
PENNSYLVANIA OCCUPATIONAL DISEASE ACT

“THE PENNSYLVANIA OCCUPATIONAL DISEASE ACT”

Act of 1939, P.L. 566, No. 284

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.

ARTICLE I

Interpretation and Definitions

Sec 101 This act shall be called and may be cited as The Pennsylvania Occupational Disease Act. It shall apply to disabilities and deaths caused by occupational disease as defined in this act, resulting from employment within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and shall not apply to any such disabilities and deaths resulting from employment outside of the Commonwealth.

Sec 102 Wherever in this act the singular is used, the plural shall be included; and where the masculine gender is used, the feminine and neuter shall be included.

Sec 103 The term “employer,” as used in this act, is declared to be synonymous with master, and to include natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the Commonwealth, and all governmental agencies created by it.

Sec 104 The term “employe,” as used in this act, is declared to be synonymous with servant, and includes all natural persons who perform services, except agricultural services or domestic services performed in a private home, for another for a valuable consideration, exclusive of persons whose employment is casual in character and not in the regular course of the business of the employer and exclusive of persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale, in the worker’s own home, or on other premises not under the control or management of the employer. Every executive officer of a corporation elected or appointed in accordance with the charter and by-laws of the corporation, except elected officers of the Commonwealth or any of its political subdivisions, shall be an employe of the corporation.

Sec 105 The term “contractor,” as used in article two, section two hundred and three, and article three, section three hundred and two (b), shall not include a contractor engaged in an independent business, other than that of supplying laborers or assistants, in which he serves persons other than the employer in whose service the disability occurs, but shall include a subcontractor to whom a principal contractor has sublet any part of the work which such principal contractor has undertaken.

Sec 106 The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority.

Sec 107 The term “department,” when used in this act, shall mean the Department of Labor and Industry of this Commonwealth.

The term “board,” when used in this act, shall mean The Workmen’s Compensation Board of this Commonwealth.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

The term “referee,” when used in this act, shall mean Workmen’s Compensation Referee.

Sec 108 The term “occupational disease,” as used in this act, shall mean only the following diseases:

- (a) Poisoning by arsenic, lead, mercury, manganese, or beryllium, their preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto.
- (b) Poisoning by phosphorus, its preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto.
- (c) Poisoning by methanol, carbon bisulphide, carbon monoxide, hydro carbon distillates (naphthas and others), or halogenated hydro carbons, or any preparations containing these chemicals or any of them, in any occupation involving direct contact with, handling thereof, or exposure thereto.
- (d) Poisoning by benzol, or by nitro, amido, or amino derivatives of benzol (dinitro-benzol, aniline, and others), or their preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto.
- (e) Caisson disease (compressed air illness) resulting from engaging in any occupation carried on in compressed air.
- (f) Radium poisoning or disability, due to radioactive properties of substances or to Roentgen-ray (X-rays) in any occupation involving direct contact with, handling thereof, or exposure thereto.
- (g) Poisoning by, or ulceration from, chromic acid, or bichromate of ammonium, bichromate of potassium, or bichromate of sodium, or their preparations, in any occupation involving direct contact with, handling thereof, or exposure thereto.
- (h) Epitheliomatous cancer or ulceration due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product or residue of any of those substances, in any occupation involving direct contact with, handling thereof, or exposure thereto.
- (i) Infection or inflammation of the skin due to oils, cutting compounds, lubricants, dust, liquids, fumes, gases, or vapor, in any occupation involving direct contact with, handling thereof, or exposure thereto.
- (j) Anthrax occurring in any occupation involving the handling of or exposure to wool, hair, bristles, hides, or skins, or bodies of animals either alive or dead.
- (k) Silicosis, anthraco-silicosis or coal worker’s pneumoconiosis (the latter two commonly know 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 (SiO₂).
- (l) Asbestosis in any occupation involving direct contact with, handling of, or exposure to the dust of asbestos.
- (m) Tuberculosis, serum hepatitis or infectious hepatitis in the occupation of nursing or auxiliary services involving exposure to such disease.
- (n) All other occupational diseases (1) to which the claimant is exposed by reason of this employment, and (2) which are peculiar to the industry or occupation, and (3) which are not common to the general population. For the purposes of this clause, partial loss of hearing due to noise shall not be considered an occupational disease.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

- (o) Diseases of the heart and lungs, resulting in either temporary or permanent total or partial disability or death, after four years or more of service in fire fighting for the benefit or safety of the public, caused by extreme over-exertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising directly out of the employment of any such firemen. The Commonwealth shall pay the full amount of compensation for disability under this clause.

Sec 109 No compensation shall be paid for any occupational disease if, during hostile attacks on the United States, disability or death of an employe results solely from military activities of the armed forces of the United States or from military activities or enemy sabotage of a foreign power.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

ARTICLE II
Damages by Action at Law

- Sec 201 In any action brought to recover damages for disability or death of an employe caused by occupational disease arising out of and in the course of his employment, it shall not be a defense that the occupational disease was caused in whole or in part by the negligence of a fellow employe.
- Sec 202 The employer shall be liable for the negligence of employes other than the plaintiff, while acting within the scope of their employment, including engineers, chauffeurs, miners, mine-foremen, fire-bosses, mine superintendents, plumbers, officers of vessels, and all other employes licensed by the Commonwealth or other governmental authority, if the employer be allowed by law the right of free selection of such employes from the class of persons thus licensed; and such employes shall be the agents and representatives of their employers, and their employers shall be responsible for the acts and neglects of such employes, as in the case of other agents and employes of their employers; and, notwithstanding the employment of such employes, the property in and about which they are employed, and the use and operation thereof, shall at all times be under the supervision, management and control of their employers.
- Sec 203 An employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employe or contractor who has rejected article three of this act, for the performance upon such premises of a part of the employer's regular business entrusted to such employe or contractor, shall be liable to such laborer or assistant in the same manner and to the same extent as to his own employe.
- Sec 204 No agreement, composition, or release of damages made before the date of any disability or death resulting from occupational disease, except the agreement defined in article three of this act, shall be valid or shall bar a claim for damages for such disability or death; and any such agreement other than that defined in article three herein, is declared to be against the public policy of this Commonwealth. The receipt of benefits from any association, society, or fund shall not bar the recovery of damages by action at law, nor the recovery of compensation under article three hereof; and any release executed in consideration of such benefits shall be void: Provided, however, That if the employe receives unemployment compensation benefits, such amount or amounts so received shall be credited as against the amount of the award made under the provisions of the occupational disease act.
- Sec 205 If disability or death is compensable under this act, a person shall not be liable to anyone at common law or otherwise on account of such disability or death for any act or omission occurring while such person was in the same employ as the person disabled or killed, except for intentional wrong.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

ARTICLE III Elective Compensation

- Sec 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, coal worker's pneumoconiosis, or asbestosis shall not exceed the sum of 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.
- (b) The right to receive compensation under this act shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of this Commonwealth relating to the employment of minors, or that he obtained his employment by misrepresenting his age.
- (c) Compensation for the occupational diseases enumerated in this act shall be paid only when such occupational disease is peculiar to the occupation or industry in which the employe was engaged and not common to the general population. Wherever compensable disability or death is mentioned as a cause for compensation under this act, it shall mean only compensable disability or death resulting from occupational disease and occurring within four years after the date of his last employment in such occupation or industry.
- (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.
- (f) If it be shown that the employe, at or immediately before the date of disability, was employed in any occupation or industry in which the occupational disease is a hazard, it shall be presumed that

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

the employee's occupational disease arose out of and in the course of his employment, but this presumption shall not be conclusive.

- (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.
- (h) Except as hereinafter provided, all compensation payable under this article shall be payable in periodic installments, as the wages of the employe were payable before the accident.
- (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 asbestos hazard within the Commonwealth of Pennsylvania for a period of two years. Subsequent to the effective date of this amending act of 1969, it shall be necessary to be a resident of Pennsylvania in order to qualify for compensation, but not to continue receiving the same after qualification. All such compensation to those whose last exposure precedes the effective date of this amending act shall be paid by the Commonwealth. Employes 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.

An application for compensation under this subsection shall not be accepted from any person who, during the preceding six months has been determined to be ineligible hereunder.

Every application shall be accompanied by two prints of the same recent photograph of the applicant, and such other proof of identity as the board shall require. One of the prints shall be stamped by the board and returned to the applicant, who shall deliver it to the physician at the time of examination. The physician shall attach the print to his report to the board.

- (j) Every person heretofore or hereafter qualified for additional compensation under the provisions of clause 2 of subsection (a) or subsection (i) of this section shall, beginning with the month following the effective date of this amending act of 1969, or the month of qualification, whichever occurs later, be paid further compensation of twenty-five dollars (\$25) per month during the period of disability. Such further compensation paid to a person heretofore qualified shall be paid by the Commonwealth. Compensation paid to any person hereafter qualified shall be paid from the same source as the additional compensation provided in clause 2 of subsection (a) or subsection (i) of this section.
- (k) Upon the award of any benefits under the Federal Coal Mine Health and Safety Act of 1969 to a person who is also receiving or claiming monthly compensation totally funded by general revenues

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

of the Commonwealth of Pennsylvania under subsections (a), (i), (j), or (l) of section 301, such person shall have his monthly compensation from general revenues of the Commonwealth suspended effective with the month following the month of award of Federal benefits, as may be evidenced by a copy of the Federal award certificate, or effective with the month of enactment of this amendment, whichever is later. Upon any future action by the United States Congress, Federal executive departments, or Federal courts which would make present recipients under the Pennsylvania Occupational Disease Act eligible for both Federal and State payments, the sum of which would exceed the maximum authorized Federal payment, the eligible recipients would then receive retroactively all State payments that were suspended under the authority of this act. All such recipients who have their State payments suspended shall continue their eligibility and entitlement under the Pennsylvania Occupational Disease Act and at any time in the future for whatever reason that such recipients' payments under the Federal law are terminated, suspended or reduced their State payments shall be reinstated effective with the month following the month that Federal benefits are terminated, suspended or reduced. The recipients' entitlement to weekly compensation and the maximum sum thereof provided under clause 2 of subsection (a) of section 301 shall remain unchanged, and no reduction shall be made in the medical and hospital compensation payable under subsection (f) of section 306 or in the burial expenses payable under clause 8 of section 307.

- (l) Every person heretofore or hereafter qualified for additional compensation under the provisions of clause (2) of subsection (a) or subsection (i) shall, beginning with the month following the effective date of this amending act, or the month of qualification, whichever occurs later, be paid further compensation of twenty-five dollars (\$25) per month during the period of disability. Such further compensation paid to a person heretofore or hereafter qualified shall be paid by the Commonwealth.

Sec 302

- (a) In every contract of hiring made after October first, one thousand nine hundred and thirty-nine, and in every contract of hiring renewed or extended by mutual consent, expressed or implied, after said date, it shall be conclusively presumed that the parties have accepted the provisions of article three of this act, and have agreed to be bound thereby, unless the employer shall post at this plant, office or place of business a notice of his intention not to pay such compensation or unless there be, at the time of the making, renewal, or extension of such contract, an express statement in writing, from either party to the other, that the provisions of article three of this act are not intended to apply, and unless a true copy of such posted notice or such written statement, accompanied by proof of posting or proof of service thereof upon the other party, setting forth under oath or affirmation the time, place, and manner of such posting or service, be filed with the department within twenty days after such posting or service. Every contract of hiring, oral, written, or implied from circumstances, now in operation, or made or implied on or before October first, one thousand nine hundred and thirty-nine, shall be conclusively presumed to continue subject to the provisions of article three hereof, unless the employer shall on or before said date either post at his plant, office or place of business a notice of his intention not to pay such compensation or unless either party shall, on or before said date, in writing, have notified the other party to such contract that the provisions of article three hereof are not intended to apply, and unless there shall be filed with the department a true copy of such notice, together with proof of posting or service, within the time and in the manner hereinabove prescribed: Provided, however, That the provisions of this section shall not be so construed as to impair the obligation of any contract now in force. Such posted notice shall constitute sufficient notice to all employes and to the parents and guardians of all minor employes, and a certified copy of proof of posting or proof of service shall be prima facie evidence of notice. It shall not be lawful for any officer or agent of this Commonwealth, or for any county, city, borough, town, or township therein, or for any officer or agent thereof, or for any other governmental authority created by the laws of this Commonwealth, to give such notice of rejection of the provisions of this article to any employe of the Commonwealth or of such governmental agency.
- (b) After October first, one thousand nine hundred and thirty-nine, an employer who permits the entry, upon premises occupied by him or under his control, of a laborer or an assistant hired by an

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

employe or contractor, for the performance upon such premises of a part of the employer's regular business entrusted to that employe or contractor, shall be conclusively presumed to have agreed to pay to such laborer or assistant compensation in accordance with the provisions of article three, unless the employer shall post at his plant, office or place of business a notice of his intention not to pay such compensation, and unless there be filed with the department within twenty days, thereafter, a true copy of such notice, together with proof of the posting of the same, setting forth upon oath or affirmation the time, place, and manner of such posting; and after October first, one thousand nine hundred and thirty-nine, any such laborer or assistant who shall enter upon premises occupied by or under control of such employer, for the purpose of doing such work, shall be conclusively presumed to have agreed to accept the compensation provided in article three, in lieu of his right of action under article two, unless he shall have given notice in writing to the employer, at the time of entering upon such employer's premises for the purpose of doing his work, of his intention not to accept such compensation, and unless within twenty days thereafter there shall have been filed with the department a true copy of such notice, accompanied by proof of service thereof upon such employer, setting forth under oath or affirmation the time, place, and manner of such service. And in such cases where article three binds such employer and such laborer or assistant, it shall not be in effect between the intermediate employer or contractor and such laborer or assistant, unless otherwise expressly agreed.

- (c) Any notice given hereunder by an employer to his employes need not be addressed to each employe individually, but may be addressed to all employes. Proof of service of any number of statements or notices may be made in one affidavit, but such affidavit shall state the time and place of each service.

Sec 303 Such agreement shall constitute an acceptance of all the provisions of article three of this act, and shall operate as a surrender by the parties thereto of their rights to any form or amount of compensation or damages for any disability or death resulting from occupational disease, or to any method of determination thereof, other than as provided in article three of this act. Such agreement shall bind the employer and his personal representatives, and the employe, his or her wife, or husband, widow or widower, next of kin, and other dependents.

Sec 304 Any agreement between employer and employe for the operation or nonoperation of the provisions of article three of this act may be terminated by the posting of notice by the employer or by either party upon thirty days' notice to the other in writing, if a copy of such notice, with proof of posting or proof of service, be filed in the department as provided in section three hundred and two of this article.

Sec 304.1 The Secretary of Labor and Industry shall, within ninety (90) days after the effective date of this amendatory act, prepare a brochure of instructions, setting forth the rights of an employe in the event of disability or death caused by occupational disease and informing him of the time and manner in which claims should be filed. A copy of such brochure shall be provided to each insurance company authorized to write insurance policies covering occupational diseases under this act. Such insurance companies shall prepare at their own expense copies of said brochure for distribution to such insured employes. Each insurance company shall prepare the brochures immediately upon receipt of the sample brochure from the Secretary of Labor and Industry in such quantity as required by employers for distribution to each employe. The employer shall distribute such brochures to each employe at the time of hiring and to each existing employe within thirty (30) days after the receipt of the brochure.

Sec 305 Every employer liable under this act to pay compensation shall insure the payment of compensation in the State Workmen's Insurance Fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted by the department from such insurance. Such insurer shall assume the employer's liability hereunder and shall be entitled to all of the employer's immunities and protection hereunder except, that whenever any employer shall have purchased insurance to provide benefits under this act to persons excluded from the definition of "employe" under section 104 of this act by virtue of being engaged in domestic service or agriculture, neither the employer nor the insurer shall be entitled to raise the defense of such exclusion.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the department, showing his financial ability to pay such compensation, whereupon the department, if the applicant establishes his financial ability, shall issue to the applicant a permit authorizing such exemption. The department shall establish a period of twelve calendar months, to begin and end at such times as the department shall prescribe, which shall be known as the annual exemption period. Unless previously revoked, all permits issued under this section shall expire and terminate on the last day of the annual exemption period for which they were issued. Permits issued under this act shall be renewed upon the filing of an application. The department may, from time to time, require further statements of the financial ability of such employer, and, if at any time such employer appears no longer able to pay compensation, shall revoke its permit granting exemption, in which case the employer shall immediately subscribe to the State Workmen's Insurance Fund or insure his liability in any insurance company or mutual association or company, as aforesaid.

Any employer who fails to comply with the provisions of this section for every such failure shall, upon summary conviction before any official of competent jurisdiction, be sentenced to pay a fine of not less than one hundred dollars or more than five hundred dollars, and costs of prosecution, or imprisonment for a period of not more than six months, or both. Every day's violation shall constitute a separate offense. It shall be the duty of the department to enforce the provisions of this section; and it shall investigate all violations that are brought to its notice and shall institute prosecutions for violations thereof. All fines recovered under the provisions of this section shall be paid to the department and by it paid into the State Treasury.

Sec 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 sixty dollars per week nor less than thirty-five dollars per week. If at the time when disability begins, the employe receives wages of thirty-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 twenty-two 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 forty-five 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:

For the loss of a hand, sixty-six and two-thirds per centum of wages during one hundred and seventy-five weeks.

For the loss of a forearm, sixty-six and two-thirds per centum of wages during one hundred and ninety-five weeks.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

For the loss of an arm, sixty-six and two-thirds per centum of wages during two hundred and fifteen weeks.

For the loss of a foot, sixty-six and two-thirds per centum of wages during one hundred and fifty weeks.

For the loss of a lower leg, sixty-six and two-thirds per centum of wages during one hundred and eighty weeks.

For the loss of a leg, sixty-six and two-thirds per centum of wages during two hundred and fifteen weeks.

For the loss of an eye, sixty-six and two-thirds per centum of wages during one hundred and fifty weeks.

For the complete loss of hearing in both ears, sixty-six and two-thirds per centum of wages during one hundred and eighty weeks.

For the loss of a thumb, sixty-six and two-thirds per centum of wages during sixty weeks.

For the loss of a first finger, commonly called index finger, sixty-six and two-thirds per centum of wages during thirty-five weeks.

For the loss of a second finger, sixty-six and two-thirds per centum of wages during thirty weeks.

For the loss of a third finger, sixty-six and two-thirds per centum of wages during twenty weeks.

For the loss of a fourth finger, commonly called little finger, sixty-six and two-thirds per centum of wages during fifteen weeks.

The loss of the first phalange of the thumb shall be considered the loss of the thumb. The loss of a substantial part of the first phalange of the thumb shall be considered the loss of one-half of the thumb.

The loss of any substantial part of the first phalange of a finger, or an amputation immediately below the first phalange for the purpose of providing an optimum surgical result, shall be considered the loss of one-half of the finger. Any greater loss shall be considered the loss of the entire finger.

The loss of one-half of the thumb or a finger shall be compensated at the same rate as for the loss of a thumb or finger, but for one-half of the period provided for the loss of a thumb or finger.

For the loss of, or permanent loss of the use of, any two or more such members, not constituting total disability, sixty-six and two-thirds per centum of wages during the aggregate of the periods specified for each.

For the loss of a great toe, sixty-six and two-thirds per centum of wages during forty weeks.

For the loss of any other toe, sixty-six and two-thirds per centum of wages during sixteen weeks.

The loss of the first phalange of the great toe, or of any toe, shall be considered equivalent to the loss of one-half of such great toe, or other toe, and shall be compensated at the same rate as for the loss of a great toe, or other toe, but for one-half of the period provided for the loss of a great toe or other toe.

The loss of more than one phalange of a great toe, or any toe, shall be considered equivalent to the loss of the entire great toe or other toe.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

For the loss of, or permanent loss of the use of any two or more such members, not constituting total disability, sixty-six and two-thirds per centum of wages during the aggregate of the periods specified for each.

Unless the board shall otherwise determine, the loss of both hands or both arms or both feet or both legs or both eyes shall constitute total disability, to be compensated according to the provisions of clause (a).

Amputation at the wrist shall be considered as the equivalent of the loss of a hand, and amputation at the ankle shall be considered as the equivalent of the loss of a foot. Amputation between the wrist and the elbow shall be considered as the loss of a forearm, and amputation between the ankle and the knee shall be considered as the loss of a lower leg. Amputation at or above the elbow shall be considered as the loss of an arm and amputation at or above the knee shall be considered as the loss of a leg. Permanent loss of the use of a hand, arm, foot, leg, eye, finger, or thumb, great toe or other toe, shall be considered as the equivalent of the loss of such hand, arm, foot, leg, eye, finger, or thumb, great toe or other toe.

In addition to the payments hereinbefore provided for disabilities of the classes specified, any period of disability necessary and required as a healing period shall be compensated in accordance with the provisions of this subsection. The healing period shall end (I) when the claimant returns to employment without impairment in earnings, or (II) on the last day of the period specified in the following table, whichever is the earlier:

For the loss of a hand, twenty weeks.

For the loss of a forearm, twenty weeks.

For the loss of an arm, twenty weeks.

For the loss of a foot, twenty-five weeks.

For the loss of the lower leg, twenty-five weeks.

For the loss of a leg, twenty-five weeks.

For the loss of an eye, ten weeks.

For the loss of hearing, ten weeks.

For the loss of a thumb or any part thereof, ten weeks.

For the loss of any other finger or any part thereof, six weeks.

For the loss of a great toe or any part thereof, twelve weeks.

For the loss of any other toe or any part thereof, six weeks.

This compensation shall not be more than sixty dollars per week nor less than thirty-five dollars per week: Provided, That if at the time of disability the employe receives wages of thirty-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 twenty-two 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 compensation for the second healing period, and in the case of a second injury or amputation to the

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

same limb prior to the expiration of their 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.

- (d) Where, at the time of disability, the employe incurs other disabilities, separate from those which result in permanent disabilities enumerated in clause (c) of this section, the number of weeks for which compensation is specified for the permanent disabilities shall begin at the end of the period of temporary total disability which results from the other separate disability, but in that event the employe shall not receive compensation provided in clause (c) of this section for the specific healing period. In the event the employe incurs two or more permanent disabilities of the above enumerated classes compensable under clause (c) of this section, he shall be compensated for the largest single healing period rather than the aggregate of the healing periods.
- (e) No compensation shall be allowed for the first seven days after disability begins, except as provided in this clause (e) and clause (f) of this section. If the period of disability lasts more than six weeks after disability begins, the employe shall also receive compensation for the first seven days of disability.
- (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 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 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. 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.
- (g) Should the employe die from some other cause than the occupational disease, the liability for compensation shall cease.

Sec 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 twenty-five dollars per week.
 - (b) If there be two children, forty-two per centum of wages of deceased, but not in excess of thirty-three dollars per week.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

- (c) If there be three children, fifty-two per centum of wages of deceased, but not in excess of forty-one dollars per week.
 - (d) If there be four children, sixty-two per centum of wages of deceased, but not in excess of forty-eight dollars per week.
 - (e) If there be five children, sixty-four per centum of wages of deceased, but not in excess of fifty-four 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 sixty 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-nine dollars per week.
 3. To the widow or widower, if there be one child, sixty per centum of wages, but not in excess of forty-six dollars 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 fifty-four 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 sixty 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-five 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 and 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-eight 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 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 stepchildren, 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 if, upon inves-

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

tigation 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 ninety dollars per week, nor be less than fifty dollars per week.

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 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.

- Sec 308 (a) When compensation is awarded because of disability or death caused by 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 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.
- (b) Compensation payable by the Commonwealth under subsection (a) of this section shall be paid out of appropriations made from time to time to the department out of the General Fund in the State Treasury.
- (c) In all claims for compensation partially payable by the Commonwealth under subsection (a) of this section, the department shall be designated as a codefendant.
- (d) In all agreements for the payment of compensation and all awards, the amount payable by the employer and the amount payable by the Commonwealth shall be separately stated. An award against the employer shall be for only the percentage of the total compensation which the employer is obligated to pay under subsection (a) of this section, not to exceed the stated percentage of the maximum payable by the employer under section 301 (a) 2 of this act, or if section 301(a) 2 be inapplicable, then under sections 306 and 307 of this act. A separate award shall be made against the Commonwealth for the balance of the compensation payable under said sections, which shall be payable out of appropriations made as aforesaid. Nothing in this section shall prohibit the Commonwealth from entering into agreements to pay the compensation for which it is liable: Provided, however, That where compensation is payable under the provisions of subsection (a) of this section, the Commonwealth shall not enter into an agreement unless the employer is a party to the agreement: And, provided further, That any such agreement shall contain facts sufficient to entitle the claimant to compensation and shall be accompanied by a supporting medical certificate. All such agreements shall be approved by the board or by a referee.

Sec 309 Whenever in this article the term "wages" is used, it shall be construed to mean the average weekly wages of the employe, ascertained as follows:

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

- (a) If at the time of the disability the wages are fixed by the week, the amount so fixed shall be the average weekly wage.
- (b) If at the time of the disability the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed, multiplied by twelve and divided by fifty-two.
- (c) If at the time of the disability the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed, divided by fifty-two.
- (d) If at the time of the disability the wages are fixed by the day, hour, or by the output of the employe, the average weekly wage shall be the wage most favorable to the employe, computed by dividing by thirteen the total wages of said employe earned in the employ of the employer in the first, second, third, or fourth period of thirteen consecutive calendar weeks in case the employe receives wages monthly or semi-monthly, by dividing by thirteen the total wages of said employe earned in the employ of the employer in the first, second, third, or fourth period of three consecutive calendar months in the year immediately preceding the disability.

If the employe has been in the employ of employer less than thirteen calendar weeks, (or three calendar months if the employe receives wages monthly, or semi-monthly) immediately preceding the disability, his average weekly wage shall be computed under the foregoing paragraph, taking "total wages" for such purpose to be the amount he would have earned had he been so employed by employer the full thirteen calendar weeks, (or three calendar months) immediately preceding the disability, and had worked when work was available to other employes in a similar occupation, unless it be conclusively shown that, by reason of exceptional causes, such method of computation does not ascertain fairly the "total wages" of the employe so employed less than thirteen calendar weeks (or three calendar months).

- (e) In occupations which are exclusively seasonal, and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth of the total wages which the employe has earned from all occupations during the twelve calendar months immediately preceding the disability, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not ascertain fairly the earnings of the employe, in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly earnings.

The terms "average weekly wage" and "total wages," as used in this section, shall include board and lodging received from the employer, and when so received, the board shall be rated at two dollars per day if more than one meal is served, and one dollar per day if only one meal is served, and lodging shall be rated at one dollar and fifty cents per day. In employments in which employes customarily receive not less than one-third of their remuneration in tips or gratuities not paid by the employer, gratuities shall be added to the wages received at the rate of two dollars per day; but such terms shall not include amounts deducted by the employer under the contract of hiring for labor furnished, or paid for by the employer, and necessary for the performance of such contract by the employe; nor shall such terms include deductions from wages due the employer for rent, and supplies necessary for the employe's use in the performance of his labor.

Where the employe is working under concurrent contracts with two or more employers, and the defendant employer has knowledge of such employment prior to the disability, his wages from all such employers shall be considered as if earned from the employer liable for compensation.

If under clauses (a), (b), (c), (d) and (e) of this section the amount determined is less than if computed as follows, this computation shall apply, via: divide the total wages earned by the employe during the last two completed calendar quarters with the same employer by the number of days he worked for such employer during such period multiplied by five.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

The weekly wage upon which compensation shall be computed, shall be the wage earned by the employe in his last employment in the occupation or industry in which the occupational disease is a hazard.

Sec 310 Alien widows, children and parents, not residents of the United States, shall be entitled to compensation, but only to the amount of fifty per centum of the compensation which would have been payable if they were residents of the United States: Provided, That compensation benefits are granted residents of the United States under the laws of the foreign country in which the widow, children or parents reside. Alien widowers, brothers and sisters who are not residents of the United States shall not be entitled to receive any compensation. In no event shall any nonresident alien widow or parent be entitled to compensation in the absence of proof that the alien widow or parent has actually been receiving a substantial portion of his or her support from the decedent. Where transmission of funds in payment of any such compensation is prohibited by any law of the Commonwealth or of the United States to residents of such foreign country, then no compensation shall accrue or be payable while such prohibition remains in effect and, unless such prohibition is removed within six years from the date of death, all obligation to pay compensation under this section shall be forever extinguished.

In every instance where an award is made to alien widows, children or parents, not residents in the United States, the referee or the board shall, in the award, fix the amount of any fee allowed to any person for services in connection with presenting the claim, and it shall be a misdemeanor punishable by a fine of not more than five hundred dollars, or imprisonment for not more than six months, or both, to accept any remuneration for the services other than that provided by the referee or board.

Sec 311 Unless the employe or someone in his behalf, or some of the dependents or someone in their behalf, shall give notice of disability to the employer liable for compensation under this article, within twenty-one days after compensation disability begins, no compensation shall be due until such notice be given, and unless such notice be given within one hundred and twenty days after the beginning of compensable disability no compensation shall be allowed.

Sec 312 The notice referred to in section three hundred and eleven shall inform the employer that a certain employe became disabled as a result of the occupational disease, described in ordinary language, in the course of his employment on or about a specified time.

Sec 313 The notice referred to in sections three hundred and eleven and three hundred and twelve may be given to the immediate or other superior of the employe, to the employer, or any agent of the employer regularly employed at the place of employment of the disabled employe.

Sec 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 for 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,

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

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.

Sec 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. Where, however, a person is receiving benefits pursuant to the act of June 28, 1935 (P.L. 477, No. 193), referred to as the Heart and Lung Act, the sixteen-month period in which parties must agree on compensation payable or file a petition for compensation in cases of personal injury or cases of death, shall not begin to run until the expiration of the receipt of benefits pursuant to the Heart and Lung Act. 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, anthracosilicosis, 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.

Sec 316 The compensation contemplated by this article may at any time be commuted by the board, at its then value when discounted at five per centum interest, with annual rests, upon application of either party, with due notice to the other, if it appears that such commutation will be for the best interest of the employe or the dependents of the deceased employe, and that it will avoid undue expense or undue hardship to either party, or that such employe or dependent has removed or is about to remove from the United States, or that the employer has sold or otherwise disposed of the whole or the greater part of his business or assets: Provided, however, That unless the employer agrees to make such commutation, the board may require the employe or the dependents of the deceased employe to furnish proper indemnity safeguarding the employer's rights.

Sec 317 At any time after the approval of an agreement or after the entry of the award, a sum equal to all further installments of compensation may (where death or the nature of the disability renders the amount of future payments certain), with the approval of the board, be paid by the employer to any savings bank, trust company, or life insurance company, in good standing and authorized to do business in this Commonwealth, and such sum, together with all interest thereon, shall thereafter be held in trust for the employe or the dependents of the employe, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee noted upon the prothonotary's docket, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same periods as are herein required by the employer, until said fund and interest shall be exhausted. In the appointment of the trustee preference shall be given, in the discretion of the board, to the choice of the employe or the dependents of the deceased employe. Should, however, there remain any unexpended balance of any fund after the payment of all sums due under this act, such balance shall be repaid to the employer who made the original payment, or to his legal representatives.

Sec 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

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

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.

Sec 319 Where the compensable disability is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employe, his personal representative, his estate or his dependents, against such third party for the balance of any sum recovered in litigation, or paid in compromise settlement, after subtraction of reasonable attorney's fees and other proper disbursements, but only to the extent of the compensation payable under this article by the employer. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employe or to the dependents, and shall be treated as an advance payment by the employer on account of any future installments of compensation.

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 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 made the payments, shall be subrogated out of the agreement or award to the amount so paid, 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.

Sec 320 (a) If the employe is a minor, under the age of eighteen years, employed or permitted to work in violation of any provision of the laws of this Commonwealth relating to minors of such age, compensation, either in the case of disability or death of such employe, shall be one hundred and fifty per centum of the amount that would be payable to such minor if legally employed. The amount by which such compensation shall exceed that provided for in case of legal employment may be referred to as "additional compensation."

(b) The employer and not the insurance carrier shall be liable for the additional compensation. Any provision in an insurance policy undertaking to relieve an employer from such liability shall be void.

(c) Where death or the nature of the disability renders the amount of future payments certain, the total amount of the additional compensation, subject to discount as in the case of commutation, shall be immediately due and payable. It shall be deposited, subject to the approval of the board, in any savings bank, trust company, or life insurance company in good standing and authorized to do business in this Commonwealth.

Where the amount of the future payments of compensation is uncertain, the board shall, upon the approval of the agreement or the entry of an award, determine as nearly as may be the total amount of payment to be made, and the additional compensation so calculated shall, immediately upon such determination, become due and payable by the employer. The amount may be redetermined by the board, and any increase shall then become due and payable, and any excess, which shall be shown to have been paid, shall be returned to the person paying the same. Upon determination of the amount due, it shall be deposited as above provided. Payments of compensation out of deposits shall be made to the employe or dependents as payments of other compensation are made: Provided, however, That the board may, in its discretion and upon inquiry as in cases of commutation, accelerate such payments.

(d) The provisions of the foregoing paragraph (c) shall not apply to employers who are exempted by the department from the necessity of carrying insurance.

(e) Possession of an employment certificate, duly issued and transmitted to the employer in accordance with the provisions of the child labor law, and receipt thereof duly acknowledged by him,

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

shall be conclusive evidence to such employer of his legal right to employ the minor for whose employment such certificate has been issued.

- (f) The possession of an age certificate, duly issued and transmitted to the employer by the school authorities of the school district in which a minor resides, shall be conclusive evidence to the employer of the minor's age as certified therein.
- (g) If neither party has elected not to be bound by the provisions of article three of the act to which this act is an amendment, in the manner prescribed by section three hundred and two of said act, they shall be held to have agreed to be bound by the provisions of this act, and to have waived any other right or remedy at law or in equity, for the recovery of damages for injuries occurring under the circumstances herein described.

ARTICLE IV
Procedure

Sec 401 The term “employer,” when used in this article, shall mean the employer as defined in article one of this act, or his duly authorized agent, or his insurer if such insurer has assumed the employer’s liability, or the State Workmen’s Insurance Fund of this Commonwealth if the employer be insured therein.

The department shall be deemed a “party in interest” in any proceeding under this article before a referee, the board or any court involving any claim for compensation, a part of which is payable by the Commonwealth under the provisions of this act.

Sec 402 Repealed.

Sec 403 (a) All proceedings before the board or any referee, and all appeals to the board, shall be instituted by petition addressed to the board. All petitions shall be in writing and in the form prescribed by the board.

(b) All petitions, all copies of agreements for compensation, and all papers requiring action by the board, shall be mailed or delivered to the department at its principal office.

Sec 404 The department shall, immediately upon their receipt, properly file and docket all petitions, agreements for compensation, findings of fact by the board or any referee, awards or disallowances of compensation, or modifications thereof, and all other reports or papers filed with it under the provisions of this act or the rules or regulations of the board.

Sec 405 Immediately upon receiving from the board or any referee any award or disallowance of compensation, or any modification thereof, or any other decision, the department shall serve a copy thereof on all parties in interest.

Sec 406 All notices and copies to which any party shall be entitled under the provisions of this article shall be served by mail, or in such manner as the board shall direct. For the purposes of this article any notice or copy shall be deemed served on the date when mailed, properly stamped and addressed, and shall be presumed to have reached the party to be served; but any party may show by competent evidence that any notice or copy was not received, or that there was an unusual or unreasonable delay in its transmission through the mails. In any such case proper allowance shall be made for the party’s failure within the prescribed time to assert any right given him by this act.

The department, the secretary of the board, and every referee shall keep a careful record of the date of mailing every notice and copy required by this act to be served on the parties in interest.

Sec 407 On or after the seventh day after disability shall have begun or death shall have occurred, the employer and employe or his dependents may agree upon the compensation payable to the employe or his dependents under this act; but any agreement made prior to the seventh day after the disability shall have begun or the death shall have occurred, or permitting a commutation of payments contrary to the provisions of this act, or varying the amount to be paid or the period during which compensation shall be payable as provided in this act, shall be wholly null and void. It shall be unlawful for any employer to accept a receipt showing the payment of compensation when in fact no such payment has been made.

All agreements made in accordance with the provisions of this section shall be in writing, and signed by all parties in interest.

All agreements for compensation and all supplemental agreements for the modification, suspension, reinstatement, or termination thereof, and all receipts executed by any employe of whatever age, or by any dependent to whom compensation is payable under section three hundred and seven, and who has attained the age of sixteen years, shall be valid and binding unless modified or set aside as hereinafter provided.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

Sec 408 All agreements for compensation may be modified, suspended, reinstated, or terminated at any time by a supplemental agreement approved by the department, if the disability of an employe has increased, decreased, recurred, or temporarily or finally terminated, or if the status of any dependent has changed.

Sec 409 Whenever an agreement or supplemental agreement shall be executed between an employer and employe or his dependents as provided by this act, such agreement shall be executed in triplicate. Two copies thereof, signed by all parties in interest, shall be mailed or delivered to the department within thirty days after execution. It shall be the duty of the department to examine the agreement to determine whether it conforms to the provisions of section four hundred and seven, to notify the parties thereto of its validity or invalidity, under the aforesaid section, within thirty days after the copies of the agreement have been mailed or delivered to it, and, if the agreement be approved, to send to the employe or dependents, together with such notification of its approval, a copy of the agreement: Provided, however, That any payment made in accordance with any agreement prior to the receipt of notice of invalidity shall discharge pro tanto the liability, under article three of this act, of the employer making such payments.

Sec 410 If, after any disability or death, the employer and the employe or his dependents shall fail to agree upon the facts thereof and the compensation due under this act, the employe or his dependents may present a claim for compensation to the board.

Whenever any claim for compensation is presented to the board, and is finally adjudicated in favor of the claimant, the amounts of compensation actually due at the time the first payment is made after such adjudication shall bear interest at the rate of six per centum per annum from the day such claim is presented, and such interest shall be payable to the same persons to whom the compensation is payable.

In case any claimant shall die before the final adjudication of his claim, the amount of compensation due such claimant to the date of death shall be paid to the dependents entitled to compensation, or, if there be no dependents, then to the estate of the decedent.

Sec 411 Whenever the employer and the employe or his dependent shall, on or after the seventh day after any disability begins or death occurs, agree on the facts on which a claim for compensation depends, but shall fail to agree on the compensation payable thereunder, they may petition the board to determine the compensation payable. Such petition shall contain the agreed facts, and shall be signed by all parties in interest. The board shall fix a time and place for hearing the petition, and shall notify all parties in interest. As soon as may be after such hearing, the board shall award or disallow compensation in accordance with the provisions of this act.

Sec 412 If any party shall desire the commutation of future installments of compensation, he shall present a petition therefor to the board.

Sec 413 The board, or a referee designated by the board, may, at any time, review and modify or set aside an existing original or existing supplemental agreement, upon petition filed by either party with the board or in the course of the proceedings under any petition pending before such board or referee, if it be proved that such agreement was in any material respect incorrect.

The board, or a referee designated by the board, may, at any time, modify, reinstate, suspend, or terminate an original or supplemental agreement or an award, upon petition filed by either party with such board, upon proof that the disability of the employe has increased, decreased, recurred, or has temporarily or finally ceased, or that the status of any dependent has changed. Such modification, reinstatement, suspension, or termination shall be made as of the date upon which it is shown that the disability of the employe has increased, decreased, recurred, or has temporarily or finally ceased, or upon which it is shown that the status of any dependent has changed: Provided, That an agreement or award can only be reviewed, or modified, or reinstated, during the time such agreement or award has to run, if for a definite period; and no agreement or award shall be reviewed, or modified, or reinstated, unless a petition is filed with the board within two years after the date of the most recent payment of compensa-

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

tion made prior to the date of filing such petition. Where, however, a person is receiving benefits pursuant to the act of June 28, 1935 (P.L. 477, No. 193), referred to as the Heart and Lung Act, the two-year period in which a petition to review, modify, or reinstate a notice of compensation, agreement or award must be filed, shall not begin to run until the expiration of the receipt of benefits pursuant to said Heart and Lung Act. Where compensation has been suspended because the employe's earnings are equal to or in excess of his wages prior to the disability payments under the agreement or award may be resumed at any time during the period for which compensation for partial disability is payable, unless it be shown that the loss of earnings does not result from the disability due to the exposure.

The board or referee to whom any such petition has been assigned may subpoena witnesses, hear evidence, make findings of fact, and award, or disallow compensation in the same manner and with the same effect and subject to the same right of appeal, as if such petition were an original claim petition.

The filing of a petition to terminate or modify a compensation agreement or award as provided in this section shall operate as a supersedeas, and shall suspend the payment of compensation fixed in the agreement or by the award, in whole or to such extent as the facts alleged in the petition would if proved, require.

Sec 414 Whenever a claim petition or other petition is presented to the board, the board shall, by general rules or special order, either direct it to be heard by one or more members of the board or assign it to a referee for hearing: Provided, however, That petitions presented under sections four hundred and eleven and four hundred and twelve shall be heard by one or more members of the board.

The department shall serve upon each adverse party a copy of the petition, together with a notice that such petition will be heard by the board or the referee to whom it has been assigned (giving his name and address), as the case may be, and, if the petition shall have been assigned to a referee, shall mail the original petition to such referee, together with copies of the notices served upon the adverse parties.

Sec 415 At any time before an award or disallowance of compensation or order has been made by a referee to whom a petition has been assigned, the board may order such petition heard before it or one or more of its members or may reassign it to any other referee. Unless the board shall otherwise order, the testimony taken before the original referee shall be considered as though taken before the board or substituted referee.

Sec 416 Within twenty days after a copy of any petition has been served upon any adverse party, he may file with the secretary of the board if the petition has been directed to be heard by the board, or with the referee if the petition has been assigned to a referee, an answer in the form prescribed by the board.

Every fact alleged in a claim petition not specifically denied by an answer so filed by an adverse party shall be deemed to be admitted by him. But the failure of any adverse party, or of all of them, to deny a fact so alleged shall not preclude the board or referee before whom the petition is heard from requiring, of its or his own motion, proof of such fact.

Sec 417 As soon as may be after the twelfth day after notice that a petition has been directed to be heard by the board has been served upon the adverse parties thereto, the board shall fix a time and place for hearing the petition. If a petition be assigned to a referee, he shall, as soon as practicable thereafter, fix a time and a place for hearing the petition. The secretary of the board, if the petition has been directed to be heard by the board or by one or more of its members, or the referee to whom the petition has been assigned, shall serve upon all parties in interest a notice of the time and place of hearing, and shall serve upon the petitioner a copy of any answer of any adverse party.

Sec 418 The board, if a petition is directed to be heard by it or by one or more of its members, or the referee to whom a petition is assigned for hearing may subpoena witnesses, order the production of books and other writings, and hear evidence, and shall make, in writing and as soon as may be after the conclusion of the hearing, such findings of fact, conclusions of law, and award or disallowance of compensation, or other order, as the petition and answers and the evidence produced before it or him and the provisions of

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

this act shall, in its or his judgment, require. The findings of fact made by the board in any petition heard by it or by one or more of its members or upon a hearing de novo shall be final, except as hereinafter provided, and the findings of fact made by a referee to whom a petition has been assigned or any question of fact has been referred under the provisions of section four hundred and nineteen shall be final, unless an appeal is taken as provided in this act, or unless the board shall, under the provisions of sections four hundred and twenty-five or four hundred and twenty-six of this article, grant a hearing de novo or a rehearing.

Sec 419 The board may refer any question of fact arising under any petition, including a petition for commutation heard by it, to a referee to hear evidence and report to the board the testimony taken before him or such testimony and findings of facts thereon as the board may order. The board may refer any question of fact arising out of any petition assigned to a referee, to any other referee to hear evidence and report the testimony so taken thereon to the original referee.

Sec 420 The board or a referee, if it or he deem it necessary, may, of its or his own motion, either before, during, or after any hearing, make an investigation of the facts set forth in the petition or answer. The board or referee with the consent of the board, may appoint one or more impartial physicians or surgeons to examine the claimant and report thereon, or he may employ the services of such other experts as shall appear necessary to ascertain the facts. The report of any physician, surgeon, or expert appointed by the board or by a referee, shall be filed with the board or referee, as the case may be, and shall be a part of the record and open to inspection as such.

The board shall fix the compensation of such physicians, surgeons, and experts, which, when so fixed, shall be paid out of the sum appropriated to the Department of Labor and Industry.

The sum of fifty thousand dollars (\$50,000) is hereby appropriated to the Department of Labor and Industry for compensation payable by the Commonwealth under the provisions of this section for the biennium one thousand nine hundred fifty-five — one thousand nine hundred fifty-seven.

Sec 421 All hearings before the board or one or more members thereof, or before a referee, shall be public.

Sec 422 The board, its members and the referees shall not be bound by the technical rules of evidence in conducting hearings and investigations, but all findings of fact shall be based only upon sufficient, competent evidence to justify them.

If any party or witness resides outside of the Commonwealth, or through illness or other cause is unable to testify before the board or a referee, his or her testimony or deposition may be taken, within or without this Commonwealth, in such manner and in such form as the board may, by special order or general rule, prescribe. The records, kept by a hospital of the medical or surgical treatment given to an employe in such hospital, shall be admissible as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters.

Where any claim for compensation at issue before a referee involves five weeks or less of disability, either the employe or the employer may submit a certificate by any qualified physician as to the history, examination, treatment, diagnosis and cause of the condition, and the statements shall be admissible as evidence of medical and surgical matters therein stated, but such statements and certificates shall not be admissible in any subsequent proceedings.

Where an employer has furnished surgical and medical services or hospitalization in accordance with the provisions of subsection (f) of section 306, or where the employe has himself procured them, the employer or employe shall, upon request, in any pending proceeding be furnished with or have made available a true and complete record of the medical and surgical services and hospital treatment, including X-rays, laboratory tests, and all other medical and surgical data in the possession or under the control of the party requested to furnish or make available such data.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

Sec 423 Any party in interest may, within twenty days after notice of a referee's award or disallowance of compensation shall have been served upon him, take an appeal to the board on the ground: (1) that the award or disallowance of compensation is not in conformity with the terms of this act, or that the referee committed any other error of law; (2) that the findings of fact and award or disallowance of compensation was unwarranted by sufficient, competent evidence, or was procured by fraud, coercion, or other improper conduct of any party in interest. The board may, upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.

In any such appeal the board may disregard the findings of fact of the referee, and may examine the testimony taken before such referee, and if it deem proper may hear other evidence, and may substitute for the finds of the referee such findings of fact as the evidence taken before the referee and the board, as hereinbefore provided, may, in the judgment of the board, require, and may make such disallowance or award of compensation or other order as the facts so founded by it may require.

Sec 424 Whenever an appeal shall be based upon an alleged error of law, it shall be the duty of the board to grant a hearing thereon. The board shall fix a time and place for such hearing, and shall serve notice thereof on all parties in interest.

As soon as may be after such hearing, the board shall either sustain or reverse the referee's award or disallowance of compensation, or make such modification thereof as it shall deem proper.

Sec 425 Whenever an appeal shall be taken on the ground that the referee's award or disallowance of compensation was unwarranted by the evidence, or because of fraud, coercion, or other improper conduct by any party in interest, the board may, in its discretion, grant a hearing de novo before the board or one or more of its members, or assign the petition for rehearing to any referee designated by it, or sustain the referee's award or disallowance of compensation. If the board shall grant a hearing de novo, it shall fix a time and place therefor and notify all parties in interest.

As soon as may be after any hearing de novo by the board, it shall in writing state its findings of fact, and award or disallow compensation in accordance with the provisions of this act.

Sec 426 The board, upon petition of any party and upon cause shown, at any time before the court of common pleas of any county of this Commonwealth, to which an appeal has been taken under the provisions of section four hundred and twenty-seven of this article shall have taken final action thereon, may grant a rehearing of any petition upon which the board has made an award or disallowance of compensation or other order or ruling, or upon which the board has sustained or reversed any action of referee; but such rehearing shall not be granted more than eighteen months after the board has made such award, disallowance, or order or ruling, or has sustained or reversed any action of the referee. If the board shall grant a rehearing of any petition from the board's action on which an appeal has been taken to and is pending in the court of common pleas under the provisions of section four hundred and twenty-seven of this article, the board shall file in such court a certified copy of its order granting such rehearing, and it shall thereupon be the duty of such court to cause the record of the case to be remitted to the board: Provided, however, That nothing contained in this section shall limit or restrict the right of the board, or a referee designated by the board, to review, modify, set aside, reinstate, suspend, or terminate, an original or supplemental agreement, or an award in accordance with the provisions of section four hundred thirteen of this article.

Sec 427 Any party may appeal from any action of the board on matters of law to the court of common pleas of the county in which the employe was last employed prior to his disability or death or of the county in which the adverse party resides or has a permanent place of business, or, by agreement of the parties, to the court of common pleas of any other county of this Commonwealth. The party taking the appeal shall, at the time of taking the appeal, serve upon the adverse party a written notice thereof, setting forth the date of the appeal and the court in which the same is filed, and shall file, either with his notice of appeal, or within thirty days thereafter, such exceptions to the action of the board as he may desire to take, and shall specify the findings of fact, if any, of the board, or of the referee sustained by the board,

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

which he alleges to be unsupported by sufficient, competent evidence.

Upon filing of the notice of an appeal, the prothonotary of the court of common pleas to which the appeal has been taken shall issue a writ of certiorari, directed to the board, commanding it, within ten days after service thereof, to certify to such court its entire record in the matter in which the appeal has been taken. The writ so issued shall be mailed by the prothonotary to the department at Harrisburg, together with a copy of the exceptions. The board shall, within ten days after such service, certify to such court its entire record in the matter in which the appeal has been taken, including the notes of testimony.

Any court before which an appeal is pending from any action of the board, may remit the record to the board for more specific findings of fact if the findings of the board or referee or of the medical board are not, in its opinion, sufficient to enable it to decide the question of law raised by the appeal.

If the court of common pleas shall affirm an award or order of the board or of a referee, sustained by the board, fixing the compensation payable under this act, the court shall enter judgment for the total amount stated by the award or order to be payable, whether then due and accrued or payable in future installments. If such court shall sustain the appellant's exceptions to a finding or findings of fact and reverse the action of the board founded thereon, the court shall remit the record to the board for further hearing and determination, in which the procedure shall be the same as that hereinbefore provided in this article in the case of petition presented to the board, except that the testimony taken in the original proceedings shall be considered as though taken in such further hearing.

The prothonotary of any court of common pleas to which an appeal has been taken from the board, shall send to the board a certificate of the judgment of the court as soon as rendered, with a copy of any opinion which may be filed in the case, and, within five days, shall give notice of such judgment, and the date thereof, by registered mail to each attorney at law appearing in the case at the address given by the attorney in the pleadings, and, if no attorney at law has appeared by registered mail to the party or parties not represented by counsel. At the end of the period allowed for an appeal from the judgment of the court, the record of the board shall be remitted to it by the prothonotary unless an appeal shall have been taken. If such appeal shall be taken, the record shall be remitted to the board by the prothonotary on its return from the appellate court.

Sec 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 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 judgment against the employer, and where the amount so stipulated or claimed is for total 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

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

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.

If the agreement be disapproved, or, after hearing, compensation shall be disallowed, the employer may file, with the prothonotary of any county in which the petition or agreement is on record as a judgment, a certified copy of the disapproval of the agreement or disallowance of compensation, and it shall be the duty of such prothonotary to strike off the judgment.

If the amount of compensation claimed be disallowed, but another amount awarded, the compensation judgment shall be a lien to the extent of the award, as of the date of filing the petition with the prothonotary, with the same effect as to other liens and the same disability to issue execution thereon as if the compensation claimed had been allowed. In such cases the prothonotary shall make such modification of the record as shall be appropriate.

If the compensation payable under any agreement or award upon which judgment has been entered under the provisions of this section shall be modified, suspended, reinstated, or terminated by a supplemental agreement executed under the provisions of section four hundred and eight, or by an award or order made under the provisions of section four hundred and thirteen, any party to such judgment, at any time after such agreement has been approved by the department or after the expiration of the time allowed for an appeal from the award or order, may file with the prothonotary of the court of common pleas of any county in which the judgment is on record a certified copy of such supplemental agreement, award, or order, and it shall thereupon be the duty of the prothonotary to modify, suspend, reinstate, or satisfy such judgment in accordance with the terms of such supplemental agreement, award or order.

Execution may issue by first filing with the prothonotary an affidavit that there has been a default in payments of compensation due on any judgment for compensation, entered prior to the approval of the compensation agreement, or an award on petition, as soon as such agreement shall have been approved by the department, or such award made as evidenced by the approval of the board of the award or by a certified copy thereof.

Execution shall in all cases be for the amount of compensation and interest thereon due and payable up to the date of the issuance of said execution, with costs, and further execution may issue from time to time as further compensation shall become due and payable, until full amount of the judgment with costs shall have actually been paid.

Sec 429 If any party against whom a compensation agreement, award, or other order fixing the compensation payable under this act has been filed of record in any county of this Commonwealth in accordance with the provisions of section four hundred and twenty-eight of this article, or against whom judgment has been entered by the prothonotary of the court of common pleas of any county on any award or order of the board or a referee, shall, at any time, present to the board receipts or copies thereof, certified by any referee, showing the payment of compensation as required by the agreement or award in full to the date of presentation to the referee, the board shall issue a certificate to such party, in the form prescribed, stating the extent to which the judgment on the agreement or award has been reduced. Upon the presentation of such certificate to the prothonotary of the court of common pleas of any county in which such agreement or award has been filed of record as a judgment, or in which judgment on an award has been entered by the prothonotary of the court of common pleas, it shall be the prothonotary's duty to mark such judgment satisfied to the extent of the payments so certified, and, upon the presentation to such prothonotary of a certificate issued by the board under the provisions of section three hundred and seventeen of this act, it shall be the duty of the prothonotary to mark such judgment fully satisfied.

Sec 430 The lien of any judgment entered upon any award shall not be divested by any appeal. If, however, the party appealing from the award shall file with the board a bond, in such amount and in such form as the rules and regulations of the board shall direct, the appeal shall, pending its decision, excuse the payment of so much of the compensation as is contested therein; but if the final decision on appeal shall sustain the award, it shall be the duty of the employer by whom such award is payable to make payments of

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

compensation as from the date of the original award. If on appeal the award is sustained as to a part, it shall be the duty of the employer by whom such part is payable to make payments as from the date of the original award. In case the award is annulled on appeal, it shall be the duty of the prothonotary of any county in which such award has been entered as a judgment to make it satisfied.

Sec 431 The cost of the prothonotary for entering the amount of compensation as provided in this act, or making a modification of the record, or marking the judgment satisfied, shall be allowed, taxed, and collected as upon a confession of judgment on a judgment note.

Sec 432 Repealed.

Sec 433 Repealed.

Sec 434 A final receipt, given by an employe or dependent entitled to compensation under a compensation agreement or award, shall be prima facie evidence of the termination of the employer's liability to pay compensation under such agreement or award: Provided, however, That the board, or a referee designated by the board, may, at any time within two years from the date to which payments have been made, set aside a final receipt, upon petition filed with the board, if it be conclusively proved that all disability due to the occupational disease in fact had not terminated. Where, however, a person is receiving benefits pursuant to the act of June 28, 1935 (P.L. 477, No. 193), referred to as the Heart and Lung Act, the two-year period within which the board or a referee designated by the board may set aside a final receipt upon petition filed with the board, shall not begin to run until the expiration of receipt of benefits under the Heart and Lung Act.

PENNSYLVANIA OCCUPATIONAL DISEASE ACT

**ARTICLE V
General Provisions**

Sec 501 No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the provisions of article two of this act shall be an enforceable lien against the amount to be paid as damages, or be valid or binding in any respect, unless the same be approved in writing by the judge presiding at the trial, or, in case of settlement without trial, by a judge of the common pleas court of the county in which the accident occurred.

No claim or agreement for legal services or disbursements in support of any claim for compensation, or in preparing any agreement for compensation, under article three of this act, shall be an enforceable lien against the amount to be paid as compensation, or be valid or binding in any other respect, unless the same be approved by the board. Any such claim or agreement shall be filed with the department, which shall, as soon as may be, notify the person by whom the same was filed of the board's approval or disapproval thereof, as the case may be.

After the approval as herein required, if the employer be notified in writing of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation: Provided, however, That where the employe's compensation is payable by the employer in periodical installments, the board shall fix, at the time of approval, the proportion of each installment to be paid on account of legal services and disbursements, and the board may, upon application made to it, commute the sum awarded for legal services and disbursements.

Sec 501.1 Any person who solicits money for assisting any person to obtain any benefits under this act shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not to exceed one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment for one year, or both. This provision shall not apply to an attorney at law who for a fee has been retained by a claimant to give him legal advice and assistance in obtaining benefits.

Sec 502 Nothing in this act shall affect or impair any rights of action which have accrued before this act shall take effect.

Sec 503 If any provision of this act shall be held by any court to be unconstitutional, such judgment shall not affect any other section or provision of this act, except that articles two and three are hereby declared to be inseparable and as one legislative thought, and if either article be declared by such court void or inoperative in an essential part so that the whole of such article must fall, the other article shall fall with it and not stand alone.

Sec 504 The following acts are hereby specifically repealed: The act, approved the second day of July, one thousand, nine hundred thirty-seven (Pamphlet Laws, twenty seven hundred fourteen), entitled "A supplement to the act, approved the second day of June, one thousand nine hundred fifteen (Pamphlet Laws, seven hundred thirty-six), entitled, as amended 'An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing a system and schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties,' as amended and reenacted, providing for the inclusion of occupational diseases within the scope thereof, and providing definitions, provisions, and procedure related to such disease; and making an appropriation."

All other acts and parts of act inconsistent with the provisions of this act.

Sec 505 The provisions of this act shall become effective on October first, one thousand nine hundred and thirty-nine, except the provisions of section three hundred two of this act, which shall become effective immediately upon the final enactment of this act.