

No. 619

AN ACT

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," increasing the rate of compensation, changing subrogation rights, and further regulating reports, examinations and testimony of physicians.

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

The Pennsylvania Occupational Disease Act.

Subsection (a), section 301; clauses (a), (b) and last paragraph of clause (c), section 306, section 307, act of June 21, 1939, P. L. 566, amended February 28, 1956, P. L. 1095, further amended.

Section 1. Subsection (a) of section 301, clauses (a), (b) and the last paragraph of clause (c) of section 306 and section 307, act of June 21, 1939 (P. L. 566), known as "The Pennsylvania Occupational Disease Act," amended February 28, 1956 (P. L. 1095), are amended to read:

Section 301. (a) When employer and employe shall by agreement, either express or implied, as hereinafter provided, accept the provisions of article three of this act, compensation for disability or death of such employe, caused by occupational disease, arising out of and in the course of his employment, shall be paid by the employer, without regard to negligence, according to the schedule contained in sections three hundred and six and three hundred and seven of this article, but—

1. No compensation shall be paid when the disability or death is caused by the employe's violation of law, but the burden of proof of such fact shall be upon the employer.

2. The maximum compensation payable under this article for disability, and death resulting from silicosis, anthraco-silicosis, or asbestosis shall not exceed the sum of [ten thousand dollars (\$10,000)] *ten thousand five hundred dollars (\$10,500)*, 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.

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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 [thirty-seven dollars and fifty cents] *forty-two dollars and fifty cents* per week nor less than twenty-five dollars per week. If at the time when disability begins, the employe receives wages of twenty-five 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 [fifteen dollars] *seventeen 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 [twenty-seven dollars and fifty cents] *thirty-two dollars and fifty cents* 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 [thirty-seven dollars and fifty cents] *forty-two dollars and fifty cents* per week nor less than twenty-five dollars per week: Provided, That if at the time of disability the employe receives wages of twenty-five 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 [fifteen dollars] *seventeen 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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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 [fifteen] *seventeen dollars* per week.

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

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

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

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

* "than" in original.

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

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

3. To the widow or widower, if there *be one child, sixty per centum of wages, but not in excess of [twenty-eight dollars and seventy-five cents] *thirty-two 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 [thirty-four dollars] *thirty-eight dollars and fifty 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 [thirty-seven dollars and fifty cents] *forty-two dollars and fifty cents* 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 [thirteen dollars and twenty-five cents] *fifteen 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 [twenty-two] *twenty-five* dollars 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 [four hundred and twenty-five] *five hundred* dollars, which shall be paid by the employer or insurer directly to the undertaker (without deduction of any amounts there-
fore paid for compensation or for medical expenses).

* "by" in original.

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 [fifty-six dollars and twenty-five cents] *sixty-three dollars and seventy-five cents* per week, nor be less than [thirty-seven dollars and fifty cents] *forty-two dollars and fifty cents* 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 [ten dollars and seventy-five cents] *twelve dollars and twenty-five cents* per week, if there is one child; thirty-four and one-half per centum of wages, but not in excess of [fifteen]

seventeen dollars per week, if there are two children; forty-five and one-half per centum of wages, but not in excess of [twenty dollars and twenty-five cents] *twenty-three dollars* per week, if there are three children; fifty-seven per centum of wages, but not in excess of [twenty-five dollars and fifty cents] *twenty-nine dollars* per week, if there are four children; sixty-two per centum of wages, but not in excess of [twenty-seven dollars] *thirty dollars and fifty cents* per week, if there be five children; and sixty-six and two-thirds per centum of wages, but not in excess of [thirty dollars and fifty cents] *thirty-four dollars and fifty cents* 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 2. Section 314 of the act, amended July 15, 1957 (P. L. 935), is amended to read:

Section 314 of
the act, amended
July 15, 1957,
P. L. 935,
further amended.

Section 314. At any time after disability begins, the employe must submit himself for examination, at some reasonable time and place, to a physician or physicians legally authorized to practice under the laws of such place, who shall be selected and paid by the employer, or the Commonwealth, and the report of the examination of the physician, with his testimony, shall be made a part of the record before a claim for disability shall be allowed by the referee of the Board: *Provided, That in the case where there has been an examination by a physician selected and paid for by the Commonwealth, there shall be, in addition an examination by an independent physician selected and paid for by the employer, who shall file a report and testify and who shall not be allowed under any circumstances to adopt the*

report or the testimony or the examination of the physician of any other party. If the employe shall refuse to submit to the examination by the physician or physicians selected by the employer or the Commonwealth, the board shall order the employe to submit to an examination at a time and place set by it and by the physician or physicians selected and paid by the employer or the Commonwealth, or by a physician or physicians designated by it and paid by the employer or the Commonwealth. The board may at any time after such first examination order the employe to submit himself to such further examinations as it shall deem reasonable and necessary, at such times and places and by such physicians as it may designate; and, in such case, the employer or the Commonwealth shall pay the fees and expenses of the examining physician or physicians, and the reasonable traveling expenses and loss of wages incurred by the employe in order to submit himself to such examination. The refusal or neglect, without reasonable cause or excuse, of the employe to submit to such examination ordered by the board, either before or after an agreement or award, shall deprive him of the right to compensation under this article, during the continuance of such refusal or neglect, and the period of such neglect or refusal shall be deducted from the period during which compensation would otherwise be payable.

The employe shall be entitled to have a physician or physicians of his own selection, to be paid by him, participate in any examination ordered by the board.

Section 318
of the act,
amended.

Section 3. Section 318 of the act is amended to read :

Section 318. The right of compensation granted by this article shall have the same preference (without limit of amount) against the assets of an employer, liable for such compensation, as is now or may hereafter be allowed by law for a claim for unpaid wages for labor: Provided, however, That no claim for compensation shall have priority over any judgment, mortgage, or conveyance of land recorded prior to the filing of the petition, award, or agreement as to compensation in the office of the prothonotary of the county in which the land is situated. Claims for payments due under this article of this act *and compensation payments made by virtue thereof* shall not be assignable, and (except as provided in *section three hundred and nineteen of article three and section five hundred and one of article five hereof*) shall be exempt from all claims of creditors, and from levy, execution, or attachment, which exemption may not be waived.

Section 4. The second paragraph of section 319 of the act, amended February 28, 1956 (P. L. 1095), is amended to read:

Second paragraph, section 319 of the act, amended February 28, 1956, P. L. 1095, further amended.

Section 319.

* * * * *

Where an employe has received payments for the disability or medical expense resulting from a disability in the course of his employment, paid by the employer, [or] an insurance company, *hospital, medical, osteopathic or dental service corporation, employe or fraternal, welfare or benefit association*, on the basis that the disability was not compensable under this act, in the event of an agreement or award for that disability, the employer, [or] insurance company, [who] *hospital, medical, osteopathic or dental service corporation, employe or fraternal, welfare or benefit association, which made [the] any payments*, shall be subrogated out of the agreement or award to the amount so paid *without deduction for attorneys' fees or otherwise*, if the right to subrogation is agreed to by the parties or is established at the time of hearing before the referee or the board.

Section 5. The first and second paragraphs of section 428 of the act, amended May 18, 1945 (P. L. 661), are amended to read:

Section 428. Whenever the employer, who has accepted and complied with the provisions of section three hundred five, shall be in default in compensation payments for thirty days or more, the employe or dependents entitled to compensation thereunder may file a certified copy of the agreement and the order of the board approving the same, or of the award or order, with the prothonotary of the court of common pleas of any county, and the prothonotary shall enter the entire balance payable under the agreement, award or order to be payable to the employe or his dependents, as a judgment against the employer or other party liable under such agreement or award. *Where the compensation so payable is for a total and permanent disability, the judgment shall be in the amount of thirty thousand dollars less such amount as the employer shall have actually paid pursuant to such agreement or award.* Such judgment shall be a lien against property of the employer or other party liable under such agreement or award, and execution may issue thereon forthwith.

Wherever, after disability or death, any employe or his dependents shall have entered into a compensation agreement with an employer liable for compensation under this act, who has not accepted or complied with the provisions of section three hundred five, or shall file a claim petition with the board against such em-

ployer, he may file a certified copy thereof with the prothonotary of the court of common pleas of any county. The prothonotary shall enter the amount stipulated in any such agreement or claimed in any such petition as a judgment against the employer, *and where the amount so stipulated or claimed is for total and permanent disability, such judgment shall be in the sum of thirty thousand dollars.* If the agreement be approved by the department, or compensation awarded as claimed in the petition, the amount of compensation stipulated in the agreement or claimed in the petition shall be a lien, as of the date when the agreement or petition was filed with the prothonotary. Pending the approval of the agreement or the award of compensation, no other lien which may be attached to the employer's property during such time shall gain priority over the lien of such agreement or award, but no execution shall issue on any compensation judgment before the approval of the agreement or the award of compensation on the said petition.

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Effective date.

Section 6. This act shall take effect sixty days after final enactment.

APPROVED—The 1st day of December, A. D. 1959.

DAVID L. LAWRENCE

No. 620

AN ACT

Amending the act of July 8, 1957 (P. L. 569), entitled "An act providing compensation to certain persons who served in the military, naval or air forces of the United States or of any of her allies during the Korean Conflict; providing the method of making payment to representatives of persons who, because of death or incapacity, cannot personally receive compensation; imposing certain duties on the Adjutant General; making an appropriation and providing penalties," deleting the requirement that certain veterans be residents of the Commonwealth of Pennsylvania on the effective date of the act to be eligible for compensation, and making an additional appropriation.

Korean Conflict
Veterans' Com-
pensation Act.

Section 2, and
clause (6),
section 4, act
of July 8, 1957.
P. L. 569,
amended.

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

Section 1. Section 2 and clause (6) of section 4 of the act of July 8, 1957 (P. L. 569), known as the "Korean Conflict Veterans' Compensation Act," are amended to read:

Section *2. Definitions.—As used in this act, the word "veteran" includes any individual a member of the military, naval or air forces of the United States or

* "7" in original.