WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

SENATE BILL No. 302

(By Mr. [Name], Mr. President)

PASSED March 8, 1947

In Effect Ninety days from Passage
ENROLLED

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article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that section nine, article two, section one, article three, and section nine-b, article four, of such chapter, be amended and reenacted to read as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-
tained in this chapter, employers subject to this chapter who are of sufficient financial responsibility to insure the payment 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 responsibility who maintain their own benefit funds, or system of compensation, to which their employees are not required or permitted to contribute, or such employers as shall furnish bond or other security to insure such payments, may upon a finding of such facts by the compensation 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 sufficient 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 workmen's compensation fund in similar cases to injured employees or the dependents of fatally injured employees whose employers contribute to such fund. Any employer electing under this section shall on or before the twentieth 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 subject to this chapter for such preceding quarter, and shall pay into the workmen's compensation fund a sum sufficient 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 commissioner shall not be liable to respond in damages at common 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 provided for in section seven of this article, that his employer has elected to carry his own risk as herein provided. The continuation in the service of such employer with such notice shall be deemed a waiver by the employee 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 injury 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 in-
jured employees and the dependents of his fatally in-
jured 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, catas-
trophes 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 di-
rectly, as provided in this section, shall, unless they give
the catastrophe and second injury security or bond here-
inafter 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
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
secured by and shall be paid from the surplus fund, as hereinbefore provided.

If an 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 injury security or bond, approved by the commissioner, in such additional amount as the commissioner shall consider adequate and sufficient to compel or secure payment 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 aforesaid 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 require to be paid into the workmen's compensation fund an amount equal to the present value of all unpaid compensation for which liability exists, in trust; and thereupon such employer shall be discharged from any further liability upon such awards, and payment of the same shall be 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.

—The commissioner shall establish a workmen's compensation fund from the premiums and other funds paid thereto by employers, as herein provided, for the benefit of employees of employers who have paid the premiums applicable to such employers and have otherwise complied fully with the provisions of section five, article two of this chapter, and for the benefit, to the extent
elsewhere in this chapter set out, of employees of em-
ployers who have elected, under section nine, article two
of this chapter, to make payments into the surplus fund
hereinafter provided for, and for the benefit of the de-
pendents of all such employees, and for the payment of
the administration expenses of this chapter and shall
adopt rules and regulations with respect to the collection,
maintenance and disbursement of such fund not in con-
flict with the provisions of this chapter.

Ten per cent of all that shall hereafter be paid into
the workmen's compensation fund by subscribers not
electing to carry their own risk under section nine, ar-
ticle two of this chapter shall be set aside for the crea-
tion of a surplus fund until such surplus shall amount
to the sum of five hundred thousand dollars, after which
time the sum of five per cent of all the money paid into
such fund shall be credited to such surplus fund, until
such time as in the judgment of the commissioner, such
surplus fund shall be sufficiently large to cover the catas-
trophe hazard, the second injury hazard, and all losses
not otherwise specifically provided for in this chapter.
A catastrophe is hereby defined as an accident in which three or more employees are killed or receive injuries, which, in the case of each individual, consists of:

- Loss of both eyes or the sight thereof; or loss of both hands or the use thereof; or loss of both feet or the use thereof; or loss of one hand and one foot or the use thereof. The aggregate of all medical and hospital bills and other costs, and all benefits payable on account of a catastrophe is hereby defined as "catastrophe payment."

In case of a catastrophe to the employees of an employer who is an ordinary premium-paying subscriber to the fund, or to the employees of an employer who, having elected to carry his own risk under section nine, article two of this chapter, has heretofore elected, or may hereafter elect, to pay into the surplus fund under the provisions of that section, then the catastrophe payment arising from such catastrophe shall not be charged against, or paid by, such employer but shall be paid from the surplus fund.

If an employee who has a definitely ascertainable physical impairment, caused by a previous injury, irrespec-
Enr. S. B. No. 302] 12

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

If an employee of an employer, who having elected to
carry his own risk under section nine of article two of
this chapter, and who has not elected to pay into the
surplus fund under the provisions of that section, who
has a definitely ascertainable physical impairment caused
by a previous injury, irrespective of its compensability,
and becomes permanently and totally disabled from the
combined effect of such previous injury and a second
injury received in the course of and as a result of his
employment, the employee shall be granted an award
of total permanent disability and his employer shall,
upon order of the commissioner, compensate the said
employee in the same manner as if the total permanent
disability of the employee had resulted from a single
injury while in the employ of such employer.

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

Article 4. Disability and Death Benefits.

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

Limited Compensation.—Where an employee has a defi-
nitely ascertainable physical impairment originating as
hereafter set forth in this section, then in the event that
such employee shall thereafter receive an injury in the
course of and resulting from his employment, unless such
injury results in total permanent disability within the
meaning of section one, article three of this chapter, such physical impairment, and the effect thereof, and an aggravation thereof, shall not be taken into consideration in fixing the amount of compensation allowed by reason of such injury, and such compensation shall be awarded only in the amount that would have been allowable had such employee not had such pre-existing physical impairment. This section shall only apply to definitely ascertainable physical impairments, either (a) Originating either before or after October first, one thousand nine hundred thirteen, otherwise than from an injury received in the course of and resulting from employment, or (b) Originating, prior to October first, one thousand nine hundred thirteen, from an injury in the course of and resulting from employment, or (c) Originating after October first, one thousand, nine hundred thirteen, from an injury in the course of and resulting from employment by an employer, who at the time of such injury had not elected to comply with,
or was not in good standing, under the workmen's compen-
sation law of West Virginia, or

(d) Originating in any injury of whatsoever origin
whenever received, occurring without the State of West
Virginia, except injuries received after October first, one
thousand, nine hundred thirteen, in the employ of a
subscriber in good standing under the compensation fund
of West Virginia in the course of and resulting from
temporary employment without the state as defined and
limited by section one, article two of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

F. L. McMeen
Chairman Senate Committee

R. F. Matthews
Chairman House Committee

Originated in the Senate

Takes effect thirty days from passage.

Howard Metcalf
Clerk of the Senate

Clerk of the House of Delegates

Donald R. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within approved this the 13th day of March, 1947.

Glenn H.筱den
Governor.

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