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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935



ENROLLED

HOUSE BILL No. 331

(By Mr. Thyong)



PASSED March 8 1935

In Effect from Passage

80

ENROLLED
House Bill No. 331

(By MR. WYSONG, by request)

[Passed March 8, 1935; in effect from passage.]

AN ACT to amend chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, relating to workmen's compensation by the addition of a new article thereto designated as article six, consisting of sections one to eighteen, inclusive; providing for compensation for disability, disablement or death resulting from silicosis, and defining silicosis.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, be, and the same is hereby, amended by the addition of a new article thereto designated as article six, consisting of sections one to eighteen, inclusive, so as to read as follows:

ARTICLE VI.

Section 1. The provisions of this article shall be administered by the state compensation commissioner, and the provisions of article one of this chapter are applicable hereto. All charges and expenses peculiar to the administration of this article shall in the proportionate amount be chargeable to and paid out of the workmen's compensation silicosis fund.

Sec. 2. (a) In order that compensation for the disease of silicosis as herein defined might be paid to all persons employed within this state in interstate or intrastate work as defined by section ten, article two of this chapter, and in the service of those employers legally doing or authorized to do business in this state and who elect to qualify under and subject themselves to the provisions of this article, the commissioner shall make the necessary separate classifications of the various industries for those employers who so elect, and the commissioner shall make such classifications and fix the rate of premiums in the manner provided by section four of article two of this chapter. Those employers who do not elect to come within the provisions of this article shall not be subject to the provisions of article two of this chapter except as otherwise specifically

15 provided in this article. The assessments and premiums paid
16 by such employers so electing shall be kept by the commissioner
17 in a separate fund to be known and designated as “workmen’s
18 compensation silicosis fund.”

19 (b) For the purpose of creating the workmen’s compensa-
20 tion silicosis fund, each employer electing to become subject
21 thereto under the provisions of this article shall make his elec-
22 tion and pay the premiums in the manner provided by section
23 five of article two of this chapter.

24 (c) Every employer electing to come under the provisions
25 of this article shall give the information, and make the neces-
26 sary reports, to the commissioner as provided by sections two
27 and three of article two of this chapter.

28 (d) Except as otherwise herein specifically provided, all the
29 provisions of this chapter relating to premiums and assessments
30 paid into, and disbursements for benefits, compensation, medi-
31 cal and hospital treatment, funeral expenses, and other charges
32 from, the fund designated as “workmen’s compensation fund,”
33 and the limitations of the amounts to be thereby expended, shall
34 likewise apply to the fund designated as “workmen’s compen-
35 sation silicosis fund;” and the term “workmen’s compen-

36 sation fund'' as used in this chapter, whenever applicable,
37 shall be construed to mean and include the term ''workmen's
38 compensation silicosis fund.''

Sec. 3. Each employer electing to pay the premiums pro-
2 vided by this article into the workmen's compensation silicosis
3 fund, or electing to make direct payments of compensation as
4 provided by section nine of article two of this chapter, shall
5 post, and keep posted, in conspicuous places about his place
6 or places of business, typewritten or printed notices in the
7 form prescribed by the commissioner, stating the fact that such
8 employer has made such election, and the same when so posted
9 shall constitute sufficient notice to all his employees, and to the
10 parents of any minor employees, of the fact that the employer
11 has made such election; and any employer who makes such
12 election shall not thereafter be liable to respond in damages at
13 common law or by statute for the disease or death of any
14 employee because of silicosis during the period in which such
15 employer shall not be in default in the payment of such premi-
16 ums and shall have complied fully with all other provisions of
17 this article.

Sec. 4. (a) The commissioner shall establish a fund, to be

2 known as "workmen's compensation silicosis fund," from the
3 premiums and other funds paid thereto by employers who
4 have elected to pay and have paid the premiums applicable to
5 such employers under the provisions of this article relating to
6 silicosis, for the benefit of employees of employers who have
7 paid the premiums applicable to such employers, and have
8 otherwise complied fully with the provisions of section five,
9 article two of this chapter, and for the benefit of the depend-
10 ents of such employees, and for the payment of the adminis-
11 tration expenses of this article, and shall adopt rules and regu-
12 lations in respect to the collection, maintenance and disburse-
13 ment of such funds not in conflict with the provisions of this
14 chapter.

15 (b) Ten per cent of all that shall hereafter be paid into the
16 workmen's compensation silicosis fund shall be set aside for the
17 creation of a sufficient surplus fund, within the discretion of
18 the commissioner, not exceeding one hundred thousand dollars,
19 after which time the sum of five per cent of all the money paid
20 into such fund shall be credited to such surplus fund until
21 such time as in the judgment of the commissioner such surplus
22 fund shall be sufficiently large to cover the catastrophe hazard

23 and all losses not otherwise specifically provided for in this
24 article.

25 (c) Employers electing as provided by this chapter to in-
26 dividually and directly compensate their employees having
27 silicosis, or their dependents, shall do so in the manner pre-
28 scribed by the compensation commissioner, and shall make all
29 reports and execute all blanks, forms and papers as directed
30 by said commissioner and as herein provided in this chapter.

31 (d) The custody, investment and disbursement of the work-
32 men's compensation silicosis fund shall be in the manner and
33 form prescribed by section two, article three, of this chapter,
34 and any and all amendments thereto.

Sec. 5. The commissioner shall disburse the workmen's com-
2 pensation silicosis fund to the employees of such employers as
3 are not delinquent in the payment of premiums for the last
4 month in which said employees have been exposed to silicon
5 dioxide dust in harmful quantities and who have otherwise
6 complied fully with the provisions of this article, and which
7 employees shall have contracted silicosis in this state in the
8 course of and resulting from their employment, or to the de-

9 pendants, if any, of such employees, in case death has ensued,
10 according to the provisions hereinafter made.

11 Where an employee suffers from the disease of silicosis as
12 hereinafter defined, or dies as the result of such disease, and
13 the disease is due to the nature of an occupation or process in
14 which he was employed at any time within one year previous
15 to such disease, and claim therefor has been made within one
16 year after the last exposure of said employee to silicon dioxide
17 dust in harmful quantities, the employee, or in case of death
18 his dependents, shall be entitled to compensation for silicosis
19 as provided herein: *Provided, however,* That compensation
20 shall not be payable for the disease of silicosis, or death re-
21 sulting therefrom, unless the employee has been exposed to
22 the inhalation of silicon dioxide dust in harmful quantities
23 over a period of not less than two years in the same employment
24 in this state.

25 For the purpose of this article, silicosis is defined as an insidi-
26 ous fibrotic disease of the lung or lungs due to the prolonged
27 inhalation and accumulation sustained in the course of and
28 resulting from his employment, of minute particles of dust
29 containing silicon dioxide (SiO_2) over such a period of time

30 and in such amounts as result in the substitution of fibrous
31 tissue for normal lung issues; and the term "silicosis" as used
32 herein shall also include silicosis accompanied by tuberculosis
33 of the lungs evidenced by the presence of tubercle bacillus in
34 the sputum.

Sec. 6. Notwithstanding anything hereinbefore or herein-
2 after contained, no employee or dependent of any employee
3 shall be entitled to receive any sum from the workmen's com-
4 pensation silicosis fund, or to direct compensation from any
5 employer making the election and receiving the permission
6 mentioned in section nine, article two of this chapter, or other-
7 wise under the provisions of this chapter, on account of con-
8 tracting the disease of silicosis caused by willful misconduct,
9 willful self-exposure as defined herein, disobedience to such
10 rules and regulations as may be adopted by the employer and
11 approved by the commissioner, and which rules and regula-
12 tions have been and are kept posted in conspicuous places in
12 and about the premises, or the failure of such employee to use
13 or make use of any protective or safety appliance or appliances
14 prescribed by the commissioner and furnished by the employer
15 for the use of or applicable to such employee; nor shall any

16 employee or dependent thereof maintain any action for dam-
17 ages on account of disability arising from the disease of silico-
18 sis contracted through willful self-exposure as defined herein.
19 For the purposes of this article and to prevent employees from
20 contracting silicosis, the commissioner may require all em-
21 ployers to adopt rules which have been approved by him for
22 the protection and safety of his employees, and keep the same
23 posted in conspicuous places in and about the premises; and
24 the commissioner shall require employers to install, use or adopt
25 such protective or safety appliance or appliances as in the
26 commissioner's opinion are necessary for the protection of the
27 employees. If silicosis or death therefrom result to any em-
28 ployee from the deliberate intention of his employer to produce
29 silicosis or death therefrom, the employee, the widow, widower,
30 child or dependent of the employee, shall have the privilege
31 to take under this article, and shall also have cause of action
32 against the employer as if this chapter had not been enacted
33 for any excess of damages over the amount received or receiv-
34 able under this chapter. As used in this section, the term,
35 "deliberate intention," shall mean conscious and willful de-
36 termination.

37 As used in this section, the term "willful self-exposure,"
38 causing the contraction of the disease of silicosis, shall include:
39 (1) Failure or omission on the part of an employee to observe
40 such rules and regulations as may be adopted by the employer
41 and approved by the commissioner and which rules and regu-
42 lations have been and are kept posted in a conspicuous place
43 in and about the premises; (2) Failure or omission on the part
44 of an employee truthfully to state to the best of his knowledge
45 in answer to inquiry made by the employer the place, dura-
46 tion, and nature of previous employment; (3) Failure or
47 omission on the part of an employee truthfully to answer to
48 the best of his knowledge in answer to an inquiry made by the
49 employer full information about the previous status of his
50 health, habits, and medical attention that he or his blood rela-
51 tives may have heretofore received.

Sec. 7. An employee shall, for the purposes hereof, be
2 deemed to have silicosis: (1) in the first stage when it is
3 found by the commissioner that the earliest detectable specific
4 signs of silicosis are present, whether or not capacity for work
5 is or has been impaired by such silicosis; (2) in the second
6 stage when it is found by the commissioner that definite and

7 specific physical signs of silicosis are present, and that capacity
8 for work is or has been impaired by that disease; (3) in the
9 third stage when it is found by the commissioner that the em-
10 ployee has silicosis accompanied by tuberculosis of the lungs
11 evidenced by the presence of tubercle bacillus in the sputum.

12 Where compensation for silicosis is due an employee under
13 the provisions hereof, such compensation shall be provided in
14 the following schedule: (a) If the employee is suffering from
15 silicosis in the first stage, the employee shall receive the sum
16 of five hundred dollars as compensation in full for said disease
17 that he has sustained as a result of and in the course of his
18 employment, said sum to be payable as a lump sum or in
19 periodic installments in the discretion of the commissioner,
20 and shall be a final payment and operate as a full release by
21 the employee for compensation and for any claim against the
22 employer that the employee may thereafter have for silicosis,
23 and irrespective of whether the employee thereafter continues
24 in the same employment, he shall not have the right to receive
25 any or further compensation or make any claim because of
26 silicosis either to the compensation commissioner or against his
27 employer, anything to the contrary in this chapter notwith-

28 standing; (b) if the employee is suffering from silicosis in the
29 second stage, the employee shall receive the sum of one thou-
30 sand dollars as compensation in full for said disease that he
31 has sustained as a result of and in the course of his employ-
32 ment, said sum to be payable as a lump sum or in periodic
33 installments in the discretion of the commissioner, and shall
34 be a final payment and operate as a full release by the em-
35 ployee for compensation and for any claim against the employer
36 that the employee may thereafter have for silicosis, and irre-
37 spective of whether the employee thereafter continues in the
38 same employment, he shall not have the right to receive any or
39 further compensation or make any claim because of silicosis
40 either to the commissioner or against his employer, anything
41 to the contrary in this chapter notwithstanding; (c) if the
42 employee is suffering from silicosis in the third stage, the com-
43 pensation shall be paid therefor in the same manner and at
44 the same rate as is provided for permanent disability under
45 the provisions of subdivisions (c), (f) and (h) of section six,
46 article four, of this chapter; (d) if the employee dies from
47 silicosis within one year from the date of the last exposure of
48 the employee to silicon dioxide dust in harmful quantities, the

49 benefits shall be in the amounts and to the persons provided
50 for in section one, article four of this chapter; as to such bene-
51 fits sections eleven to fourteen, inclusive, of article four of this
52 chapter shall apply.

Sec. 8. The commissioner shall have power, after due notice
2 to the employer, and whenever in his opinion it shall be neces-
3 sary, to order a claimant to appear for examination before the
4 medical board hereinafter provided. Claimant shall be en-
5 titled to reasonable traveling and other expenses necessarily
6 incurred by him in obeying such order, which shall be paid out
7 of the workmen's compensation silicosis fund within the amount
8 allowed for medical, surgical and hospital treatment.

Sec. 9. (a) To entitle any employee to compensation for
2 silicosis under the provisions hereof, the application therefor
3 must be made on a form or forms prescribed by the commis-
4 sioner and filed in the office of the commissioner within one
5 year from and after the date of the last injurious exposure to
6 silicon dioxide dust, or in case of death, the application shall
7 be filed as aforesaid by the dependent of such employee within
8 one year from and after the date of the last injurious exposure
9 to silicon dioxide dust.

10 (b) Nonresident aliens may be officially represented by the
11 consular officers of the country of which such aliens may be
12 citizens or subjects: *Provided*, That nothing herein contained
13 shall be construed as giving such consular officer the right to
14 make application for compensation in behalf of the nonresident
15 aliens.

Sec. 10. Unless the employer during the continuance of
2 employment shall have actual knowledge that the employee has
3 contracted silicosis, or unless the employee or some one on his
4 behalf or his dependents shall give written notice of a claim
5 that such employee has contracted silicosis, within a period
6 of one year from the date when said employee shall have ceased
7 to be a subject to injurious exposure to silicon dioxide dust in
8 employment with said employer, no compensation shall be
9 allowed and paid on account of death or disability of such em-
10 ployee by reason of silicosis.

Sec. 11. On the hearing of a claim for compensation for
2 silicosis, the commissioner shall hear, determine and file findings
3 covering, but not limited thereto, the following nonmedical
4 questions:

5 (a) Whether the employee was in fact, within one year prior

6 to the filing of his claim, in the employ of the employer, and,
7 if so, the duration of such employment and whether or not
8 such employment was subject to the provisions hereof:

9 (b) The occupation or occupations, process or processes in
10 which the employee was engaged during such employment, and
11 the approximate periods of work in each such occupation or
12 process;

13 (c) The employments, previous and subsequent to the em-
14 ployment out of which the claim arose, the duration thereof,
15 and the exposure therein to the hazard of silicon dioxide dust;

16 (d) Whether such employee contracted said disease through
17 wilful self-exposure;

18 (e) The average weekly wages of the employee at the time
19 of his last injurious exposure to silicon dioxide dust in the
20 employment of the employer;

21 (f) The date of the last injurious exposure to silicon dioxide
22 dust in the employment with the employer, and if the employee
23 is no longer in the service of the employer, the date upon
24 which said employee ceased so to work; and, if the employee
25 has died, the date and place of such death and the place of
26 interment of the body.

Sec. 12. There shall be a medical board, known as the
2 "silicosis medical board," which shall consist of three licensed
3 physicians, who shall be appointed by the commissioner. No
4 person shall be appointed as a member of said board, or as a
5 consultant thereto, who has not by special study or experience,
6 or both, acquired special knowledge of pulmonary diseases.
7 All members of the silicosis medical board shall be physicians
8 of good professional standing, admitted to practice medicine
9 and surgery in this state, and two of said physicians shall be
10 roentgenologists. One of the board shall be designated an-
11 nually as chairman by the commissioner. The term of office
12 of each member of such board shall be six years, except that
13 the terms of the members first appointed shall be two, four and
14 six years, respectively. The function of such board shall be
15 to determine all medical questions to cases of compensation for
16 silicosis under the direction and supervision of the commis-
17 sioner. The commissioner, from time to time, shall fix the per
18 diem salary, computed on the basis of actual time devoted to
19 the discharge of their duties, to be paid each member of such
20 board, and they shall also be entitled to reasonable and neces-

21 sary traveling and other expenses incurred while actually en-
22 gaged in the performance of their duties.

Sec. 13. The silicosis medical board, upon reference to it
2 by the commissioner of a case of silicosis, shall notify the em-
3 ployee, or in case he is dead the claimant, and the employer,
4 to appear before such board at a time and place stated in the
5 notice. If the employee be living, he shall appear before the
6 board at the time and place specified and submit to such ex-
7 aminations, including clinical and X-ray examinations, as the
8 board may require. If a physician licensed to practice medi-
9 cine in the state shall make affidavit that the employee is phys-
10 ically unable to appear at the time and place designated by
11 the board, such board shall, on notice to the proper parties,
12 change the place and time of examination to such other place
13 and time as may reasonably facilitate the hearing or exam-
14 ination of the employee. The employee, or in case he is dead
15 the claimant, and the employer shall also produce as evidence
16 to the board all reports of medical and X-ray examinations
17 which may be in their respective possession or control, showing
18 the past or present condition of the employee. If the employee
19 be dead, the notice of the board shall further require that the

20 claimant produce necessary consents and permits so that an
21 autopsy may be performed, if the board shall so direct. When
22 in the opinion of the board an autopsy is deemed necessary to
23 accurately and scientifically ascertain and determine the cause
24 of death, such autopsy examination shall be ordered by the
25 board, which shall designate a duly licensed physician, a path-
26 ologist, or such other specialists as may be deemed necessary
27 by the board, to make such examination and tests to determine
28 the cause of death and certify his or their written findings,
29 in triplicate, with said board, and which findings shall be public
30 records. In the event that a claimant for compensation for
31 such death refuses to consent and permit such autopsy to be
32 made, all rights for compensation shall thereupon be forfeited.

33 The employee, or if he be dead, the claimant, and the em-
34 ployer, shall be entitled to be present at all examinations con-
35 ducted by the board, and to be represented by attorneys and
36 physicians.

Sec. 14. The silicosis medical board, as soon as practicable,
2 after it has completed its investigation, shall make its written
3 report, in triplicate, to the commissioner of its findings and
4 conclusions on every medical question in controversy, and the

5 commissioner shall send one copy thereof to the employee or
6 claimant and one copy to the employer, and the said board shall
7 also return to and file with the commissioner all the evidence,
8 as well as all statements under oath, if any, of the persons who
9 appeared before it on behalf of the employee or claimant, or
10 employer, and also all medical reports and X-ray examinations
11 produced by or on behalf of the employee or claimant, or
12 employer.

13 The findings and conclusions of the said board shall set forth,
14 among other things, the following:

15 (a) Whether or not the claimant or the deceased employee
16 has contracted silicosis, and, if so, the stage thereof;

17 (b) If the claimant or the deceased employee has contracted
18 such disease, whether or not the exposure in the employment,
19 with said employer, was sufficient to have caused silicosis or to
20 have injuriously aggravated an existing silicosis;

21 (c) What, if any, physician appeared before the board on
22 behalf of the claimant, and what, if any, X-rays were produced
23 by or on behalf of the claimant, and what, if any, physician
24 appeared before the board on behalf of the employer, and what,
25 if any, X-rays were produced by or on behalf of the employer.

26 If either party object to the whole or any part of such find-
27 ings and conclusions of the board, he shall file with the com-
28 missioner, within ten days of the mailing of said copy to him
29 unless for good cause shown the commissioner extends said
30 time, his objections, in writing, thereto, specifying the partic-
31 ular statements of the board's findings and conclusions to which
32 he objects. After the time has expired for the filing of ob-
33 jections to the findings and conclusions of the board, the com-
33a missioner shall proceed to act as provided in this chapter.
33b If after the time has expired for the filing of objections to
33c the findings and conclusions of the board no objections
33d have been filed, the report of a majority of the board
34 of its findings and conclusions on any medical question shall be
35 taken to be plenary and conclusive evidence of the findings
36 and conclusions therein stated. If objection has been filed to
37 the findings and conclusions of the board, notice thereof shall
38 be given to the board, and the members thereof joining in
39 such findings and conclusions shall appear at the time fixed
40 by the commissioner for the hearing to submit to examination
41 and cross-examination in respect to such findings and con-
42 clusions. At such hearing evidence to controvert the findings

43 and conclusions of the board shall be limited to examination
44 and cross-examination of the members of the board appearing,
45 and in addition thereto only the testimony of such physician
46 or physicians as may have appeared before the board on behalf
47 of the claimant or the employer, or each, and participated in
48 all of the examinations conducted by such board: *Provided,*
49 That if such physician shall have died or is physically unable
50 to attend, after appearing before said board, the party whom
51 he represented may select any other duly licensed physician of
52 West Virginia and may introduce his testimony in addition to
53 that of the one who has so died or is so physically unable to
54 attend.

Sec. 15. The provisions hereof shall not apply to cases of
2 silicosis in which the last injurious exposure to silicon dioxide
3 dust in harmful quantities occurred before the provisions
4 hereof shall have taken effect: *Provided,* That any employer
5 hereunder may elect to provide and pay compensation here-
6 under for silicosis in which the last injurious exposure to the
7 hazards of such disease occurred before the provisions hereof
8 shall have taken effect by filing notice of such election with the
9 commissioner and posting copies of said notice in conspicuous

10 places on his premises, and every employee who is employed
11 at the time of posting such notice shall be deemed to have ac-
12 cepted all the provisions hereof and shall be bound thereby
13 unless within thirty days after the filing and posting of such
14 notice such employee shall file a notice to the contrary with the
15 commissioner, whose duty it shall be to immediately notify the
16 employer: *Provided further*, That any employer and any for-
17 mer employee thereof prior to the date the provisions hereof
18 take effect, when such former employee claims to have con-
19 tracted silicosis, may by an agreement in writing elect to accept
20 the provisions hereof, whereupon such former employee shall
21 file his application with the commissioner, and the commissioner
22 is hereby authorized to act in such cases, in which event all
23 charges for administration and other expenses shall be charged
24 to the particular employer, and if the commissioner finds that
25 compensation should be paid, he shall determine the total
26 amount and all administration charges thereof and assess same
27 against the particular employer, who shall at once make pay-
28 ment of the full amount thereof into the workmen's compen-
29 sation silicosis fund, and such amount so awarded shall be

30 disbursed by the commissioner as in any other case arising under
31 the provisions hereof.

Sec. 16. Compensation shall be paid only to or for the use
2 of such employees, or their dependents, as herein provided,
3 and shall be exempt from all claims of creditors and from **any**
4 attachment, execution or assignment. Payments shall be made
5 in such periodical installments as may seem best to the com-
6 missioner in each case.

Sec. 17. Any person who shall knowingly and with fraudu-
2 lent intent secure or attempt to secure larger compensation, or
3 compensation for a longer term than he is entitled to, from
4 the workmen's compensation silicosis fund, or knowingly and
5 with like intent secure or attempt to secure compensation from
6 such fund when he is not entitled thereto, or shall knowingly
7 and with like intent aid or abet anyone in the commission of
8 the offenses herein set forth, shall be guilty of a misdemeanor,
9 and upon conviction thereof shall be fined not exceeding five
10 hundred dollars or imprisoned not exceeding twelve months,
11 or both, in the discretion of the court, and if the person so
12 convicted is receiving compensation from such fund, he shall

13 from and after such conviction cease to receive such compen-
14 sation.

Sec. 18. The provisions of section one, article five of this
2 chapter, providing for the finality of the commissioner's rulings
3 and the review by the supreme court of appeals, are applicable
4 to the provisions of this article.

5 All acts and parts of acts in conflict with this act, or any
6 part thereof, are hereby repealed. The various provisions of
7 this act shall be construed as separable and several, and should
8 any of the provisions, sentences, clauses or parts thereof be
9 construed or held unconstitutional, or for any other reason
10 invalid, the remaining provisions of this act shall not be thereby
11 affected.

I certify that the foregoing act,
having been presented to the Governor for
his approval, and not having been returned
by him to the House of the Legislature in
which it originated within the time pre-
scribed by the constitution of the state, has
become a law without his approval.

This the 15th day of March,
1935.


SECRETARY OF STATE

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clinton M. Howard
.....
Chairman Senate Committee

Archie M. Victor
.....
Chairman House Committee

Originated in the *House of Delegates*

Takes effect *after* passage.

Charles M. ...
.....
Clerk of the Senate

Geo. S. Hall
.....
Clerk of the House of Delegates

Chas. E. Hoyle
.....
President of the Senate

John S. ...
.....
Speaker House of Delegates.

The within.....this the.....

day of....., 1935.

.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. **MAR 15 1935**
Wm. S. O'BRIEN,
Secretary of State