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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
2 departments created by it, including county boards of educa-
3 tion, political subdivisions of the state, any volunteer fire
4 department or company and other emergency service organi-
5 zations as defined by article five, chapter fifteen of this code,
6 and all persons, firms, associations and corporations regularly
7 employing another person or persons for the purpose of carry-
8 ing on any form of industry, service or business in this state,
9 are employers within the meaning of this chapter and are
10 hereby required to subscribe to and pay premiums into the
11 workers' compensation fund for the protection of their em-
12 ployees and shall be subject to all requirements of this chap-
13 ter and all rules and regulations prescribed by the commis-
14 sioner with reference to rate, classification and premium pay-
15 ment, provided that such rates will be adjusted by the com-
16 missioner to reflect the demand on the compensation fund by
17 the covered employer.

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

20 (1) Employers of employees in domestic services; or

21 (2) Employers of five or fewer full-time employees in agri-
22 cultural service; or

23 (3) Employers of employees while said employees are em-
24 ployed without the state except in cases of temporary em-
25 ployment without the state; or

26 (4) Casual employers. An employer is deemed to be a cas-
27 ual employer when the number of his employees does not ex-
28 ceed three and the period of employment is temporary, inter-
29 mittent and sporadic in nature and does not exceed ten cal-
30 endar days in any calendar quarter.

31 (5) Churches;

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

35 (7) Employers of employees who are officers of and stock-
36 holders in a corporation qualifying for special tax treatment
37 under subchapter S of the Internal Revenue Code of the United
38 States.

39 If an employer is a partnership, or sole proprietorship, such
40 employer may elect to include as an "employee" within this
41 chapter, any member of such partnership, or the owner of the
42 sole proprietorship. In the event of such election, the employer
43 shall serve upon the commissioner written notice naming the
44 persons to be covered and shall include such "employee's" re-
45 munerations for premium purposes in all future payroll reports,
46 and no such partner, or proprietor shall be deemed an em-
47 ployee within the meaning of this chapter until such notice has
48 been served.

49 Notwithstanding any other provision of this chapter to the
50 contrary, whenever there are churches in a circuit which em-
51 ploy one individual clergyman and the payments to such clergy-
52 man from such churches constitute his full salary, such circuit
53 or group of churches may elect to be considered a single em-
54 ployer for the purposes of premium payment into the workers'
55 compensation fund.

56 Employers who are not required to subscribe to the workers'

57 compensation fund may voluntarily choose to subscribe to and
58 pay premiums into the fund for the protection of their em-
59 ployees and in such case shall be subject to all requirements
60 of this chapter and all rules and regulations prescribed by the
61 commissioner with reference to rates, classifications and prem-
62 ium payments and shall afford to them the protection of this
63 chapter, including section six of this article, but the failure of
64 such employers to choose to subscribe to and to pay premiums
65 into the fund shall not impose any liability upon them other
66 than such liability as would exist notwithstanding the provi-
67 sions of this chapter.

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

86 Any foreign corporation employer choosing to comply with
87 the provisions of this chapter and to receive the benefits here-
88 under shall, at the time of making application to the commis-
89 sioner, in addition to other requirements of this chapter, fur-
90 nish such commissioner with a certificate from the secretary of
91 state, where such certificate is necessary, showing that it has
92 complied with all the requirements necessary to enable it
93 legally to do business in this state and no application of such
94 foreign corporation employer shall be accepted by the com-
95 missioner until such certificate is filed.

§23-2-1b. Special provisions as to premiums.

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

11 The premium and actual expenses in connection with gov-
 12 ernmental agencies and departments of the state of West Vir-
 13 ginia shall be paid out of the state treasury from appropria-
 14 tions made for such agencies and departments, in the same
 15 manner as other disbursements are made by such agencies and
 16 departments.

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

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

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

1 (a) For the purpose of creating a workers' compensation
 2 fund each employer who is required to subscribe to the fund

3 or who elects to subscribe to the fund, shall pay premiums
4 calculated as a percentage of the employer's payroll at the
5 rate determined by the commissioner and then in effect. At
6 the time each employer subscribes to the fund, the applica-
7 tion required by the commissioner shall be filed and a prem-
8 ium deposit equal to the first quarter's estimated premium
9 payment shall be remitted. The minimum quarterly premium
10 to be paid by any employer shall be ten dollars.

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

15 At the time each premium is paid, every subscribing em-
16 ployer shall make a payroll report to the commissioner for
17 the preceding quarter. The report shall be on the form or
18 forms prescribed by the commissioner, and shall contain all
19 information required by the commissioner.

20 After subscribing to the fund, each employer shall remit
21 with each payroll report and premium payment, an amount
22 calculated to be sufficient to maintain a premium deposit equal
23 to the previous quarter's premium payment: *Provided*, That
24 the commissioner may reduce the amount of the premium
25 deposit required from seasonal employers for those quarters
26 during which employment is significantly reduced. The prem-
27 ium deposit shall be credited to the employer's account on
28 the books of the commissioner and used to pay premiums
29 and any other sums due the fund when an employer becomes
30 delinquent.

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

38 (b) Failure of an employer to timely pay premium, to
39 timely file a payroll report, or to maintain an adequate prem-
40 ium deposit, shall cause the employer's account to become

41 delinquent. The commissioner shall, in writing, within sixty
42 days of the end of each quarter notify all delinquent em-
43 ployers of their failure to timely pay premiums, to timely
44 file a payroll report, or to maintain an adequate premium de-
45 posit. The notification shall demand the filing of the delin-
46 quent payroll report and payment of delinquent premium,
47 and/or payment of an amount sufficient to maintain the
48 premium deposit, before the end of the third month following
49 the end of the preceding quarter. The notification shall also
50 require payment of interest on the delinquent premium pay-
51 ment and/or premium deposit pursuant to section thirteen of
52 this article.

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

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

72 (e) Failure by any employer, who voluntarily elects to
73 subscribe, to resolve his delinquency within the prescribed
74 period, shall automatically terminate the election of such
75 employer to pay into the workers' compensation fund and
76 shall deprive such delinquent employer of the benefits and
77 protection afforded by this chapter including section six of
78 this article, and he shall be liable as provided in section
79 eight of this article. The defaulting employer's liability under

80 section eight of this article shall be retroactive to twelve o'clock
81 p.m., of the last day of the month following the end of the
82 quarter for which the delinquency occurs.

83 (f) Any employer, who is required to subscribe to the fund
84 and subsequently defaults, or who elects to subscribe and
85 subsequently his account is terminated, shall be restored im-
86 mediately to the benefits and protection of this chapter only
87 upon the filing of all delinquent payroll and other reports
88 required by the commissioner and payment into the fund of
89 all unpaid premiums, an adequate premium deposit, accrued
90 interest and claims losses paid during the period of delinquency
91 and default: *Provided*, That the commissioner shall, upon
92 written application for reinstatement filed by an employer,
93 order that an administrative hearing be held prior to rein-
94 statement to determine the terms of repayment of all delin-
95 quent premiums, premium deposits and accrued interest, and
96 the extent to which claims losses may be waived, equitably
97 considering, (1) the exact nature of the default, (2) the
98 amount of the claims losses, (3) the solvency of the fund,
99 (4) the financial condition of the employer, (5) the degree of
100 willfulness exhibited by the employer's conduct resulting
101 in the default, and (6) the potential economic impact upon
102 the state and the specific geographic area in which the em-
103 ployer is located, if the employer should cease operations.
104 Any such administrative hearing shall be conducted pursuant
105 to article five, chapter twenty-nine-a of this code: *Provided*,
106 That the authority of the commissioner to waive claims losses
107 or to restore any employer in default to the benefits of this
108 chapter prior to payment in full of all delinquent premiums,
109 premium deposits, and accrued interest, shall expire on the first
110 day of July, one thousand nine hundred eighty-six, and the
111 commissioner shall report to the legislature, on or before the
112 first day of January, one thousand nine hundred eighty-five
113 and one thousand nine hundred eighty-six on the terms of
114 reinstatement of defaulting employers and any costs to the
115 fund.

116 Applications for reinstatement shall: (1) Be made upon
117 forms prescribed by the commissioner; (2) include a report of
118 the gross payroll of the employer during the entire period of

119 default, which payroll information shall be verified by the
120 employer or its authorized agent; and (3) include a payment
121 equal to one half of one percent of the gross payroll reported
122 during the period of default, or one hundred dollars, whichever
123 amount shall be greater. An employer who applies for rein-
124 statement shall be entitled to the benefits and protection of
125 this chapter on the day the application is received by the
126 commissioner: *Provided*, That if the commissioner reinstates
127 an employer subject to the terms of a repayment agreement,
128 the subsequent failure of the employer to make scheduled pay-
129 ments in accordance with the repayment agreement, to timely
130 file current premiums or to restore the premium deposit to
131 the required amount by the end of the repayment period
132 shall cause the repayment agreement to be null, void and
133 of no effect, and the employer shall be denied the benefits
134 and protection of this chapter effective from the date that
135 such employer's account originally became delinquent.

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

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

147 Upon withdrawal from the fund or termination of election
148 of any employer, he shall be refunded the balance due him of
149 his deposit, after deducting all amounts owed by him to the
150 workers' compensation fund, and the commissioner shall
151 notify the employees of such employer of said termination
152 in such manner as he may deem best and sufficient.

153 Notice to employees in this section provided for shall be
154 given by posting written notice that the employer is delinquent
155 under the compensation law of West Virginia, and in the case
156 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

197 process in suits instituted in courts of record in the state of
198 West Virginia, which fee shall be paid by the commissioner
199 out of any funds at his disposal, but shall be charged by him
200 against the account of the employer to whose delinquency such
201 notice relates.

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

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

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

16 In addition to all other civil remedies prescribed herein
17 the commissioner may in the name of the state distrain upon
18 any personal property, including intangible property, of any
19 employer delinquent for any payment and interest thereon. If
20 the commissioner has good reason to believe that such prop-
21 erty or a substantial portion thereof is about to be removed
22 from the county in which it is situated, he may likewise dis-
23 train in the name of the state before such delinquency occurs.
24 For such purpose, the commissioner may require the services
25 of a sheriff of any county in the state in levying such distress
26 in the county in which the sheriff is an officer and in which
27 such personal property is situated. A sheriff so collecting any
28 payments and interest thereon shall be entitled to such com-
29 pensation as is provided by law for his services in the levy
30 and enforcement of executions.

31 In case a business subject to the payments and interest
32 thereon imposed under this chapter shall be operated in con-
33 nection with a receivership or insolvency proceeding in any
34 state court in this state, the court under whose direction such
35 business is operated shall, by the entry of a proper order or
36 decree in the cause, make provisions, so far as the assets in
37 administration will permit, for the regular payment of such
38 payments as the same become due.

39 The secretary of state of this state shall withhold the is-
40 suance of any certificate of dissolution or withdrawal in the
41 case of any corporation organized under the laws of this state
42 or organized under the laws of any other state and admitted
43 to do business in this state, until notified by the commissioner
44 that all payments and interest thereon against any such cor-
45 poration which is an employer under this chapter have been
46 paid or that provision satisfactory to the commissioner has
47 been made for payment.

48 In any case when an employer required to subscribe to the
49 fund defaults in payments of premium, premium deposit, or
50 interest thereon, for as many as two calendar quarters, which
51 quarters need not be consecutive, and remains in default after
52 due notice, and the commissioner has been unable to collect
53 such payments by any of the other civil remedies prescribed
54 herein, the commissioner may bring action in the circuit
55 court of Kanawha County to enjoin such employer from con-
56 tinuing to carry on the business in which such liability was
57 incurred: *Provided*, That the commissioner may as an alter-
58 native to this action require such delinquent employer to file
59 a bond in the form prescribed by the commissioner with satis-
60 factory surety in an amount not less than fifty percent more
61 than the payments and interest due.

**§23-2-9. Election of employer to provide own system of compen-
pensation.**

1 Notwithstanding anything contained in this chapter, em-
2 ployers subject to this chapter who are of sufficient financial
3 responsibility to ensure the payment of compensation to injured
4 employees and the dependents of fatally injured employees,
5 whether in the form of pecuniary compensation or medical

6 attention, funeral expenses or otherwise as herein provided, of
7 the value at least equal to the compensation provided in this
8 chapter, or employers of such financial responsibility who
9 maintain their own benefit funds, or system of compensation
10 to which their employees are not required or permitted to
11 contribute, or such employers as shall furnish bond or other
12 security to ensure such payments, may, upon a finding of such
13 facts by the compensation commissioner, elect to pay individ-
14 ually and directly, or from such benefit funds, department or
15 association, such compensation and expenses to injured em-
16 ployees or fatally injured employees' dependents. The compen-
17 sation commissioner shall require security or bond from such
18 employer, to be approved by him, and of such amount as
19 is by him considered adequate and sufficient to compel or
20 secure to such employees, or their dependents, payment of the
21 compensation and expenses herein provided for, which shall
22 in no event be less than the compensation paid or furnished
23 out of the state workers' compensation fund in similar cases
24 to injured employees or the dependents of fatally injured em-
25 ployees whose employers contribute to such fund. Any em-
26 ployer electing under this section shall on or before the last
27 day of the first month of each quarter, for the preceding quar-
28 ter, file with the commissioner a sworn statement of the total
29 earnings of all of his employees subject to this chapter for
30 such preceding quarter, and shall pay into the workers' com-
31 pensation fund a sum sufficient to pay his proper proportion of
32 the expenses of the administration of this chapter, and a sum
33 sufficient to pay his proper portion of the expenses for claims
34 for those employers who are delinquent in the payment of
35 premiums, and a sum sufficient to pay his fair portion of the
36 expenses of the disabled workers' relief fund, as may be
37 determined by the commissioner. The commissioner shall make
38 and publish rules and regulations governing the mode and
39 manner of making application, and the nature and extent of
40 the proof required to justify the finding of facts by the com-
41 missioner, to consider and pass upon such election by employ-
42 ers subject to this chapter, which rules and regulations shall be
43 general in their application. Any employer subject to this
44 chapter who shall elect to carry his own risk and who has
45 complied with the requirements of this section and the rules

46 of the compensation commissioner shall not be liable to re-
47 spond in damages at common law or by statute for the injury
48 or death of any employee, however occurring, after such elec-
49 tion and during the period that he is allowed by the commis-
50 sioner to carry his own risk.

51 Any employer whose record upon the books of the compen-
52 sation commissioner shows a liability against the workers'
53 compensation fund incurred on account of injury to or death
54 of any of his employees, in excess of premiums paid by such
55 employer, shall not be granted the right, individually and di-
56 rectly or from such benefit funds, department or association,
57 to compensate his injured employees and the dependents of his
58 fatally injured employees until he has paid into the workers'
59 compensation fund the amount of such excess of liability over
60 premiums paid, including his proper proportion of the liability
61 incurred on account of explosions, catastrophes or second in-
62 juries as defined in section one, article three of this chapter,
63 occurring within the state and charged against such fund.

64 All employers who have heretofore elected, or shall here-
65 after elect, to pay compensation and expenses directly as pro-
66 vided in this section, shall unless they give the catastrophe
67 and second injury security or bond hereinafter provided for,
68 pay into the surplus fund referred to in section one, article
69 three of this chapter, upon the same basis and in the same
70 percentages, subject to the limitations herein set forth, as funds
71 are set aside for the maintenance of the surplus fund out of
72 payments made by premium-paying subscribers, such payments
73 to be made at the same time as hereinbefore provided with re-
74 spect to payment of proportion of expenses of administration.
75 In case there be a catastrophe or second injury, as defined in
76 section one, article three of this chapter, to the employees of
77 any employer making such payments, the employer shall not
78 be liable to pay compensation or expenses arising from or
79 necessitated by the catastrophe or second injury, and such
80 compensation and expenses shall not be charged against such
81 employer, but such compensation and expenses shall be paid
82 from the surplus fund in the same manner and to the same
83 extent as in the case of premium-paying subscribers.

84 If an employer elect to make payments into the surplus fund
85 as aforesaid, then the bond or other security required by this
86 section shall be of such amount as the commissioner considers
87 adequate and sufficient to compel or secure to the employees
88 or their dependents payments of compensation and expenses,
89 except any compensation and expenses that may arise from, or
90 be necessitated by, any catastrophe or second injury, as de-
91 fined in section one, article three of this chapter, which last
92 are secured by and shall be paid from the surplus fund as
93 hereinbefore provided.

94 If any employer elect not to make payments into the surplus
95 fund, as hereinbefore provided, then, in addition to bond or
96 security in the amount hereinbefore set forth, such employer
97 shall furnish catastrophe and second injury security or bond,
98 approved by the commissioner, in such additional amount as
99 the commissioner shall consider adequate and sufficient to
100 compel or secure payment of all compensation and expenses
101 arising from, or necessitated by, any catastrophe or second in-
102 jury that might thereafter ensue.

103 All employers hereafter making application to carry their
104 own risk under the provisions of this section, shall with such
105 application, make a written statement as to whether such em-
106 ployer elects to make payments as aforesaid into the surplus
107 fund or not to make such payments and to give catastrophe
108 and second injury security or bond hereinbefore in such case
109 provided for.

110 All employers who have heretofore elected to carry their own
111 risk under the provisions of this section shall be deemed to
112 have elected to make payments into the surplus fund unless,
113 within thirty days after the effective date of this act, they notify
114 the commissioner in writing to the contrary: *Provided*, That
115 such employers, as have heretofore elected, under the rules
116 heretofore promulgated by the commissioner, not to make
117 payments into the surplus fund, shall be deemed to have
118 elected to give the catastrophe and second injury security or
119 bond hereinbefore provided for and not to make payments in-
120 to the surplus fund. Any catastrophe and second injury secur-
121 ity or bond heretofore given under rules and regulations prom-

122 ulgated by the commissioner and approved by him shall be
123 valid under this section, and any election heretofore made un-
124 der rules and regulations of the commissioner to make pay-
125 ments into the surplus fund shall be valid and protective to
126 the person so electing from and after the date of such election.

127 In any case under the provisions of this section that shall
128 require the payment of compensation or benefits by an em-
129 ployer in periodical payments, and the nature of the case
130 makes it possible to compute the present value of all future
131 payments, the commissioner may, in his discretion, at any
132 time compute and permit or require to be paid into the workers'
133 compensation fund an amount equal to the present value of
134 all unpaid compensation for which liability exists, in trust; and
135 thereupon such employer shall be discharged from any further
136 liability upon such award, and payment of the same shall be
137 assumed by the workers' compensation fund.

§23-2-13. Interest on past due payments.

1 Payments unpaid on the date on which due and payable,
2 as prescribed by the commissioner, shall immediately begin
3 bearing interest at the rate of two percentage points above the
4 prime rate as listed in the guide to general levels of money
5 rates in the first New York edition of the *Wall Street Journal*
6 published in the month during which such payments were due.
7 Interest shall be compounded quarterly until payment plus
8 accrued interest is received by the commissioner. This in-
9 terest rate shall be in effect for the remainder of the quarter
10 during which the premium payment is due. The interest
11 rate shall be redetermined quarterly in accordance with this
12 section. Interest collected pursuant to this section shall be
13 paid into the workers' compensation fund; *Provided*, That in
14 no event shall the rate of interest charged a political sub-
15 division of the state or a volunteer fire department pursuant
16 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.**

1 The commissioner shall establish a workers' compensation

2 fund from the premiums and other funds paid thereto by
3 employers, as herein provided, for the benefit of employees of
4 employers who have paid the premiums applicable to such
5 employers and have otherwise complied fully with the pro-
6 visions of section five, article two of this chapter, and for
7 the benefit, to the extent elsewhere in this chapter set out,
8 of employees of employers who have elected, under section
9 nine, article two of this chapter, to make payments into the
10 surplus fund hereinafter provided for, and for the benefit of
11 the dependents of all such employees, and for the payment of
12 the administration expenses of this chapter and shall adopt
13 rules and regulations with respect to the collection, mainten-
14 ance and disbursement of such fund not in conflict with the
15 provisions of this chapter.

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

27 A catastrophe is hereby defined as an accident in which
28 three or more employees are killed or receive injuries, which,
29 in the case of each individual, consist of: Loss of both eyes
30 or the sight thereof; or loss of both hands or the use thereof;
31 or loss of both feet or the use thereof; or loss of one hand
32 and one foot or the use thereof. The aggregate of all medical
33 and hospital bills and other costs, and all benefits payable
34 on account of a catastrophe is hereby defined as "catastrophe
35 payment." In case of a catastrophe to the employees of an
36 employer who is an ordinary premium-paying subscriber
37 to the fund, or to the employees of an employer who, having
38 elected to carry his own risk under section nine, article two
39 of this chapter, has heretofore elected, or may hereafter elect,
40 to pay into the surplus fund under the provisions of that sec-

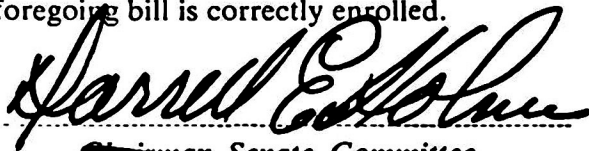
41 tion, then the catastrophe payment arising from such catas-
42 trophe shall not be charged against, or paid by, such employer
43 but shall be paid from the surplus fund.

44 If an employee who has a definitely ascertainable physical
45 impairment, caused by a previous injury, irrespective of its
46 compensability, becomes permanently and totally disabled
47 through the combined effect of such previous injury and a
48 second injury received in the course of and as a result of
49 his employment, the employer shall be chargeable only
50 for the compensation payable for such second injury: *Provided*,
51 That in addition to such compensation, and after the
52 completion of the payments therefor, the employee shall
53 be paid the remainder of the compensation that would be
54 due for permanent total disability out of a special reserve of
55 the surplus fund known as the second injury reserve, created
56 in the manner hereinbefore set forth.

57 If an employee of an employer, who having elected to carry
58 his own risk under section nine, article two of this chapter,
59 and who has not elected to pay into the surplus fund under
60 the provisions of that section, who has a definitely ascertain-
61 able physical impairment caused by a previous injury, ir-
62 respective of its compensability, and becomes permanently and
63 totally disabled from the combined effect of such previous
64 injury and a second injury received in the course of and as a
65 result of his employment, the employee shall be granted an
66 award of total permanent disability and his employer shall,
67 upon order of the commissioner, compensate the said em-
68 ployee in the same manner as if the total permanent disability
69 of the employee had resulted from a single injury while in
70 the employ of such employer.

71 Employers electing, as herein provided, to compensate in-
72 dividually and directly their injured employees and their
73 fatally injured employees' dependents shall do so in the man-
74 ner prescribed by the commissioner, and shall make all reports
75 and execute all blanks, forms and papers as directed by the
76 commissioner, and as provided in this chapter.

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



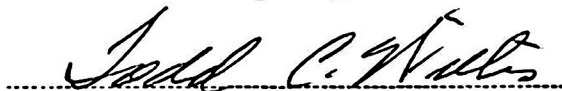
Chairman Senate Committee



Chairman House Committee

Originating in the House.

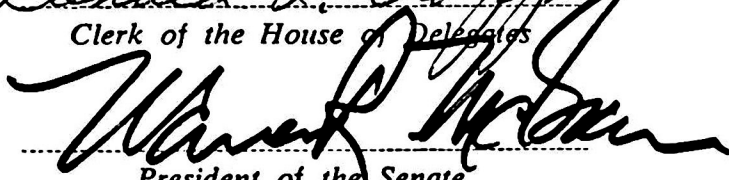
Takes effect from passage.



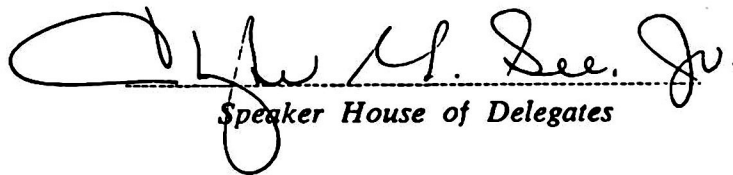
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker House of Delegates

The within is approved this the 30
day of March, 1984.



Governor

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