WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

HOUSE BILL No. 322

(By Mr. Hunsberger)

PASSED March 7, 1947

In Effect July 1, 1947
AN ACT to amend and reenact sections five and nine, article two, and section one, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workmen's compensation and its administration.

Be it enacted by the Legislature of West Virginia:

That sections five and nine, article two, and sections one, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 2. Employers and Employees Subject to Chapter; Premiums.

Section 5. Premiums; Failure to Pay; Reinstatement;

2 Deposit to Insure Payment; Refund of Deposit; Notices to

3 Employees.—For the purpose of creating a workmens'
compensation fund each employer subject to this chapter
shall pay the premiums of liability based upon and being such a percentage of the payroll of such employer
as may have been determined by the commissioner and be then in effect. The premiums shall be paid quarterly
on or before the twentieth day of the next succeeding month for the preceding quarter, and shall be the pre-
scribed percentage of the total earnings of all employees within the meaning of this chapter, for such preceding
quarter. The minimum premium to be paid by any employer for any quarter shall be one dollar and fifty cents.
The premiums and deposits provided for in this chapter shall be paid by the employers to the state compensa-
tion commissioner, who shall issue receipts for all sums so received, mailing the original to the person, firm or
corporation paying the same, transmitting a copy thereof to the state treasurer and state auditor, and retaining
a copy for his own records. All sums received by the state compensation commissioner as herein provided shall
be deposited in the state treasury to the credit of the workmen's compensation fund in the manner now pre-
scribed by law for depositing money in the state treasury.

Each employer shall make a payroll report to the commissioner for each quarter as heretofore specified, and such report shall be on the form or forms prescribed by the commissioner, and furnish all information required by him.

Failure to pay premiums as herein provided or to make the quarterly payroll reports required by the commissioner shall deprive the employer so delinquent of the benefits and protection afforded by this chapter, and shall automatically terminate the election of such employer to pay into the workmen’s compensation fund as herein provided, and such employer shall be liable to his employees as provided in section eight of this article; and the commissioner shall not be required to notify the delinquent employer of such termination, but he shall notify the employees of such employer by written notice posted as hereinafter provided for in this section. The termination of election of such delinquent employer shall date from twelve o’clock p.m., of the last day of the month in which he fails to pay the premiums or make payroll.
reports, as above provided, for the preceding quarter.

The employer so delinquent may be reinstated upon application under such terms as are prescribed by this chapter and by the commissioner hereunder, after the payment into the workmen's compensation fund of all unpaid premiums, penalties and charges. Such reinstatement shall be in effect from and after the date that the new application is accepted by the commissioner:

Provided, however, That such delinquent employer shall be entitled to the benefits and protection of this chapter until twelve o'clock p.m. of the last day of the month immediately succeeding the month in which his election is terminated, and his employees shall be entitled to compensation for injuries received during such period, but not thereafter unless such delinquent employer becomes reinstated as herein provided.

Any employer hereafter electing to avail himself of the benefits of this chapter shall at the time of making application to the commissioner deposit in the workmen's compensation fund an amount estimated to be equal to the amount of the premium which shall be paid by him for the
next succeeding quarter. Any employer whose deposit is
less than the amount of his premium for the last quarter
shall, upon written request from the commissioner mailed
to his address as carried upon the books of the commis-
missioner by twelve o'clock p.m. of the twentieth of the
month in which request is mailed, pay to the commissi-
er a sum sufficient to make his deposit at least equal to the
amount of his premium for the last preceding quarter, and
failure of any employer to comply with such written re-
quest within the time specified shall deprive him of the
benefits and protection afforded by this chapter, and shall
automatically terminate his election to pay into the work-
men's compensation fund as herein provided, and such
employer shall be liable to his employees as provided in
section eight of this article; and the commissioner shall
not be required to notify the delinquent employer of such
termination, but he shall notify the employees of such
employer by written notice posted as hereafter provided
for in this section. The termination of election of such
employer shall date from twelve o'clock p.m. of the last
day of the month in which he is notified by the commis-
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... sioner that his deposit is not equal to the sum of his pre-
mium for the last preceding quarter. Such employer may
be reinstated upon application under such terms as are
prescribed by this chapter and the rules of the commis-
sioner. The deposit hereinbefore described shall be cred-
ited to the employer’s account on the books of the com-
missioner and used to pay premiums and any other sums
due the fund when such employer becomes delinquent
in the payment of the same.

Upon withdrawal from the fund or termination of
election of any employer, he shall be refunded the bal-
ance due him of his deposit, after deducting all amounts
owed by him to the workmen’s compensation fund, and
the commissioner shall notify the employees of such em-
ployer of said termination in such manner as he may
demean best and sufficient.

Notices to employees in this section provided for shall
be given by posting written notice that the employer is
delinquent under the compensation law of West Virginia,
and that neither the employer nor the employees of such
employer are protected by said law as to any accidents
happening after the date specified in said notice. Such notice shall be in the form prescribed by the commissioner and shall be posted in a conspicuous place at the chief works of the employer, as the same appear in records of the commissioner. If the said chief works of the employer cannot be found or identified, then said notices shall be posted at the front door of the court house of the county in which said chief works are located, according to the records in the commissioner's office. Any person who shall, prior to the reinstatement of the said employer, as hereinbefore provided for, or prior to sixty days after the posting of said notice, whichever shall first occur, remove, deface or render illegible the said notice, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed five hundred dollars, and the said notice shall state this provision upon its face. The commissioner may require any sheriff, deputy sheriff, constable, or other official of the state of West Virginia, who may be authorized to serve civil process, to post such notice and to make return thereof of the fact of such posting to the commissioner, and any
failure of such officer to post any notice within ten days after he shall have received the same from the commissioner, without just cause or excuse, shall constitute a wilful failure or refusal to perform a duty required of him by law within the meaning of section twenty-eight, article five, chapter sixty-one of the code of West Virginia. Any person actually injured by reason of such failure shall have an action against said official, and upon any official bond he may have given, for such damages as such person may actually have incurred, but not to exceed, in the case of any surety upon said bond, the amount of the penalty of said bond. Any official posting said notice as herein required shall be entitled to the same fee as is now or may hereafter be provided for the service of process in suits instituted in courts of record in the state of West Virginia, which fee shall be paid by the commissioner out of any funds at his disposal, but shall be charged by him against the account of the employer to whose delinquency such notice relates.

Sec. 9. Election of Employer to Provide Own System of Compensation.—Notwithstanding anything contained in
this chapter, employers subject to this chapter who are
of sufficient financial responsibility to insure the pay-
ment of compensation to injured employees and the
dependents of fatally injured employees, whether in the
form of pecuniary compensation or medical attention,
funeral expenses or otherwise as herein provided, of
the value at least equal to the compensation provided
in this chapter, or employers of such financial responsi-
bility who maintain their own benefit funds, or system
of compensation, to which their employees are not re-
quired or permitted to contribute, or such employers as
shall furnish bond or other security to insure such pay-
ments, may, upon a finding of such facts by the com-
pensation commissioner, elect to pay individually and
directly, or from such benefit funds, department or
association, such compensation and expenses to injured
employees or fatally injured employees' dependents. The
compensation commissioner shall require security or
bond from such employer, to be approved by him, and of
such amount as is by him considered adequate and suffi-
cient to compel or secure to such employees, or their
dependents, payment of the compensation and expenses
herein provided for, which shall in no event be less than
the compensation paid or furnished out of the state work-
men's compensation fund in similar cases to injured em-
ployees or the dependents of fatally injured employees
whose employers contribute to such fund. Any employer
electing under this section shall on or before the twen-
tieth day of the first month of each quarter, for the
preceding quarter, file with the commissioner a sworn
statement of the total earnings of all his employees sub-
ject to this chapter for such preceding quarter, and shall
pay into the workmen's compensation fund a sum suffi-
cient to pay his proper proportion of the expenses of the
administration of this chapter, as may be determined
by the commissioner. The commissioner shall make and
publish rules and regulations governing the mode and
manner of making application, and the nature and extent
of the proof required to justify the finding of facts by
the commissioner, to consider and pass upon such election
by employers subject to this chapter, which rules and
regulations shall be general in their application. Any
employer subject to this chapter who shall elect to carry
his own risk and who has complied with the requirements
of this section and the rules of the compensation commis-
sioner shall not be liable to respond in damages at com-
mon law or by statute for the injury or death of any
employee, however occurring, after such election and
during the period that he is allowed by the commissioner
to carry his own risk; provided the injured employee
has remained in his service with notice given, as pro-
vided for in section seven of this article, that his em-
ployer has elected to carry his own risk as herein pro-
vided. The continuation in the service of such employer
with such notice shall be deemed a waiver by the em-
pLOYEE and by the parents of any minor employee of the
right of action, as aforesaid, which the employee or his
or her parents would otherwise have.
Any employer whose record upon the books of the
compensation commissioner shows a liability against the
workmen's compensation fund incurred on account of in-
jury to or death of any of his employees, in excess of
premiums paid by such employer, shall not be granted
the right, individually and directly or from such benefit funds, department or association, to compensate his injured employees and the dependents of his fatally injured employees until he has paid into the workmen's compensation fund the amount of such excess of liability over premiums paid, including his proper proportion of the liability incurred on account of explosions, catastrophes or second injuries as defined in section one, article three of this chapter, occurring within the state and charged against such fund.

All employers who have heretofore elected, or shall hereafter elect, to pay compensation and expenses directly as provided in this section, shall, unless they give the catastrophe and second injury security or bond herein-after provided for, pay into the surplus fund referred to in section one, article three of this chapter upon the same basis and in the same percentages, subject to the limitations herein set forth, as funds are set aside for the maintenance of the surplus fund out of payments made by premium-paying subscribers, such payments to be made at the same time as hereinbefore provided with respect
to payment of proportion of expenses of administration.

In case there be a catastrophe or second injury, as defined in section one, article three of this chapter, to the employees of any employer making such payments, the employer shall not be liable to pay compensation or expenses arising from or necessitated by the catastrophe or second injury, and such compensation and expenses shall not be charged against such employer, but such compensation and expenses shall be paid from the surplus fund in the same manner and to the same extent as in the case of premium-paying subscribers.

If an employer elect to make payments into the surplus fund as aforesaid, then the bond or other security required by this section shall be of such amount as the commissioner considers adequate and sufficient to compel or secure to the employees or their dependents payment of compensation and expenses, except any compensation and expenses that may arise from, or be necessitated by, any catastrophe or second injury, as defined in section one, article three of this chapter, which last are secured
by and shall be paid from the surplus fund as herein-
before provided.

If any employer elect not to make payments into the
surplus fund, as hereinbefore provided, then, in addition
to bond or security in the amount hereinbefore set forth,
such employer shall furnish catastrophe and second in-
jury security or bond, approved by the commissioner,
in such additional amount as the commissioner shall con-
sider adequate and sufficient to compel or secure pay-
ment of all compensation and expenses arising from, or
necessitated by, any catastrophe or second injury that
might thereafter ensue.

All employers hereafter making application to carry
their own risk under the provisions of this section, shall
with such application, make a written statement as to
whether such employer elects to make payments as afore-
said into the surplus fund, or not to make such payments
and to give catastrophe and second injury security or
bond hereinbefore in such case provided for.

All employers who have heretofore elected to carry
their own risk under the provisions of this section shall
be deemed to have elected to make payments into the surplus fund unless, within thirty days after the effective date of this act, they notify the commissioner in writing to the contrary: Provided, however, That such employers, as have heretofore elected, under the rules heretofore promulgated by the commissioner, not to make payments into the surplus fund, shall be deemed to have elected to give the catastrophe and second injury security or bond hereinbefore provided for and not to make payments into the surplus fund. Any catastrophe and second injury security or bond heretofore given under rules and regulations promulgated by the commissioner and approved by him shall be valid under this section, and any election heretofore made under rules and regulations of the commissioner to make payments into the surplus fund shall be valid and protective to the person so electing from and after the date of such election.

In any case under the provisions of this section that shall require the payment of compensation or benefits by an employer in periodical payments, and the nature of the case makes it possible to compute the present
value of all future payments, the commissioner may, in
his discretion, at any time compute and permit or re-
quire to be paid into the workmen's compensation fund
an amount equal to the present value of all unpaid com-
pensation for which liability exists, in trust; and there-
upon such employer shall be discharged from any further
liability upon such award, and payment of the same shall
be assumed by the workmen's compensation fund.

Article 4. Disability and Death Benefits.

Section 1. To Whom Compensation Fund Disbursed;

2 Silicosis Included in "Injury" and "Personal Injury";
3 Definition of Silicosis.—Subject to the provisions and
4 limitations elsewhere in this chapter set forth, the com-
5 missioner shall disburse the workmen's compensation
6 fund to the employees of such employers as are not de-
7 linquent in the payment of premiums for the quarter in
8 which the injury occurs, and in case of catastrophe, in
9 addition to the employees next above described, to the
10 employees of employers who have elected, under section
11 nine, article two of this chapter to make payments into
12 the surplus fund as provided in that section, and which
employees shall have received personal injuries in the course of and resulting from their employment in this state, or in temporary employment without the state as provided in section one, article two of this chapter, or to the dependents, if any, of such employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter.

For the purpose of this chapter the terms "injury" and "personal injury" shall be extended to include silicosis, and the commissioner shall likewise disburse the workmen's compensation fund to the employees of such employers as are not delinquent in the payment of premiums for the last quarter in which such employees have been exposed to silicon dioxide dust in harmful quantities, and which employees shall have contracted silicosis in this state in the course of and resulting from their employment, or to the dependents, if any, of such employees, in case death has ensued, according to the provisions hereinafter made: Provided, however, That compensa-
tion shall not be payable for the disease of silicosis, or
death resulting therefrom, unless the employee has been
exposed to the inhalation of silicon dioxide dust in harm-
ful quantities over a period of not less than two years
in the state of West Virginia. An application for benefits
on account of silicosis shall set forth the name of the
employer or employers and the time worked for each,
and the commissioner may allocate to and divide any
charges on account of such claim among the employers
for whom the claimant was employed during a period
of two years immediately preceding the filing of the ap-
plication. The allocation shall be based upon the time
and degree of exposure with each employer.

For the purpose of this chapter silicosis is defined as an
insidious fibrotic disease of the lung or lungs due to the
prolonged inhalation and accumulation, sustained in the
course of and resulting from his employment, of minute
particles of dust containing silicon dioxide (SiO₂) over
such a period of time and in such amounts as result in
the substitution of fibrous tissues for normal lung tissues;
and the term “silicosis” as used herein shall also include
silicosis accompanied by tuberculosis of the lungs.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest L. McClees
Chairman Senate Committee

R. S. Matthews
Chairman House Committee

Originated in the House of Delegates

Takes effect July 1, 1947

The within approved this the 13th

day of Men, 1947.

Governor.

Filed in the Office of the Secretary of State of West Virginia, Mar. 13, 1947.

SECRETARY OF STATE