

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

SENATE BILL No. 302

(By Mr. Vickers, Mr. President)



PASSED March 8, 1947

In Effect Ninety days from Passage



302

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Senate Bill No. 302

(By MR. VICKERS, MR. PRESIDENT)

[Passed March 8, 1947; in effect ninety days from passage.]

AN ACT to repeal section nine-a, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section nine, article two, section one, article three, and section nine-b, article four, of such chapter, relating to workmen's compensation and its administration.

*Be it enacted by the Legislature of West Virginia:*

That section nine-a, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that section nine, article two, section one, article three, and section nine-b, article four, of such chapter, be amended and reenacted to read as follows:

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

**Premiums.**

Sec. 9. *Election of Employer to Provide Own System of Compensation.*—Notwithstanding anything con-

3 tained in this chapter, employers subject to this chapter  
4 who are of sufficient financial responsibility to insure the  
5 payment 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 the  
9 value at least equal to the compensation provided in this  
10 chapter, or employers of such financial responsibility who  
11 maintain their own benefit funds, or system of compensa-  
12 tion, to which their employees are not required or per-  
13 mitted to contribute, or such employers as shall furnish  
14 bond or other security to insure such payments, may  
15 upon a finding of such facts by the compensation commis-  
16 sioner, elect to pay individually and directly, or from  
17 such benefit funds, department or association, such com-  
18 pensation and expenses to injured employees or fatally  
19 injured employees' dependents. The compensation com-  
20 missioner shall require security or bond from such em-  
21 ployer, to be approved by him, and of such amount as is  
22 by him considered adequate and sufficient to compel or  
23 secure to such employees, or their dependents, payment

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

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

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

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

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

86 respect to payment of proportion of expenses of admin-  
87 istration. In case there be a catastrophe or second injury,  
88 as defined in section one, article three of this chapter,  
89 to the employees of any employer making such pay-  
90 ments, the employer shall not be liable to pay compen-  
91 sation or expenses arising from or necessitated by the  
92 catastrophe or second injury, and such compensation and  
93 expenses shall not be charged against such employer,  
94 but such compensation and expenses shall be paid from  
95 the surplus fund in the same manner and to the same  
96 extent as in the case of premium-paying subscribers.

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

106 secured by and shall be paid from the surplus fund, as  
107 hereinbefore provided.

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

118 All employers hereafter making application to carry  
119 their own risk under the provisions of this section, shall  
120 with such application, make a written statement as to  
121 whether such employer elects to make payments as  
122 aforesaid into the surplus fund, or not to make such  
123 payments and to give catastrophe and second injury  
124 security or bond hereinbefore in such case provided  
125 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 effec-  
130 tive date of this act, they notify the commissioner in  
131 writing to the contrary: *Provided, however,* That such  
132 employers, as have heretofore elected, under the rules  
133 heretofore promulgated by the commissioner, not to make  
134 payments into the surplus fund, shall be deemed to have  
135 elected to give the catastrophe and second injury security  
136 or bond hereinbefore provided for and not to make  
137 payments into the surplus fund. Any catastrophe and  
138 second injury security or bond heretofore given under  
139 rules and regulations promulgated by the com-  
140 missioner and approved by him shall be valid under this  
141 section, and any election heretofore made under rules  
142 and regulations of the commissioner to make payments  
143 into the surplus fund shall be valid and protective to  
144 the person so electing from and after the date of such  
145 election.

146 In any case under the provisions of this section that  
147 shall require the payment of compensation or benefits

148 by an employer in periodical payments, and the nature  
149 of the case makes it possible to compute the present value  
150 of all future payments, the commissioner may, in his  
151 discretion, at any time compute and permit or require  
152 to be paid into the workmen's compensation fund an  
153 amount equal to the present value of all unpaid compen-  
154 sation for which liability exists, in trust; and thereupon  
155 such employer shall be discharged from any further lia-  
156 bility upon such awards, and payment of the same shall be  
157 assumed by the workmen's compensation fund.

**Article 3. Workmen's Compensation Fund.**

Section 1. *Compensation Fund; Surplus Fund; Catastrophe and Catastrophe Payment Defined; Second Injury and Second Injury Reserve; Compensation by Employers.*

4 —The commissioner shall establish a workmen's compensation fund from the premiums and other funds paid  
5 thereto by employers, as herein provided, for the benefit  
6 of employees of employers who have paid the premiums  
7 applicable to such employers and have otherwise complied fully with the provisions of section five, article  
8 two of this chapter, and for the benefit, to the extent

11 elsewhere in this chapter set out, of employees of em-  
12 ployers who have elected, under section nine, article two  
13 of this chapter, to make payments into the surplus fund  
14 hereinafter provided for, and for the benefit of the de-  
15 pendants of all such employees, and for the payment of  
16 the administration expenses of this chapter and shall  
17 adopt rules and regulations with respect to the collection,  
18 maintenance and disbursement of such fund not in con-  
19 flict with the provisions of this chapter.

20 Ten per cent of all that shall hereafter be paid into  
21 the workmen's compensation fund by subscribers not  
22 electing to carry their own risk under section nine, ar-  
23 ticle two of this chapter shall be set aside for the crea-  
24 tion of a surplus fund until such surplus shall amount  
25 to the sum of five hundred thousand dollars, after which  
26 time the sum of five per cent of all the money paid into  
27 such fund shall be credited to such surplus fund, until  
28 such time as in the judgment of the commissioner, such  
29 surplus fund shall be sufficiently large to cover the catas-  
30 trophe hazard, the second injury hazard, and all losses  
31 not otherwise specifically provided for in this chapter.

32 A catastrophe is hereby defined as an accident in  
33 which three or more employees are killed or receive in-  
34 juries, which, in the case of each individual, consists of:  
35 Loss of both eyes or the sight thereof; or loss of both  
36 hands or the use thereof; or loss of both feet or the use  
37 thereof; or loss of one hand and one foot or the use  
38 thereof. The aggregate of all medical and hospital bills  
39 and other costs, and all benefits payable on account of a  
40 catastrophe is hereby defined as "catastrophe payment."  
41 In case of a catastrophe to the employees of an employer  
42 who is an ordinary premium-paying subscriber to the  
43 fund, or to the employees of an employer who, having  
44 elected to carry his own risk under section nine, article  
45 two of this chapter, has heretofore elected, or may here-  
46 after elect, to pay into the surplus fund under the provi-  
47 sions of that section, then the catastrophe payment aris-  
48 ing from such catastrophe shall not be charged against,  
49 or paid by, such employer but shall be paid from the  
50 surplus fund.

51 If an employee who has a definitely ascertainable phy-  
52 sical impairment, caused by a previous injury, irrespec-

53 tive of its compensability, becomes permanently and to-  
54 tally disabled through the combined effect of such  
55 previous injury and a second injury received in the  
56 course of and as a result of his employment, the employer  
57 shall be chargeable only for the compensation payable  
58 for such second injury. *Provided, however,* That in addi-  
59 tion to such compensation, and after the completion of  
60 the payments therefor, the employee shall be paid the  
61 remainder of the compensation that would be due for  
62 permanent total disability out of a special reserve of the  
63 surplus fund known as the second injury reserve, created  
64 in the manner hereinbefore set forth.

65 If an employee of an employer, who having elected to  
66 carry his own risk under section nine of article two of  
67 this chapter, and who has not elected to pay into the  
68 surplus fund under the provisions of that section, who  
69 has a definitely ascertainable physical impairment caused  
70 by a previous injury, irrespective of its compensability,  
71 and becomes permanently and totally disabled from the  
72 combined effect of such previous injury and a second  
73 injury received in the course of and as a result of his

74 employment, the employee shall be granted an award  
75 of total permanent disability and his employer shall,  
76 upon order of the commissioner, compensate the said  
77 employee in the same manner as if the total permanent  
78 disability of the employee had resulted from a single  
79 injury while in the employ of such employer.

80 Employers electing, as herein provided, to compensate  
81 individually and directly their injured employees and  
82 their fatally injured employees' dependents shall do so in  
83 the manner prescribed by the commissioner, and shall  
84 make all reports and execute all blanks, forms and papers  
85 as directed by the commissioner, and as provided in this  
86 chapter.

#### **Article 4. Disability and Death Benefits.**

Sec. 9-b. *Effect of Pre-existing Physical Impairment;*

2 *Limited Compensation.*—Where an employee has a defi-  
3 nitely ascertainable physical impairment originating as  
4 hereafter set forth in this section, then in the event that  
5 such employee shall thereafter receive an injury in the  
6 course of and resulting from his employment, unless such  
7 injury results in total permanent disability within the

8 meaning of section one, article three of this chapter, such  
9 physical impairment, and the effect thereof, and an ag-  
10 gravation thereof, shall not be taken into consideration  
11 in fixing the amount of compensation allowed by reason  
12 of such injury, and such compensation shall be awarded  
13 only in the amount that would have been allowable had  
14 such employee not had such pre-existing physical im-  
15 pairment. This section shall only apply to definitely as-  
16 certainable physical impairments, either

17 (a) Originating either before or after October first,  
18 one thousand nine hundred thirteen, otherwise than  
19 from an injury received in the course of and resulting  
20 from employment, or

21 (b) Originating, prior to October first, one thousand  
22 nine hundred thirteen, from an injury in the course  
23 of and resulting from employment, or

24 (c) Originating after October first, one thousand, nine  
25 hundred thirteen, from an injury in the course of and  
26 resulting from employment by an employer, who at  
27 the time of such injury had not elected to comply with,

28 or was not in good standing, under the workmen's com-  
29 pensation law of West Virginia, or

30 (d) Originating in any injury of whatsoever origin  
31 whenever received, occurring without the State of West  
32 Virginia, except injuries received after October first, one  
33 thousand, nine hundred thirteen, in the employ of a  
34 subscriber in good standing under the compensation fund  
35 of West Virginia in the course of and resulting from  
36 temporary employment without the state as defined and  
37 limited by section one, article two of this chapter.

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 Senate

Takes effect Thirty days from passage.

Howard K. Keen  
Clerk of the Senate

Garrett  
Clerk of the House of Delegates

Arnold M. Vickers  
President of the Senate

John E. Amos  
Speaker House of Delegates

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

Clarence Medsco  
Governor.



Filed in the Office of the Secretary of State  
of West Virginia MAR 13 1947  
WM. S. O'BRIEN,  
SECRETARY OF STATE