

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

HOUSE BILL No. 322

(By Mr. Hansburger)



PASSED March 7, 1947

In Effect July 1, 1947 Passage



322

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[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'

4 compensation fund each employer subject to this chapter
5 shall pay the premiums of liability based upon and be-
6 ing such a percentage of the payroll of such employer
7 as may have been determined by the commissioner and
8 be then in effect. The premiums shall be paid quarterly
9 on or before the twentieth day of the next succeeding
10 month for the preceding quarter, and shall be the pre-
11 scribed percentage of the total earnings of all employees
12 within the meaning of this chapter, for such preceding
13 quarter. The minimum premium to be paid by any em-
14 ployer for any quarter shall be one dollar and fifty cents.
15 The premiums and deposits provided for in this chapter
16 shall be paid by the employers to the state compensa-
17 tion commissioner, who shall issue receipts for all sums
18 so received, mailing the original to the person, firm or
19 corporation paying the same, transmitting a copy thereof
20 to the state treasurer and state auditor, and retaining
21 a copy for his own records. All sums received by the
22 state compensation commissioner as herein provided shall
23 be deposited in the state treasury to the credit of the
24 workmen's compensation fund in the manner now pre-

25 scribed by law for depositing money in the state treasury.
26 Each employer shall make a payroll report to the com-
27 missioner for each quarter as heretofore specified, and
28 such report shall be on the form or forms prescribed
29 by the commissioner, and furnish all information re-
30 quired by him.

31 Failure to pay premiums as herein provided or to make
32 the quarterly payroll reports required by the commis-
33 sioner shall deprive the employer so delinquent of the
34 benefits and protection afforded by this chapter, and shall
35 automatically terminate the election of such employer
36 to pay into the workmen's compensation fund as herein
37 provided, and such employer shall be liable to his em-
38 ployees as provided in section eight of this article; and
39 the commissioner shall not be required to notify the
40 delinquent employer of such termination, but he shall
41 notify the employees of such employer by written notice
42 posted as hereinafter provided for in this section. The
43 termination of election of such delinquent employer shall
44 date from twelve o'clock p.m., of the last day of the month
45 in which he fails to pay the premiums or make payroll

46 reports, as above provided, for the preceding quarter.

47 The employer so delinquent may be reinstated upon
48 application under such terms as are prescribed by this
49 chapter and by the commissioner hereunder, after the
50 payment into the workmen's compensation fund of all
51 unpaid premiums, penalties and charges. Such rein-
52 statement shall be in effect from and after the date that
53 the new application is accepted by the commissioner:
54 *Provided, however,* That such delinquent employer shall
55 be entitled to the benefits and protection of this chapter
56 until twelve o'clock p.m. of the last day of the month im-
57 mediately succeeding the month in which his election is
58 terminated, and his employees shall be entitled to com-
59 pensation for injuries received during such period, but
60 not thereafter unless such delinquent employer becomes
61 reinstated as herein provided.

62 Any employer hereafter electing to avail himself of the
63 benefits of this chapter shall at the time of making appli-
64 cation to the commissioner deposit in the workmen's com-
65 pensation fund an amount estimated to be equal to the
66 amount of the premium which shall be paid by him for the

67 next succeeding quarter. Any employer whose deposit is
68 less than the amount of his premium for the last quarter
69 shall, upon written request from the commissioner mailed
70 to his address as carried upon the books of the commis-
71 sioner by twelve o'clock p.m. of the twentieth of the
72 month in which request is mailed, pay to the commis-
73 er a sum sufficient to make his deposit at least equal to the
74 amount of his premium for the last preceding quarter, and
75 failure of any employer to comply with such written re-
76 quest within the time specified shall deprive him of the
77 benefits and protection afforded by this chapter, and shall
78 automatically terminate his election to pay into the work-
79 men's compensation fund as herein provided, and such
80 employer shall be liable to his employees as provided in
81 section eight of this article; and the commissioner shall
82 not be required to notify the delinquent employer of such
83 termination, but he shall notify the employees of such
84 employer by written notice posted as hereafter provided
85 for in this section. The termination of election of such
86 employer shall date from twelve o'clock p.m. of the last
87 day of the month in which he is notified by the commis-

88 sioner that his deposit is not equal to the sum of his pre-
89 mium for the last preceding quarter. Such employer may
90 be reinstated upon application under such terms as are
91 prescribed by this chapter and the rules of the commis-
92 sioner. The deposit hereinbefore described shall be cred-
93 ited to the employer's account on the books of the com-
94 missioner and used to pay premiums and any other sums
95 due the fund when such employer becomes delinquent
96 in the payment of the same.

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

104 Notices to employees in this section provided for shall
105 be given by posting written notice that the employer is
106 delinquent under the compensation law of West Virginia,
107 and that neither the employer nor the employees of such
108 employer are protected by said law as to any accidents

109 happening after the date specified in said notice. Such
110 notice shall be in the form prescribed by the commis-
111 sioner and shall be posted in a conspicuous place at the
112 chief works of the employer, as the same appear in rec-
113 ords of the commissioner. If the said chief works of the
114 employer cannot be found or identified, then said notices
115 shall be posted at the front door of the court house
116 of the county in which said chief works are located, ac-
117 cording to the records in the commissioner's office. Any
118 person who shall, prior to the reinstatement of the said
119 employer, as hereinbefore provided for, or prior to sixty
120 days after the posting of said notice, whichever shall
121 first occur, remove, deface or render illegible the said
122 notice, shall be guilty of a misdemeanor, and upon con-
123 viction thereof shall be fined not to exceed five hundred
124 dollars, and the said notice shall state this provision upon
125 its face. The commissioner may require any sheriff, dep-
126 uty sheriff, constable, or other official of the state of
127 West Virginia, who may be authorized to serve civil
128 process, to post such notice and to make return thereof
129 of the fact of such posting to the commissioner, and any

130 failure of such officer to post any notice within ten days
131 after he shall have received the same from the com-
132 missioner, without just cause or excuse, shall constitute
133 a wilful failure or refusal to perform a duty required
134 of him by law within the meaning of section twenty-
135 eight, article five, chapter sixty-one of the code of West
136 Virginia. Any person actually injured by reason of such
137 failure shall have an action against said official, and upon
138 any official bond he may have given, for such damages
139 as such person may actually have incurred, but not to
140 exceed, in the case of any surety upon said bond, the
141 amount of the penalty of said bond. Any official posting
142 said notice as herein required shall be entitled to the
143 same fee as is now or may hereafter be provided for the
144 service of process in suits instituted in courts of record
145 in the state of West Virginia, which fee shall be paid by
146 the commissioner out of any funds at his disposal, but
147 shall be charged by him against the account of the em-
148 ployer to whose delinquency such notice relates.

Sec. 9. *Election of Employer to Provide Own System of*

2 *Compensation.*—Notwithstanding anything contained in

3 this chapter, employers subject to this chapter who are
4 of sufficient financial responsibility to insure the pay-
5 ment of compensation to injured employees and the
6 dependents of fatally injured employees, whether in the
7 form of pecuniary compensation or medical attention,
8 funeral expenses or otherwise as herein provided, of
9 the value at least equal to the compensation provided
10 in this chapter, or employers of such financial responsi-
11 bility who maintain their own benefit funds, or system
12 of compensation, to which their employees are not re-
13 quired or permitted to contribute, or such employers as
14 shall furnish bond or other security to insure such pay-
15 ments, may, upon a finding of such facts by the com-
16 pensation commissioner, elect to pay individually and
17 directly, or from such benefit funds, department or
18 association, such compensation and expenses to injured
19 employees or fatally injured employees' dependents. The
20 compensation commissioner shall require security or
21 bond from such employer, to be approved by him, and of
22 such amount as is by him considered adequate and suffi-
23 cient to compel or secure to such employees, or their

24 dependents, payment of the compensation and expenses
25 herein provided for, which shall in no event be less than
26 the compensation paid or furnished out of the state work-
27 men's compensation fund in similar cases to injured em-
28 ployees or the dependents of fatally injured employees
29 whose employers contribute to such fund. Any employer
30 electing under this section shall on or before the twen-
31 tieth day of the first month of each quarter, for the
32 preceding quarter, file with the commissioner a sworn
33 statement of the total earnings of all his employees sub-
34 ject to this chapter for such preceding quarter, and shall
35 pay into the workmen's compensation fund a sum suffi-
36 cient to pay his proper proportion of the expenses of the
37 administration of this chapter, as may be determined
38 by the commissioner. The commissioner shall make and
39 publish rules and regulations governing the mode and
40 manner of making application, and the nature and extent
41 of the proof required to justify the finding of facts by
42 the commissioner, to consider and pass upon such election
43 by employers subject to this chapter, which rules and
44 regulations shall be general in their application. Any

45 employer subject to this chapter who shall elect to carry
46 his own risk and who has complied with the requirements
47 of this section and the rules of the compensation commis-
48 sioner shall not be liable to respond in damages at com-
49 mon law or by statute for the injury or death of any
50 employee, however occurring, after such election and
51 during the period that he is allowed by the commissioner
52 to carry his own risk; provided the injured employee
53 has remained in his service with notice given, as pro-
54 vided for in section seven of this article, that his em-
55 ployer has elected to carry his own risk as herein pro-
56 vided. The continuation in the service of such employer
57 with such notice shall be deemed a waiver by the em-
58 ployee and by the parents of any minor employee of the
59 right of action, as aforesaid, which the employee or his
60 or her parents would otherwise have.

61 Any employer whose record upon the books of the
62 compensation commissioner shows a liability against the
63 workmen's compensation fund incurred on account of in-
64 jury to or death of any of his employees, in excess of
65 premiums paid by such employer, shall not be granted

66 the right, individually and directly or from such benefit
67 funds, department or association, to compensate his in-
68 jured employees and the dependents of his fatally injured
69 employees until he has paid into the workmen's com-
70 pensation fund the amount of such excess of liability
71 over premiums paid, including his proper proportion of
72 the liability incurred on account of explosions, catastro-
73 phes or second injuries as defined in section one, article
74 three of this chapter, occurring within the state and
75 charged against such fund.

76 All employers who have heretofore elected, or shall
77 hereafter elect, to pay compensation and expenses direct-
78 ly as provided in this section, shall, unless they give the
79 catastrophe and second injury security or bond herein-
80 after provided for, pay into the surplus fund referred to
81 in section one, article three of this chapter upon the same
82 basis and in the same percentages, subject to the limita-
83 tions herein set forth, as funds are set aside for the main-
84 tenance of the surplus fund out of payments made by
85 premium-paying subscribers, such payments to be made
86 at the same time as hereinbefore provided with respect

87 to payment of proportion of expenses of administration.
88 In case there be a catastrophe or second injury, as defined
89 in section one, article three of this chapter, to the em-
90 ployees of any employer making such payments, the
91 employer shall not be liable to pay compensation or ex-
92 penses arising from or necessitated by the catastrophe
93 or second injury, and such compensation and expenses
94 shall not be charged against such employer, but such
95 compensation and expenses shall be paid from the sur-
96 plus fund in the same manner and to the same extent as
97 in the case of premium-paying subscribers.

98 If an employer elect to make payments into the surplus
99 fund as aforesaid, then the bond or other security re-
100 quired by this section shall be of such amount as the
101 commissioner considers adequate and sufficient to compel
102 or secure to the employees or their dependents payment
103 of compensation and expenses, except any compensation
104 and expenses that may arise from, or be necessitated by,
105 any catastrophe or second injury, as defined in section
106 one, article three of this chapter, which last are secured

107 by and shall be paid from the surplus fund as herein-
108 before provided.

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

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

126 All employers who have heretofore elected to carry
127 their own risk under the provisions of this section shall

128 be deemed to have elected to make payments into the
129 surplus fund unless, within thirty days after the effective
130 date of this act, they notify the commissioner in writing
131 to the contrary: *Provided, however,* That such employers,
132 as have heretofore elected, under the rules heretofore
133 promulgated by the commissioner, not to make payments
134 into the surplus fund, shall be deemed to have elected
135 to give the catastrophe and second injury security or
136 bond hereinbefore provided for and not to make pay-
137 ments into the surplus fund. Any catastrophe and second
138 injury security or bond heretofore given under rules and
139 regulations promulgated by the commissioner and ap-
140 proved by him shall be valid under this section, and any
141 election heretofore made under rules and regulations of
142 the commissioner to make payments into the surplus
143 fund shall be valid and protective to the person so elect-
144 ing from and after the date of such election.

145 In any case under the provisions of this section that
146 shall require the payment of compensation or benefits
147 by an employer in periodical payments, and the nature
148 of the case makes it possible to compute the present

149 value of all future payments, the commissioner may, in
150 his discretion, at any time compute and permit or re-
151 quire to be paid into the workmen's compensation fund
152 an amount equal to the present value of all unpaid com-
153 pensation for which liability exists, in trust; and there-
154 upon such employer shall be discharged from any further
155 liability upon such award, and payment of the same shall
156 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

13 employees shall have received personal injuries in the
14 course of and resulting from their employment in this
15 state, or in temporary employment without the state as
16 provided in section one, article two of this chapter, or
17 to the dependents, if any, of such employees in case
18 death has ensued, according to the provisions herein-
19 after made; and also for the expenses of the administra-
20 tion of this chapter, as provided in section two, article
21 one of this chapter.

22 For the purpose of this chapter the terms "injury" and
23 "personal injury" shall be extended to include silicosis,
24 and the commissioner shall likewise disburse the work-
25 men's compensation fund to the employees of such em-
26 ployers as are not delinquent in the payment of premiums
27 for the last quarter in which such employees have been
28 exposed to silicon dioxide dust in harmful quantities,
29 and which employees shall have contracted silicosis in
30 this state in the course of and resulting from their em-
31 ployment, or to the dependents, if any, of such employees,
32 in case death has ensued, according to the provisions
33 hereinafter made: *Provided, however,* That compensa-

34 tion shall not be payable for the disease of silicosis, or
35 death resulting therefrom, unless the employee has been
36 exposed to the inhalation of silicon dioxide dust in harm-
37 ful quantities over a period of not less than two years
38 in the state of West Virginia. An application for benefits
39 on account of silicosis shall set forth the name of the
40 employer or employers and the time worked for each,
41 and the commissioner may allocate to and divide any
42 charges on account of such claim among the employers
43 for whom the claimant was employed during a period
44 of two years immediately preceding the filing of the ap-
45 plication. The allocation shall be based upon the time
46 and degree of exposure with each employer.

47 For the purpose of this chapter silicosis is defined as an
48 insidious fibrotic disease of the lung or lungs due to the
49 prolonged inhalation and accumulation, sustained in the
50 course of and resulting from his employment, of minute
51 particles of dust containing silicon dioxide (SiO_2) over
52 such a period of time and in such amounts as result in
53 the substitution of fibrous tissues for normal lung tissues;
54 and the term "silicosis" as used herein shall also include
55 silicosis accompanied by tuberculosis of the lungs.

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

Forest L. McNear
Chairman Senate Committee

R. L. Matthews
Chairman House Committee

Originated in the House of Delegates

Takes effect July 1, 1947 passage.

J. Howard Meyer
Clerk of the Senate

J. Rupp
Clerk of the House of Delegates

Charles M. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 13
day of March, 1947.

Clarence Meadows
Governor.



Filed in the Office of the Secretary of State
of West Virginia.....
MAR 13 1947
W. S. GUSTEN,
SECRETARY OF STATE