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STATE OF WEST VIRGINIA

**WEST VIRGINIA LEGISLATURE**  
REGULAR SESSION, 1970



**ENROLLED**

HOUSE BILL No. 526

(By Mr. Watson and Mr. Seibert)



PASSED February 12, 1970

In Effect ninety days from Passage



526

FILED IN THE OFFICE  
JOHN D. ROOSEVELLER, IV  
SECRETARY OF STATE  
THIS DATE 2-18-70

**ENROLLED**  
**House Bill No. 526**

(By MR. WATSON and MR. SEIBERT)

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[Passed February 12, 1970; in effect ninety days from passage.]

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AN ACT to amend and reenact section seven, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article two of said chapter, relating to the authority of the secretary of the workmen's compensation fund to act during the commissioner's absence or inability to act, and the payment of workmen's compensation premiums.

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

That section seven, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article two of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.****§23-1-7. Secretary to act during commissioner's absence or inability to act.**

1 Whenever it shall appear that the commissioner will  
2 be absent or unable to act for one week or more, the  
3 secretary of the commissioner may be designated by  
4 the commissioner to act during his absence or inability  
5 to act, and during such period he shall have all the  
6 duties and powers of the commissioner. The secretary  
7 shall give bond in the penalty of twenty-five thousand  
8 dollars conditioned for the faithful performance of the  
9 duties of his office, which bond shall be approved by  
10 the attorney general as to form and by the governor  
11 as to sufficiency. The surety of such bond may be a  
12 bonding or surety company, in which case the premium  
13 shall be paid out of the appropriation made for the ad-  
14 ministration of this chapter.

15 In the event a vacancy occurs in the office of commis-  
16 sioner, the secretary of the commissioner shall have all  
17 the duties and powers of the commissioner until a com-  
18 missioner is appointed by the governor in accordance  
19 with section one of this article.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO  
CHAPTER; PREMIUMS.**

**§23-2-5. Payment of premiums; payroll report; effect of failure to pay premiums or make payroll report; reinstatement; application for benefits; deposit to insure payment of premiums; refund of deposit; notice to employees.**

1 For the purpose of creating a workmen's compensation  
2 fund each employer subject to this chapter shall pay the  
3 premiums of liabilities based upon and being such a per-  
4 centage of the payroll of such employer as may have  
5 been determined by the commissioner and be then in  
6 effect. The premiums shall be paid quarterly on or be-  
7 fore the last day of the next succeeding month  
8 for the preceding quarter, and shall be the prescribed  
9 percentage of the total earnings of all employees within  
10 the meaning of this chapter, for such preceding quarter.  
11 The minimum premium to be paid by any employer for  
12 any quarter shall be one dollar and fifty cents. The  
13 premiums and deposits provided for in this chapter shall  
14 be paid by the employers to the state compensation com-  
15 missioner, who shall issue receipts for all sums so re-  
16 ceived to the state treasurer and retain a copy for his  
17 own records. All sums received by the state compensa-

18 tion commissioner as herein provided shall be deposited  
19 in the state treasury to the credit of the workmen's com-  
20 pensation fund in the manner now prescribed by law  
21 for depositing money in the state treasury. Each em-  
22 ployer shall make a payroll report to the commissioner  
23 for each quarter as heretofore specified, and such report  
24 shall be on the form or forms prescribed by the commis-  
25 sioner, and furnish all information required by him.

26 Failure to pay premiums as herein provided or to make  
27 the quarterly payroll reports required by the commis-  
28 sioner shall deprive the employer so delinquent of the  
29 benefits and protection afforded by this chapter, and  
30 shall automatically terminate the election of such  
31 employer to pay into the workmen's compensation fund  
32 as herein provided, and such employer shall be liable to  
33 his employees as provided in section eight of this article;  
34 and the commissioner shall not be required to notify  
35 the delinquent employer of such termination, but he  
36 shall notify the employees of such employer by written  
37 notice posted as hereinafter provided for in this section.  
38 The termination of election of such delinquent employer

39 shall date from twelve o'clock p. m., of the last day of  
40 the month in which he fails to pay the premiums or  
41 make a payroll report, as above provided, for the pre-  
42 ceding quarter.

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

58 Any employer hereafter electing to avail himself of the  
59 benefits of this chapter shall at the time of making

60 application to the commissioner deposit in the work-  
61 men's compensation fund an amount estimated to be  
62 equal to the amount of the premium which shall be  
63 paid by him for the next succeeding quarter. Any em-  
64 ployer whose deposit is less than the amount of his  
65 premium for the last quarter shall, upon written request  
66 from the commissioner mailed to his address as carried  
67 upon the books of the commissioner by twelve o'clock  
68 p. m. of the last day of the month in which request  
69 is mailed, pay to the commissioner a sum sufficient to  
70 make his deposit at least equal to the amount of his  
71 premium for the last preceding quarter, and failure of  
72 any employer to comply with such written request within  
73 the time specified shall deprive him of the benefits  
74 and protection afforded by this chapter, and shall auto-  
75 matically terminate his election to pay into the work-  
76 men's compensation fund as herein provided, and such  
77 employer shall be liable to his employees as provided  
78 in section eight of this article; and the commissioner  
79 shall not be required to notify the delinquent employer  
80 of such termination, but he shall notify the employees of

81 such employer by written notice posted as hereafter pro-  
82 vided for in this section. The termination of election  
83 of such employer shall date from twelve o'clock p. m.  
84 of the last day of the month in which he is notified  
85 by the commissioner that his deposit is not equal to the  
86 sum of his premium for the last preceding quarter. Such  
87 employer may be reinstated upon application under such  
88 terms as are prescribed by this chapter and the rules  
89 of the commissioner. The deposit hereinbefore described  
90 shall be credited to the employer's account on the books  
91 of the commissioner and used to pay premiums and any  
92 other sums due the fund when such employer becomes  
93 delinquent in the payment of the same.

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

101 Notices to employees in this section provided for shall

102 be given by posting written notice that the employer  
103 is delinquent under the compensation law of West Vir-  
104 ginia, and that neither the employer nor the employees  
105 of such employer are protected by said law as to any  
106 injury or death sustained after the date specified in said  
107 notice. Such notice shall be in the form prescribed by  
108 the commissioner and shall be posted in a conspicuous  
109 place at the chief works of the employer, as the same  
110 appear in records of the commissioner. If the said chief  
111 works of the employer cannot be found or identified,  
112 then said notices shall be posted at the front door of  
113 the courthouse of the county in which said chief works  
114 are located, according to the records in the commis-  
115 sioner's office. Any person who shall, prior to the rein-  
116 statement of the said employer, as hereinbefore provided  
117 for, or prior to sixty days after the posting of said notice,  
118 whichever shall first occur, remove, deface or render  
119 illegible the said notice, shall be guilty of a misdemeanor,  
120 and upon conviction thereof, shall be fined not to ex-  
121 ceed five hundred dollars, and the said notice shall state  
122 this provision upon its face. The commissioner may re-

123 quire any sheriff, deputy sheriff, constable, or other  
124 official of the state of West Virginia, who may be  
125 authorized to serve civil process, to post such notice and  
126 to make return thereof of the fact of such posting to the  
127 commissioner, and any failure of such officer to post any  
128 notice within ten days after he shall have received the  
129 same from the commissioner, without just cause or ex-  
130 cuse, shall constitute a wilful failure or refusal to per-  
131 form a duty required of him by law within the meaning  
132 of section twenty-eight, article five, chapter sixty-one  
133 of the code of West Virginia. Any person actually in-  
134 jured by reason of such failure shall have an action  
135 against said official, and upon any official bond he may  
136 have given, for such damages as such person may actually  
137 have incurred, but not to exceed, in the case of any surety  
138 upon said bond, the amount of the penalty of said bond.  
139 Any official posting said notice as herein required shall  
140 be entitled to the same fee as is now or may hereafter  
141 be provided for the service of process in suits instituted  
142 in courts of record in the state of West Virginia, which

143 fee shall be paid by the commissioner out of any funds  
144 at his disposal, but shall be charged by him against the  
145 account of the employer to whose delinquency such  
146 notice relates.

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

William Tompau  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Meyer  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

Land G. Jackson  
President of the Senate

Sam F. Benjamin  
Speaker House of Delegates

The within approved this the 16th  
day of February, 1970.

Arch. A. Shaver, Jr.  
Governor



PRESENTED TO THE  
GOVERNOR

Date 2/16/70

Time 2:40 p.m.