WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1983

ENROLLED

Com. Sub. for

HOUSE BILL No. 107

(By Mr. Speaker, Mr. Fee, by request of the Executive)

Passed May 24, 1983

In Effect

83 JUN 9 9:53
SECO. OF STATE

RECEIVED
AN ACT to amend article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-b, relating to liability of employers in default of payment to the workers' compensation fund; setting forth the legislative purpose; describing when employers in default for purposes of this section; providing for the application of settlement; establishing when employer is reinstated; the effect of reinstatement; setting forth the amount of settlement; limitation of time for settlement; authorizing the commissioner to agree on payment schedule; limitation on period for payment; when employer in default of settlement payment; effect of default of settlement payment; setting forth notice requirements of commissioner; and requiring commissioner to provide application forms.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-b, to read as follows:
ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRA TERRITORIAL COVERAGE.

§23-2-5b. Legislative purpose; application for settlement; reinstatement; amount of settlement; when settlement void; notification of rights.

The Legislature hereby declares that it is the purpose of this section to provide any employer who may, as of the effective date of this section, be in default in any payment due under the provisions of this chapter, an opportunity to settle the amount of the default in accordance with the provisions hereinafter set forth. For purposes of this section, the term "default" shall apply to any employer who has failed to subscribe or pay premiums to the workers' compensation fund in accordance with the provisions of this chapter.

(a) On or before the first day of October, one thousand nine hundred eighty-three, any employer who may qualify under this section shall apply to the commissioner for a settlement of the amount of default. Such application shall: (1) Be made on a form prescribed by the commissioner; (2) include the gross payroll of the employer during the entire period of default, which payroll information shall be verified by the employer or its authorized agent; and (3) include a payment equal to one half of one percent of the gross payroll during the period of default, or one hundred dollars, whichever amount shall be greater.

(b) Notwithstanding other provisions of this chapter to the contrary, upon timely receipt of the application prescribed in subsection (a) of this section, the commissioner shall declare the employer to be reinstated to the benefits and protections of this chapter: Provided, That such reinstatement shall not affect any cause of action which has accrued against the employer as a result of an injury sustained during any period of default: Provided, however, That the employer shall make the quarterly premium payments as prescribed by this chapter, beginning with the premium due for the third quarter of the year one thousand nine hundred eighty-three, and continuing thereafter as the same shall become due.

(c) After the commissioner shall have received the appli-
cation of an employer as prescribed herein, the commissioner
and the employer or its authorized agent shall agree, in writ-
ing, on or before the first day of July, one thousand nine hun-
dred eighty-four, to settle the default in an amount which shall
include all delinquent premium payments, plus interest, com-
pounded monthly, at the rate that would have been earned on
the premiums had they been timely paid. The commissioner
may authorize payment of the amount set forth in the agree-
ment on a payment schedule, which period shall not exceed
three years from the date of the execution of the agreement.
The agreement shall set forth that the employer shall be in
default if any payment shall not be received by the commis-
sioner within fifteen days of the due date thereof.

(d) If the employer shall fail to pay current premiums in
accordance with the provisions of this chapter or if the em-
ployer shall default upon any payment set forth under the
terms of the agreement, such agreement shall be null, void
and of no effect and the commissioner shall have the authority
to proceed in accordance with the provisions of this chapter.

(e) The commissioner shall notify in writing, within fifteen
days of the effective date of this section, all employers who are
in default as indicated by the records of the commissioner, of
the employer's right to apply for a settlement in accordance
with the provisions of this section. The commissioner may also
take additional steps, as deemed appropriate, to notify other
employers of the rights set forth herein. The written notice of
the commissioner shall include the form required for applica-
tion and the commissioner shall make such form available to
other employers.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Member

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within __________ approved __________ this the __________ day of __________ 1983.

Governor