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. ROCKERFELLER, IV
SECRETARY OF STATE
THIS DATE 2-18-70
ENROLLED

House Bill No. 526
(By Mr. Watson and Mr. Seibert)

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

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 be absent or unable to act for one week or more, the secretary of the commissioner may be designated by the commissioner to act during his absence or inability to act, and during such period he shall have all the duties and powers of the commissioner. The secretary shall give bond in the penalty of twenty-five thousand dollars conditioned for the faithful performance of the duties of his office, which bond shall be approved by the attorney general as to form and by the governor as to sufficiency. The surety of such bond may be a bonding or surety company, in which case the premium shall be paid out of the appropriation made for the administration of this chapter.

In the event a vacancy occurs in the office of commissioner, the secretary of the commissioner shall have all the duties and powers of the commissioner until a commissioner is appointed by the governor in accordance 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 fund each employer subject to this chapter shall pay the premiums of liabilities 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 last day of the next succeeding month for the preceding quarter, and shall be the prescribed percentage of the total earnings of all employees within the meaning of this chapter, for such preceding quarter.

2 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 compensation commissioner, who shall issue receipts for all sums so received to the state treasurer and retain a copy for his own records. All sums received by the state compensa-
tion commissioner as herein provided shall be deposited in the state treasury to the credit of the workmen's compensation fund in the manner now prescribed 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 a payroll report, as above provided, for the pre-
ceding 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 reinstate-
ment shall be in effect from and after the date that the
new application is accepted by the commissioner: Pro-
vided, 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 be-
comes 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 work-
men'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 em-
ployer 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 commissioner by twelve o'clock
p. m. of the last day of the month in which request
is mailed, pay to the commissioner 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 request within
the time specified shall deprive him of the benefits
and protection afforded by this chapter, and shall auto-
matically 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 commissioner that his deposit is not equal to the sum of his premium 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 commissioner. The deposit hereinbefore described shall be credited to the employer’s account on the books of the commissioner 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 balance 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 employer of said termination in such manner as he may deem 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 injury or death sustained 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 courthouse 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 re-
quire 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompkin
Chairman Senate Committee

Clayton E. Davidson
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Herbert Wetzy
Clerk of the Senate

C.A. Blankenship
Clerk of the House of Delegates

Lloyd G. Jackson
President of the Senate

James W. Barringer
Speaker House of Delegates

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

Michael N. Manley
Governor
PRESENTED TO THE GOVERNOR

Date 2/16/70

Time 2:40 p.m.