

## No. 335

## AN ACT

## HB 116

Amending the act of June 21, 1939 (P. L. 566), entitled "An act defining the liability of an employer to pay damages for occupational disease contracted by an employe arising out of and in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; imposing duties on the Department of Labor and Industry, the Workmen's Compensation Board, Workmen's Compensation Referees, and deans of medical schools; creating a medical board to determine controverted medical issues; establishing an Occupational Disease Fund in custody of the State Workmen's Insurance Board; imposing upon the Commonwealth a part of the compensation payable for certain occupational diseases; making an appropriation; and prescribing penalties," redefining "occupational disease," providing for additional payments to employes totally disabled by silicosis, anthraco-silicosis and asbestosis, for payments to certain employes so disabled and not theretofore compensated, and liability therefor, increasing certain benefits and further providing for certain services, and prescribing when compensation shall commence in certain cases.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Clause (k) of section 108, act of June 21, 1939 (P. L. 566), known as "The Pennsylvania Occupational Disease Act," is amended to read:

Section 108. The term "occupational disease," as used in this act, shall mean only the following diseases:

\* \* \*

(k) Silicosis, [or] anthraco-silicosis [(commonly known as Miner's Asthma and hereinafter referred to as anthraco-silicosis) in any occupation involving direct contact with, handling of, or exposure to dust of silicon dioxide (SiO<sub>2</sub>).] or coal worker's pneumoconiosis (the latter two commonly known as Miner's Asthma and hereinafter referred to as anthraco-silicosis or coal worker's pneumoconiosis) in any occupation involving direct contact with, handling of, or exposure to the dust of anthracite or bituminous coal and/or dust of silicon dioxide (SiO<sub>2</sub>).

\* \* \*

Section 2. Clause 2 of subsection (a) of section 301 of the act, amended September 30, 1961 (P. L. 1768), is amended to read:

Section 301. (a) \* \* \*

2. The maximum compensation payable under this article for disability, and death resulting from silicosis, anthraco-silicosis, coal worker's pneumoconiosis, or asbestosis shall not exceed the sum of [twelve thousand dollars (\$12,000)] twelve thousand seven hundred fifty dollars

(\$12,750) which shall be full and complete payment for all disability, present or future, or for death from such occupational diseases arising out of employment by any and all employers in this Commonwealth except that any employe who has received the maximum compensation herein or heretofore payable shall be paid additional compensation in the amount of seventy-five dollars (\$75) per month for each month of total disability occurring subsequent to the month in which such maximum compensation was received: Provided, That in the case of any employe who received the maximum compensation herein or heretofore payable prior to the effective date of this amending act, such additional compensation shall commence only with the month this amending act becomes effective. Such additional compensation which is paid to an employe who, on the effective date of this amending act, is receiving compensation or has theretofore received the maximum compensation prescribed, shall be paid by the Commonwealth. Such additional compensation paid to an employe who first becomes entitled to compensation subsequent to the effective date of this amending act and who exhausts the maximum compensation prescribed, shall be paid from the same source or sources and in the same manner as the prescribed maximum compensation was paid.

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Section 3. Subsections (d), (e) and (g) of section 301 of the act, amended February 28, 1956 (P. L. 1095), are amended to read:

Section 301. \* \* \*

(d) Compensation for silicosis, or anthraco-silicosis, coal worker's pneumoconiosis and asbestosis, shall be paid only when it is shown that the employe has had an aggregate employment of at least two years in the Commonwealth of Pennsylvania, during a period of ten years next preceding the date of disability, in an occupation having a silica, coal, or asbestos hazard.

(e) Compensation shall not be payable for partial disability due to silicosis, anthraco-silicosis, coal worker's pneumoconiosis, or asbestosis.

Compensation shall be payable, as otherwise provided in this act, for total disability or death caused by silicosis, anthraco-silicosis, coal worker's

pneumoconiosis, or asbestosis, or by silicosis, anthraco-silicosis, coal worker's pneumoconiosis, or asbestosis, when accompanied by active pulmonary tuberculosis.

\* \* \*

(g) The employer liable for the compensation provided by this article shall be the employer in whose employment the employe was last exposed to the hazard of the occupational disease claimed, regardless of the length of time of such last exposure: Provided, That when a claimant alleges that disability or death was due to silicosis, anthraco-silicosis, coal worker's pneumoconiosis, asbestosis or any other occupational disease which developed to the point of disablement only after an exposure of five or more years, the only employer liable shall be the last employer in whose employment the employe was last exposed to the hazard of such occupational disease during a period of six months or more: And provided further, That in those cases where disability or death is not conclusively proven to be the result of such last exposure, all compensation shall be paid by the Commonwealth. An exposure during a period of less than six months after the effective date of this act shall not be deemed an exposure. The notice of disability or death and claim shall be made to the employer who is liable under this subsection, his insurance carrier, if any, and the Commonwealth.

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Section 4. Section 301 of the act is amended by adding, at the end thereof, a new subsection to read:

Section 301. \* \* \*

(i) Notwithstanding any other provisions of this act, compensation for silicosis, anthraco-silicosis, coal worker's pneumoconiosis, and asbestosis shall be paid for each month beginning with the month this amending act becomes effective, or beginning with the first month of disability, whichever occurs later, at the rate of seventy-five dollars (\$75) per month, to every employe totally disabled thereby as a result of exposure thereto, who has not theretofore been compensated because his claim was barred by any of the time limitations prescribed by this act, and shall continue during the period of such total disability. No compensation under this section shall be paid to any employe who has not been exposed to a silica, coal, or <sup>1</sup> asbestos hazard within the Com-

<sup>1</sup>"asbestosis" in original.

monwealth of Pennsylvania for a period of two years. All such compensation to those whose last exposure precedes the effective date of this amending act shall be paid by the Commonwealth. Employees whose last exposure follows the effective date of this amending act and who become entitled to the compensation provided by this subsection shall be paid as provided by this act.

Section 5. Clauses (a) and (b), the last paragraph of clause (c) and clause (f) of section 306, and section 307 of the act, amended September 30, 1961 (P. L. 1768), are amended to read:

Section 306. The following schedule of compensation is hereby established subject to the limitations of section 301:

(a) For total disability sixty-six and two-thirds per centum of the wages of the disabled employe as defined in section three hundred and nine, beginning after the seventh day of total disability, and payable for the duration of total disability, but the compensation shall not be more than [forty-seven dollars and fifty cents] fifty dollars per week nor less than [twenty-seven dollars and fifty cents] thirty dollars per week. If at the time when disability begins, the employe receives wages of [twenty-seven dollars and fifty cents] thirty dollars per week or less, then he shall receive ninety per centum of the wages per week as compensation, but in no event less than [twenty dollars] twenty-two dollars and fifty cents per week. Nothing in this clause shall require payment of compensation after disability shall cease.

(b) For disability partial in character (except the particular cases mentioned in clause (c)) sixty-six and two thirds per centum of the difference between the wages of the disabled employe, as defined in section three hundred and nine, and the earning power of the employe thereafter; but such compensation shall not be more than [thirty-seven dollars and fifty cents] forty dollars per week. This compensation shall be paid during the period of such partial disability except as provided in clause (e) of this section, but not more than three hundred and fifty weeks. Should total disability be followed by partial disability, the period of three hundred and fifty weeks shall not be reduced by the number of weeks during which compensation was paid for total disability. The term "earning power," as used in this section, shall in no case be less than the weekly amount which the employe receives after disability begins, and in those cases in which the employe works fewer than five

days per week for reasons not connected with or arising out of the disability resulting from the injury shall not be less than five times his actual daily wage as fixed by the day, hour, or by the output of the employe, and in no instance shall an employe receiving compensation under this section receive more in compensation and wages combined than a fellow employe in employment similar to that in which the injured employe was engaged at the time of disability.

(c) For all disability resulting from loss or loss of the use of members resulting from occupational disease, the compensation shall be exclusively as follows:

\* \* \*

This compensation shall not be more than [forty-seven dollars and fifty cents] fifty dollars per week nor less than [twenty-seven dollars and fifty cents] thirty dollars per week: Provided, That if at the time of disability the employe receives wages of [twenty-seven dollars and fifty cents] thirty dollars per week or less, then he shall receive ninety per centum of such wages per week as compensation, but in no event less than [twenty dollars] twenty-two dollars and fifty cents per week.

When an employe works during the healing period, his wages and earning power shall be as defined in this act, and he shall not receive more in wages and compensation combined than his wages at the time of disability as defined in section 309. Where any such injury or injuries shall require an amputation at a time after the end of the healing period hereinbefore provided, the employe shall be entitled to receive compensation for the second healing period, and in the case of a second injury or amputation to the same limb prior to the expiration of the first healing period, a new healing period shall commence for the period hereinbefore provided and no further compensation shall be payable for the first healing period.

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(f) During the first six months after disability begins, the employer shall furnish reasonable surgical and medical services, medicines, and supplies, as and when needed, unless the employe refuses to allow them to be furnished by the employer. The cost of such services, medicines, and supplies, shall not exceed [four hundred fifty] seven hundred fifty dollars. If the employer shall, upon application made to him, refuse to furnish such services, medicines, and supplies, the employe may procure same and shall receive from the employer the reasonable cost thereof within the above limitations. In addition to the above service,

medicines, and supplies, hospital treatment, services, and supplies and orthopedic appliances and prostheses, shall be furnished by the employer for the said period of six months. The board may order further medical, surgical and hospital services [after the end of the six month period,] if it is established that further care will result in restoring the disabled employe's earning power to a <sup>1</sup> substantial degree. In each order the board shall specify the maximum period and the maximum costs of the treatment designed for the employe's rehabilitation. The cost of such hospital treatment, service, and supplies, shall not in any case exceed the prevailing charge in the hospital for like services to other individuals. If the employe shall refuse reasonable surgical, medical, and hospital services, medicines, and supplies, tendered to him by his employer, he shall forfeit all rights to compensation for disability or any increase in his disability shown to have resulted from such refusal. Whenever an employe shall have suffered the loss of a limb, part of a limb, or an eye, the employer shall furnish to the employe in addition to the aforementioned surgical and medical services, services rendered by duly licensed practitioners of the healing arts, medicines and supplies, or artificial limb or eye or other prostheses of a type and kind recommended by the doctor attending such employe in connection with such injury as well as such training as may be required in the proper use of such prostheses. The provisions of this section shall apply to occupational diseases where no loss of earning power occurs.

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Section 307. In case of death resulting from occupational disease, compensation shall be computed on the following basis, and distributed to the following persons, subject to the limitations of section 301:

1. If there be no widow nor widower entitled to compensation, compensation shall be paid to the guardian of the child or children, or if there be no guardian, to such other persons as may be designated by the board as hereinafter provided, as follows:

(a) If there be one child, thirty-two per centum of wages of deceased, but not in excess of [nineteen dollars] twenty dollars per week.

(b) If there be two children, forty-two per centum of wages of deceased, but not in excess of [twenty-five dollars and seventy five] twenty-seven dollars and twenty-five cents per week.

(c) If there be three children, fifty-two per centum of wages of deceased, but not in excess of [thirty-two dollars and fifty cents] thirty-four dollars and twenty-five cents per week.

<sup>1</sup> "substantial" in original.

(d) If there be four children, sixty-two per centum of wages of deceased, but not in excess of [thirty-eight dollars] forty dollars per week.

(e) If there be five children, sixty-four per centum of wages of deceased, but not in excess of [forty-three dollars] forty-five dollars and twenty-five cents per week.

(f) If there be six or more children, sixty-six and two-thirds per centum of wages of deceased, but not in excess of [forty-seven dollars and fifty cents] fifty dollars per week.

2. To the widow or widower, if there be no children, fifty-one per centum of wages, but not in excess of [thirty dollars and fifty cents] thirty-two dollars and twenty-five cents per week.

3. To the widow or widower, if there be one child, sixty per centum of wages, but not in excess of [thirty-six dollars and fifty cents] thirty-eight dollars and fifty cents per week.

4. To the widow or widower, if there be two children, sixty-six and two-thirds per centum of wages, but not in excess of [forty-three dollars] forty-five dollars and twenty-five cents per week.

5. To the widow or widower, if there be three or more children, sixty-six and two thirds per centum of wages, but not in excess of [forty-seven dollars and fifty cents] fifty dollars per week.

6. If there be neither widow, widower, nor children, entitled to compensation, then to the father or mother, if dependent to any extent upon the employe at the time of his death, thirty-two per centum of wages, but not in excess of [twenty dollars] twenty-one dollars per week: Provided, however, That in the case of a minor child who has been contributing to his parents, the dependency of said parents shall be presumed: And provided further, That if the father or mother was totally dependent upon the deceased employe at the time of his death, the compensation payable to such father or mother shall be fifty-two per centum of wages, but not in excess of [thirty dollars] thirty-one dollars and fifty cents per week.

7. If there be neither widow, widower, children, nor dependent parent, entitled to compensation, then to the brothers and sisters, if actually dependent upon the decedent for support at the time of his death, twenty-two per centum of wages for one brother or sister, and five per centum additional for each additional brother or sister, with a maximum of thirty-two per centum, such compensation to be paid to their guardian,

or, if there be no guardian, to such other person as may be designated by the board, as hereinafter provided.

8. Whether or not there be dependents as aforesaid, the reasonable expense of burial, not exceeding [five hundred] seven hundred fifty dollars, which shall be paid by the employer or insurer directly to the undertaker (without deduction of any amounts theretofore paid for compensation or for medical expenses).

Compensation shall be payable under this section to or on account of any child, brother, or sister, only if and while such child, brother, or sister is under the age of eighteen. No compensation shall be payable under this section to a widow, unless she was living with her deceased husband at the time of his death, or was then actually dependent upon him and receiving from him a substantial portion of her support. No compensation shall be payable under this section to a widower, unless he be incapable of self-support at the time of his wife's death and be at such time dependent upon her for support. If members of decedent's household at the time of his death, the terms "child" and "children" shall include step children, adopted children, and children to whom he stood in loco parentis, and shall include posthumous children. Should any dependent of a deceased employe die or remarry, or should the widower become capable of self-support, the right of such dependent or widower to compensation under this section shall cease: Provided, however, That upon remarriage of any widow the compensation of such widow shall continue, as hereinbefore provided, for one-third of the period during which compensation then remains payable to her: Provided further, That if, upon investigation and hearing, it shall be ascertained that the widow or widower is living with a man or woman, as the case may be, in meretricious relationship and not married, or the widow living a life of prostitution, the board may order the termination of compensation payable to such widow or widower. If the compensation payable under this section to any person shall, for any cause, cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased.

The wages upon which death compensation shall be based shall not in any case be taken to exceed seventy-five dollars per week, nor be less than fifty dollars per week.

This compensation shall be paid during three hundred and fifty weeks and, in the case of children entitled to compensation under this section, the compensation of each child shall continue after said period of three



hundred and fifty weeks until such child reaches the age of eighteen, at the rate of twenty-four and one-half per centum of wages, but not in excess of [fourteen dollars] fifteen dollars per week, if there is one child; thirty-four and one-half per centum of wages, but not in excess of [nine-teen dollars] twenty dollars per week, if there are two children; forty-five and one-half per centum of wages, but not in excess of [twenty-five dollars and seventy-five] twenty-seven dollars and twenty-five cents per week, if there are three children; fifty-seven per centum of wages, but not in excess of [thirty-two dollars and fifty cents] thirty-four dollars and twenty-five cents per week, if there are four children; sixty-two per centum of wages, but not in excess of [thirty-five dollars] thirty-six dollars and seventy-five cents per week, if there be five children; and sixty-six and two-thirds per centum of wages, but not in excess of [forty dollars] forty-two dollars per week, if there be six children or more.

The board may, if the best interests of a child or children shall so require, at any time order and direct the compensation payable to a child or children, or to a widow or a widower, on account of any child or children, to be paid to the guardian of such child or children, or, if there be no guardian, to such other person as the board, as hereinafter provided, may direct. If there be no guardian or committee of any minor, dependent, or insane employe, or dependent, on whose account compensation is payable, the amount payable on account of such minor, dependent, or insane employe, or dependent may be paid to any surviving parent, or to such other person as the board may order and direct, and the board may require any person, other than a guardian or committee, to whom it has directed compensation for a minor, dependent, or insane employe, or dependent to be paid, to render, as and when it shall so order, accounts of the receipts and disbursements of such person, and to file with it a satisfactory bond in a sum sufficient to secure the proper application of the moneys received by such person.

Section 6. Subsection (a) of section 308 of the act, amended February 28, 1956 (P. L. 1095), is amended to read:

Section 308. (a) When compensation is awarded because of disability or death caused by silicosis, anthracosis-silicosis, coal worker's pneumoconiosis, asbestosis, or any other occupational disease which developed to the point of disablement only after an exposure of five or more years, the compensation for disability or death due to such disease shall, except as otherwise provided in subsection (g) of section 301, be paid jointly by

the employer and the Commonwealth and the employer shall be liable for sixty per centum of the compensation due and the Commonwealth forty per centum.

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Section 7. Section 315 of the act, amended February 28, 1956 (P. L. 1095), is amended to read:

Section 315. In cases of disability all claims for compensation shall be forever barred, unless, within sixteen months after compensable disability begins, the parties shall have agreed upon the compensation payable under this article, or unless, within sixteen months after compensable disability begins, one of the parties shall have filed a petition as provided in article four hereof. In cases of death all claims for compensation shall be forever barred, unless, within sixteen months after the death, the parties shall have agreed upon the compensation payable under this article, or unless, within sixteen months after the death, one of the parties shall have filed a petition as provided in article four hereof. Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of sixteen months from the time of the making of the most recent payment made prior to the date of filing such petition.

In cases of total disability from silicosis, anthraco-silicosis, coal worker's pneumoconiosis, and asbestosis where the claim is allowed, compensation shall be payable and commence as of the date the claim is filed.

Section 8. This act shall take effect December 1, 1965.

APPROVED—The 10th day of November, A. D. 1965.

WILLIAM W. SCRANTON

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No. 336

A SUPPLEMENT

HB 1345

To the act, approved June 25, 1931 (P. L. 1352), entitled "An act providing for joint action by the Commonwealth of Pennsylvania and the State of New Jersey in the administration, operation, and maintenance of bridges over the Delaware River, and for the construction of additional bridge facilities across said river; authorizing the Governor, for these purposes, to enter into an agreement with the State of New Jersey; creating a Delaware River Joint Toll Bridge Commission and specifying the powers and duties thereof, including the power to finance the construction of additional bridges by the issuance of revenue bonds to be redeemed from revenues derived from tolls collected at such bridges; transferring to said commission all powers now exercised by existing commission created to acquire toll