WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

ENROLLED

Com. Sub. for
HOUSE BILL No. 1962

(By Mr. Speaker, Mr. Lee)

Passed March 10, 1984

In Effect from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1962
(By Mr. Speaker, Mr. See)

[Passed March 10, 1984; in effect from passage.]

AN ACT to amend and reenact sections one, one-b, five, nine and thirteen, article two; and section one, article three, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to workers' compensation; employers and employees subject to the provisions of workers' compensation statutes in this code; special premium rates for employee officers of associations or corporations, members of partnerships and owners of sole proprietorships electing coverage under the workers' compensation statutes; applications to be filed by subscribing employers; premium rates and premium deposits; premium payments and payroll reports to be submitted; delinquent accounts; notice of delinquency by commissioner; failure to resolve delinquency and resulting default; reinstatement of defaulting employer; applications for reinstatement; administrative hearings on such applications; cause of actions accruing during periods of delinquency; withdrawal or termination of coverage; notice to employees of employer's delinquency, default, withdrawal or termination; criminal penalties for removal of posted notice to employees; posting of such notices by officials authorized to serve civil process; collection of premiums from defaulting employers by civil suits, liens and injunctions; the withholding of
certificates of dissolution or withdrawal in cases of defaulting employers; self insured employers; dates such self insurers must file statements of earnings and make payments; rates of interest to be charged on unpaid payments; maximum rate of interest to be charged against unpaid payments of certain employers; workers' compensation fund; surplus fund; rates of contribution to the surplus funds; and definitions of certain terms relating to the surplus fund.

Be it enacted by the Legislature of West Virginia:

That sections one, one-b, five, nine and thirteen, article two, and section one, article three, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1. Employers subject to chapter.

1 The state of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company and other emergency service organizations as defined by article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and are hereby required to subscribe to and pay premiums into the workers' compensation fund for the protection of their employees and shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rate, classification and premium payment, provided that such rates will be adjusted by the commissioner to reflect the demand on the compensation fund by the covered employer.

The following employers are not required to subscribe to the fund, but may elect to do so:

(1) Employers of employees in domestic services; or
(2) Employers of five or fewer full-time employees in agricultural service; or

(3) Employers of employees while said employees are employed without the state except in cases of temporary employment without the state; or

(4) Casual employers. An employer is deemed to be a casual employer when the number of his employees does not exceed three and the period of employment is temporary, intermittent and sporadic in nature and does not exceed ten calendar days in any calendar quarter.

(5) Churches;

(6) Employers engaged in organized professional sports activities, including employers of trainers and jockeys engaged in thoroughbred horse racing; or

(7) Employers of employees who are officers of and stockholders in a corporation qualifying for special tax treatment under subchapter S of the Internal Revenue Code of the United States.

If an employer is a partnership, or sole proprietorship, such employer may elect to include as an “employee” within this chapter, any member of such partnership, or the owner of the sole proprietorship. In the event of such election, the employer shall serve upon the commissioner written notice naming the persons to be covered and shall include such “employee’s” remuneration for premium purposes in all future payroll reports, and no such partner, or proprietor shall be deemed an employee within the meaning of this chapter until such notice has been served.

Notwithstanding any other provision of this chapter to the contrary, whenever there are churches in a circuit which employ one individual clergyman and the payments to such clergyman from such churches constitute his full salary, such circuit or group of churches may elect to be considered a single employer for the purposes of premium payment into the workers’ compensation fund.

Employers who are not required to subscribe to the workers’
compensation fund may voluntarily choose to subscribe to and
pay premiums into the fund for the protection of their em-
ployees and in such case shall be subject to all requirements
of this chapter and all rules and regulations prescribed by the
commissioner with reference to rates, classifications and prem-
ium payments and shall afford to them the protection of this
chapter, including section six of this article, but the failure of
such employers to choose to subscribe to and to pay premiums
into the fund shall not impose any liability upon them other
than such liability as would exist notwithstanding the provi-
sions of this chapter.

Any foreign corporation employer whose employment in
this state is to be for a definite or limited period which could
not be considered “regular employing” within the meaning of
this section may choose to pay into the workers’ compensation
fund the premiums herein provided for, and at the time of mak-
ing application to the commissioner, such employer shall fur-
nish a statement under oath showing the probable length of
time the employment will continue in this state, the character
of the work, an estimate of the monthly payroll and any other
information which may be required by the commissioner. At
the time of making application such employer shall deposit
with the state compensation commissioner to the credit of the
workers’ compensation fund the amount required by section
five of this article, which amount shall be returned to the em-
ployer if his application be rejected by the commissioner. Up-
on notice to such employer of the acceptance of his application
by the commissioner, he shall be an employer within the mean-
ing of this chapter and subject to all of its provisions.

Any foreign corporation employer choosing to comply with
the provisions of this chapter and to receive the benefits here-
under shall, at the time of making application to the commis-
sioner, in addition to other requirements of this chapter, fur-
nish such commissioner with a certificate from the secretary of
state, where such certificate is necessary, showing that it has
complied with all the requirements necessary to enable it
legally to do business in this state and no application of such
foreign corporation employer shall be accepted by the com-
missioner until such certificate is filed.
§23-2-1b. Special provisions as to premiums.

Every executive officer of an association or of a corporation
defined as an employee elsewhere in this chapter, and any
member of a partnership or owner of a sole proprietorship
which has elected coverage under this chapter for such member
or owner shall pay premiums based upon the actual salary
paid to such employee up to an amount sufficient to qualify
such employee to receive the maximum level of benefits, but in
no event shall the basis for premium be less than the salary
necessary to provide such employee with the minimum level
of benefits.

The premium and actual expenses in connection with govern-
mental agencies and departments of the state of West Vir-
ginia shall be paid out of the state treasury from appropri-
tions made for such agencies and departments, in the same
manner as other disbursements are made by such agencies and
departments.

County commissions, municipalities, other political subdi-
visions of the state, county boards of education, emergency
service organizations organized as aforesaid and volunteer fire
departments or companies shall provide for the funds to pay
their prescribed premiums into the fund and such premiums
and premiums of state agencies and departments, including
county boards of education, shall be paid into the fund in the
same manner as herein provided for other employers subject
to this chapter.

County commissions and municipalities are hereby autho-
rized to pay all or any part of the premiums prescribed for such
emergency service organizations organized as aforesaid and
such duly incorporated volunteer fire departments or com-
panies as may provide services within the county or munici-
pality.

§23-2-5. Application; payment of premiums; payroll reports; prem-
ium deposits; delinquency; default; reinstatement; pay-
ment of benefits; notice to employees.

(a) For the purpose of creating a workers' compensation
fund each employer who is required to subscribe to the fund
or who elects to subscribe to the fund, shall pay premiums calculated as a percentage of the employer's payroll at the rate determined by the commissioner and then in effect. At the time each employer subscribes to the fund, the application required by the commissioner shall be filed and a premium deposit equal to the first quarter's estimated premium payment shall be remitted. The minimum quarterly premium to be paid by any employer shall be ten dollars.

Thereafter, premiums shall be paid quarterly on or before the last day of the month following the end of the quarter, and shall be the prescribed percentage of the total earnings of all employees during the preceding quarter.

At the time each premium is paid, every subscribing employer shall make a payroll report to the commissioner for the preceding quarter. The report shall be on the form or forms prescribed by the commissioner, and shall contain all information required by the commissioner.

After subscribing to the fund, each employer shall remit with each payroll report and premium payment, an amount calculated to be sufficient to maintain a premium deposit equal to the previous quarter's premium payment: Provided, That the commissioner may reduce the amount of the premium deposit required from seasonal employers for those quarters during which employment is significantly reduced. The premium deposit 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 an employer becomes delinquent.

All premiums and premium deposits required to be paid by this chapter shall be paid by the employers to the workers' compensation commissioner, who shall maintain record of all sums so received. All sums received by the commissioner shall be deposited in the state treasury to the credit of the workers' compensation fund in the manner now prescribed by law.

(b) Failure of an employer to timely pay premium, to timely file a payroll report, or to maintain an adequate premium deposit, shall cause the employer's account to become
delinquent. The commissioner shall, in writing, within sixty
days of the end of each quarter notify all delinquent em-
ployers of their failure to timely pay premiums, to timely
file a payroll report, or to maintain an adequate premium de-
posit. The notification shall demand the filing of the delin-
quently payroll report and payment of delinquent premium,
and/or payment of an amount sufficient to maintain the
premium deposit, before the end of the third month following
the end of the preceding quarter. The notification shall also
require payment of interest on the delinquent premium pay-
ment and/or premium deposit pursuant to section thirteen of
this article.

c) Whenever the commissioner notifies an employer of the
delinquent status of his account, the notification shall explain
the legal consequence of subsequent default by employers
required to subscribe to the fund, and the effects of termina-
tion of any electing employer’s account.

d) Failure by the employer, who is required to subscribe
to the fund and who fails to resolve his delinquency within the
prescribed period, shall place the account in default and shall
deprive such defaulting employer of the benefits and pro-	ection afforded by this chapter including section six of this
article, and he shall be liable as provided in section eight of
this article. The defaulting employer’s liability under section
eight of this article shall be retroactive to twelve o’clock,
p.m., of the last day of the month following the end of the
quarter for which the delinquency occurs. The commissioner
shall notify the defaulting employer of the method by which
the employer may be reinstated with the fund. The commis-
sioner shall also notify the employees of such employer by
written notice as hereinafter provided for in this section.

e) Failure by any employer, who voluntarily elects to
subscribe, to resolve his delinquency within the prescribed
period, shall automatically terminate the election of such
employer to pay into the workers’ compensation fund and
shall deprive such delinquent employer of the benefits and
protection afforded by this chapter including section six of
this article, and he shall be liable as provided in section
eight of this article. The defaulting employer’s liability under
section eight of this article shall be retroactive to twelve o'clock p.m., of the last day of the month following the end of the quarter for which the delinquency occurs.

(f) Any employer, who is required to subscribe to the fund and subsequently defaults, or who elects to subscribe and subsequently his account is terminated, shall be restored immediately to the benefits and protection of this chapter only upon the filing of all delinquent payroll and other reports required by the commissioner and payment into the fund of all unpaid premiums, an adequate premium deposit, accrued interest and claims losses paid during the period of delinquency and default: Provided, That the commissioner shall, upon written application for reinstatement filed by an employer, order that an administrative hearing be held prior to reinstatement to determine the terms of repayment of all delinquent premiums, premium deposits and accrued interest, and the extent to which claims losses may be waived, equitably considering, (1) the exact nature of the default, (2) the amount of the claims losses, (3) the solvency of the fund, (4) the financial condition of the employer, (5) the degree of willfullness exhibited by the employer's conduct resulting in the default, and (6) the potential economic impact upon the state and the specific geographic area in which the employer is located, if the employer should cease operations. Any such administrative hearing shall be conducted pursuant to article five, chapter twenty-nine-a of this code: Provided, That the authority of the commissioner to waive claims losses or to restore any employer in default to the benefits of this chapter prior to payment in full of all delinquent premiums, premium deposits, and accrued interest, shall expire on the first day of July, one thousand nine hundred eighty-six, and the commissioner shall report to the legislature, on or before the first day of January, one thousand nine hundred eighty-five and one thousand nine hundred eighty-six on the terms of reinstatement of defaulting employers and any costs to the fund.

Applications for reinstatement shall: (1) Be made upon forms prescribed by the commissioner; (2) include a report of 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 reported during the period of default, or one hundred dollars, whichever amount shall be greater. An employer who applies for reinstatement shall be entitled to the benefits and protection of this chapter on the day the application is received by the commissioner: Provided, That if the commissioner reinstates an employer subject to the terms of a repayment agreement, the subsequent failure of the employer to make scheduled payments in accordance with the repayment agreement, to timely file current premiums or to restore the premium deposit to the required amount by the end of the repayment period shall cause the repayment agreement to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer’s account originally became delinquent.

(g) No employee of an employer required by this chapter to subscribe to the workers’ compensation fund shall be denied benefits provided by this chapter because the employer failed to subscribe or because the employer’s account is either delinquent or in default.

(h) The provisions of this section shall not deprive any individual of any cause of action which has accrued as a result of an injury or death which occurred during any period of delinquency not resolved in accordance with the provisions of this article, or subsequent failure to comply with the terms of the repayment agreement.

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 workers’ 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.

Notice 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 in the case of employers required by this chapter to subscribe and pay
157 premiums to the fund, that the delinquent employer is liable
158 to his employees for injury or death, both in workers' com-
159 pensation benefits and in damages at common law or by
160 statute; and, in the case of employers not required by this
161 chapter to subscribe and pay premiums to the fund, but
162 voluntarily electing to do so as herein provided, that neither
163 the employer nor the employees of such employer are pro-
164 tected by said laws as to any injury or death sustained after
165 the date specified in said notice. Such notice shall be in the
166 form prescribed by the commissioner and shall be posted
167 in a conspicuous place at the chief works of the employer,
168 as the same appear in records of the commissioner. If the
169 said chief works of the employer cannot be found or identi-
170 fied, then said notices shall be posted at the front door of the
171 courthouse of the county in which said chief works are located,
172 according to the records in the commissioner's office. Any
173 person who shall, prior to the reinstatement of the said em-
174 ployer, as hereinbefore provided for, or prior to sixty days
175 after the posting of said notice, whichever shall first occur,
176 remove, deface or render illegible the said notice, shall be
177 guilty of a misdemeanor, and, upon conviction thereof, shall
178 be fined not to exceed five hundred dollars, and the said
179 notice shall state this provision upon its face. The commis-
180 sioner may require any sheriff, deputy sheriff, constable or
181 other official of the state of West Virginia, who may be autho-
182 rized to serve civil process, to post such notice and to make
183 return thereof of the fact of such posting to the commissioner,
184 and any failure of such officer to post any notice within ten
185 days after he shall have received the same from the com-
186 missioner, without just cause or excuse, shall constitute a
187 willful failure or refusal to perform a duty required of him by
188 law within the meaning of section twenty-eight, article five,
189 chapter sixty-one of this code. Any person actually injured
190 by reason of such failure shall have an action against said
191 official, and upon any official bond he may have given, for
192 such damages as such person may actually have incurred, but
193 not to exceed, in the case of any surety upon said bond, the
194 amount of the penalty of said bond. Any official posting
195 said notice as herein required shall be entitled to the same
196 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.

§23-2-5a. Collection of premiums from defaulting employers; civil remedies; injunctive relief; secretary of state to withhold certificates of dissolution.

The commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment required by this chapter. If judgment is against the employer he shall pay the costs of the action. Civil action under this section shall be given preference on the calendar of the court over all other civil actions.

Any payment and interest thereon due and unpaid under this chapter shall be a personal obligation of the employer and shall, in addition thereto, be a lien enforceable against all the property of the employer: Provided, That no such lien shall be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in chapter ninety-nine, acts of the Legislature, regular session, one thousand nine hundred forty-three.

In addition to all other civil remedies prescribed herein the commissioner may in the name of the state detain upon any personal property, including intangible property, of any employer delinquent for any payment and interest thereon. If the commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, he may likewise detain in the name of the state before such delinquency occurs. For such purpose, the commissioner may require the services of a sheriff of any county in the state in levying such distress in the county in which the sheriff is an officer and in which such personal property is situated. A sheriff so collecting any payments and interest thereon shall be entitled to such compensation as is provided by law for his services in the levy and enforcement of executions.
In case a business subject to the payments and interest thereon imposed under this chapter shall be operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or decree in the cause, make provisions, so far as the assets in administration will permit, for the regular payment of such payments as the same become due.

The secretary of state of this state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state or organized under the laws of any other state and admitted to do business in this state, until notified by the commissioner that all payments and interest thereon against any such corporation which is an employer under this chapter have been paid or that provision satisfactory to the commissioner has been made for payment.

In any case when an employer required to subscribe to the fund defaults in payments of premium, premium deposit, or interest thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains in default after due notice, and the commissioner has been unable to collect such payments by any of the other civil remedies prescribed herein, the commissioner may bring action in the circuit court of Kanawha County to enjoin such employer from continuing to carry on the business in which such liability was incurred: Provided, That the commissioner may as an alternative to this action require such delinquent employer to file a bond in the form prescribed by the commissioner with satisfactory surety in an amount not less than fifty percent more than the payments and interest due.

§23-2-9. Election of employer to provide own system of compensation.

Notwithstanding anything contained in this chapter, employers subject to this chapter who are of sufficient financial responsibility to ensure 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 ensure such payments, may, upon a finding of such
facts by the compensation commissioner, elect to pay individ-
ually and directly, or from such benefit funds, department or
association, such compensation and expenses to injured em-
ployees or fatally injured employees' dependents. The compen-
sation 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 workers' compensation fund in similar cases
to injured employees or the dependents of fatally injured em-
ployees whose employers contribute to such fund. Any em-
ployer electing under this section shall on or before the last
day of the first month of each quarter, for the preceding quar-
ter, file with the commissioner a sworn statement of the total
earnings of all of his employees subject to this chapter for
such preceding quarter, and shall pay into the workers' com-
penation fund a sum sufficient to pay his proper proportion of
the expenses of the administration of this chapter, and a sum
sufficient to pay his proper portion of the expenses for claims
for those employers who are delinquent in the payment of
premiums, and a sum sufficient to pay his fair portion of the
expenses of the disabled workers' relief fund, 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 com-
mmissioner, to consider and pass upon such election by employ-
ers 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.

Any employer whose record upon the books of the compensation commissioner shows a liability against the workers' 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 injured employees and the dependents of his fatally injured employees until he has paid into the workers' compensation fund the amount of such excess of liability over premiums paid, including his proper proportion of the liability incurred on account of explosions, catastrophes 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 directly as provided in this section, shall unless they give the catastrophe and second injury security or bond hereinafter 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 respect to payment of proportion of expenses of administration. In case there be a catastrophe or second injury, as defined in section one, article three of this chapter, to the employees of any employer making such payments, the employer shall not be liable to pay compensation or expenses arising from or necessitated by the catastrophe or second injury, and such compensation and expenses shall not be charged against such employer, but such compensation and expenses shall be paid from the surplus fund in the same manner and to the same extent as in the case of premium-paying subscribers.
If an employer elect to make payments into the surplus fund as aforesaid, then the bond or other security required by this section shall be of such amount as the commissioner considers adequate and sufficient to compel or secure to the employees or their dependents payments of compensation and expenses, except any compensation and expenses that may arise from, or be necessitated by, any catastrophe or second injury, as defined in section one, article three of this chapter, which last are secured by and shall be paid from the surplus fund as hereinbefore provided.

If any 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, 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 prom-
ulgated by the commissioner and approved by him shall be
valid under this section, and any election heretofore made un-
der rules and regulations of the commissioner to make pay-
ments 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 em-
ployer 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 workers'
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 award, and payment of the same shall be
assumed by the workers' compensation fund.


Payments unpaid on the date on which due and payable,
as prescribed by the commissioner, shall immediately begin
bearing interest at the rate of two percentage points above the
prime rate as listed in the guide to general levels of money
rates in the first New York edition of the Wall Street Journal
published in the month during which such payments were due.
Interest shall be compounded quarterly until payment plus
accrued interest is received by the commissioner. This inter-
rest rate shall be in effect for the remainder of the quarter
during which the premium payment is due. The interest
rate shall be redetermined quarterly in accordance with this
section. Interest collected pursuant to this section shall be
paid into the workers' compensation fund: Provided, That in
no event shall the rate of interest charged a political sub-
division of the state or a volunteer fire department pursuant
to this section exceed ten percent per annum.

ARTICLE 3. WORKERS' COMPENSATION FUND.

§23-3-1. Compensation fund; surplus fund; catastrophe and catas-
trophe payment defined; second injury and second
injury reserve; compensation by employers.

The commissioner shall establish a workers' 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 pro-
visions of section five, article two of this chapter, and for
the benefit, to the extent elsewhere in this chapter set out,
of employees of employers 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 dependents 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, mainten-
ance and disbursement of such fund not in conflict with the
provisions of this chapter.

A portion of all premiums that shall be paid into the work-
ers' compensation fund by subscribers not electing to carry
their own risk under section nine, article two of this chapter,
shall be set aside to create and maintain a surplus fund
to cover the catastrophe hazard, the second injury hazard,
and all losses not otherwise specifically provided for in this
chapter. The percentage to be set aside shall be determined
by the commissioner as necessary to maintain a solvent sur-
plus fund. All interest earned on investments by the workers'
compensation fund, which is attributable to the surplus fund,
shall be credited to the surplus fund.

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, consist 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 sec-
tion, then the catastrophe payment arising from such catast-
rophe 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, irrespective of its
compensability, becomes permanently and totally 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,
That in addition 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, 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 ascertain-
able physical impairment caused by a previous injury, ir-
respective 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 em-
ployee 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 in-
dividually and directly their injured employees and their
fatally injured employees' dependents shall do so in the man-
ner 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

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 30th day of March, 1984.