

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.

Last paragraph, section 319 of the act, amended December 28, 1959, P. L. 2034, further amended.

Section 2. The last paragraph of section 319 of the act, amended December 28, 1959 (P. L. 2034), is amended to read:

Section 319. * * *

Where an employe has received payments for the disability or medical expense resulting from an injury by accident 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 injury and disability were not compensable under this act, in the event of an agreement or award for that injury, the employer *or* insurance company, [hospital, medical, osteopathic or dental service corporation, employe or fraternal, welfare or benefit association, which] *who* made [any] *the* payments, shall be subrogated out of the agreement or award to the amount so paid [without deduction for attorney's 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.

APPROVED—The 30th day of September, A. D. 1961.

DAVID L. LAWRENCE

No. 710

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," changing provisions relating to liability of employers and benefits and persons entitled thereto.

The Pennsylvania Occupational Disease Act.

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

Section 1. Subsection (a) of section 301, act of June 21, 1939 (P. L. 566), known as "The Pennsylvania Occupational Disease Act," amended December 1, 1959 (P. L. 1678), is amended to read :

Subsection (a), section 301, act of June 21, 1939, P. L. 566, amended December 1, 1959, P. L. 1678, further amended.

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 five hundred dollars (\$10,500)] *twelve thousand dollars (\$12,000)*, 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 2. Clauses (a) and (b), the last paragraph of clause (c) and clause (f) of section 306 of the act, clauses (a) and (b) and the last paragraph of clause (c), amended December 1, 1959 (P. L. 1678) and clause (f) amended February 28, 1956 (P. L. 1095), are amended to read :

Clauses (a) and (b), the last paragraph of clause (c) and clause (f), section 306 of the act, clauses (a) and (b) and last paragraph of clause (c), amended December 1, 1959, P. L. 1678, and clause (f), amended February 28, 1956, P. L. 1095, further amended.

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-two dollars and fifty cents] *forty-seven dollars and fifty cents* per week nor less than [twenty-five dollars] *twenty-seven dollars and fifty cents* per week. If at the time when disability begins, the employe receives wages of [twenty-five dollars] *twenty-seven dollars and fifty cents* per week or less, then he shall receive ninety per centum of the wages per week as compensation, but in no event less than [seventeen

dollars and fifty cents] *twenty dollars* 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-two dollars and fifty cents] *thirty-seven 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 [forty-two dollars and fifty cents] *forty-seven dollars and fifty cents* per week nor less than [twenty-five dollars] *twenty-seven dollars and fifty cents* per week: Provided, That if at the time of disability the employe receives wages of [twenty-five dollars] *twenty-seven dollars and fifty cents* per week or less, then he shall receive ninety per centum of such wages per week as compensation, but in no event less than [seventeen dollars and fifty cents] *twenty dollars* 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 com-

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.

* * * * *

(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 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 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. [: Provided, That the] *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 of
the act amended
December 1,
1959, P. L. 1678,
further amended.

Section 3. Section 307 of the act, amended December 1, 1959 (P. L. 1678), is amended to read:

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 [seventeen] *nineteen* dollars per week.

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

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

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

(e) If there be five children, sixty-four per centum of wages of deceased, but not in excess of [thirty-eight dollars and fifty cents] *forty-three dollars* 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-two dollars and fifty cents] *forty-seven 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-seven dollars] *thirty dollars and fifty 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-two dollars and fifty cents] *thirty-six 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-eight dollars and fifty cents] *forty-three dollars* 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-two dollars and fifty cents] *forty-seven 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 [fifteen] *twenty* 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-five] *thirty* 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 five hundred 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 [sixty-three dollars and seventy-five cents] *seventy-five dollars* per week, nor be less than [forty-two dollars and fifty cents] *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 [twelve dollars and twenty-five cents] *fourteen dollars* per week, if there is one child; thirty-four and one-half per centum of wages, but not in excess of [seventeen] *nineteen* dollars per week, if there are two children; forty-five and one-half per centum of wages, but not in excess of [twenty-three dollars] *twenty-five dollars and seventy-five cents* per week, if there are three children; fifty-seven per centum of wages, but not in excess of [twenty-nine dollars] *thirty-two dollars and fifty cents* per week, if there are four children; sixty-two per centum of wages, but not in excess of [thirty dollars and fifty cents] *thirty-five dollars* per week, if there be five children; and sixty-six and two-thirds per centum of wages, but not in excess of [thirty-four dollars and fifty cents] *forty 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 4. The last paragraph of section 319 of the act, amended December 1, 1959 (P. L. 1678), is amended to read:

Last paragraph, section 319 of the act, amended December 1, 1959, P. L. 1678, 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, [, hospital, medical, osteopathic or dental service corporation, employe or fraternal, welfare or benefit association, which] *who* made [any] *the* 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 second paragraph of section 428 of the act, amended December 1, 1959 (P. L. 1678), is amended to read:

Second paragraph, section 428 of the act, amended December 1, 1959, P. L. 1678, further amended.

* * * * *

Section 428.

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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 employer, 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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APPROVED—The 30th day of September, A. D. 1961.

DAVID L. LAWRENCE

No. 711

AN ACT

Amending the act of July 15, 1957 (P. L. 901), entitled "An act giving cities of the third class the right and power to adopt one of several plans of optional charters and to exercise the powers and authority of local self-government subject to certain restrictions and limitations; providing procedures for such adoption and defining the effect thereof," to permit cities adopting an optional charter plan under said act to provide for the hearing of appeals from assessments and the revision thereof by an administrative procedure.

Optional Third
Class City Char-
ter Law.

Section 305, act
of July 15, 1957,
P. L. 901,
amended.

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

Section 1. Section 305, act of July 15, 1957 (P. L. 901), known as the "Optional Third Class City Charter Law," is amended to read:

Section 305. The charter of any city adopted in accordance with this act shall not give any power or authority to diminish any rights or privileges of any present city employe in his pension or retirement system. Terms of office of a mayor, treasurer, controller or members of council elected to or holding office prior to adoption of a charter shall not be terminated prior to the time for which elected. No city shall exercise any powers or authority beyond the city limits except such