

Senate Bill No. 40

(By Senator Jenkins)

[Introduced January 12, 2011; referred to the Committee on
Transportation and Infrastructure; and then to the Committee on
Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §23-2-1 of the Code of West Virginia,
1931, as amended, relating to providing that taxicab companies
are not required to subscribe to or pay into the Workers'
Compensation Fund by having insurance policies approved by the
Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

That §23-2-1 of the Code of West Virginia, 1931, 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; elections not to provide
certain coverages; notices; filing of business
registration certificates.**

1 (a) The State of West Virginia and all governmental agencies
2 or departments created by it, including county boards of education,
3 political subdivisions of the state, any volunteer fire department
4 or company and other emergency service organizations as defined by
5 article five, chapter fifteen of this code, and all persons, firms,
6 associations and corporations regularly employing another person or
7 persons for the purpose of carrying on any form of industry,
8 service or business in this state, are employers within the meaning
9 of this chapter and are required to subscribe to and pay premium
10 taxes into the Workers' Compensation Fund for the protection of
11 their employees and are subject to all requirements of this chapter
12 and all rules prescribed by the Workers' Compensation Commission
13 with reference to rate, classification and premium payment:
14 *Provided*, That rates will be adjusted by the commission to reflect
15 the demand on the compensation fund by the covered employer.

16 (b) The following employers are not required to subscribe to
17 the fund, but may elect to do so:

18 (1) Employers of employees in domestic services;

19 (2) Employers of five or fewer full-time employees in
20 agricultural service;

21 (3) Employers of employees while the employees are employed
22 without the state except in cases of temporary employment without
23 the state;

24 (4) Casual employers. An employer is a casual employer when

1 the number of his or her employees does not exceed three and the
2 period of employment is temporary, intermittent and sporadic in
3 nature and does not exceed ten calendar days in any calendar
4 quarter;

5 (5) Churches;

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

9 (7) Any volunteer rescue squad or volunteer police auxiliary
10 unit organized under the auspices of a county commission,
11 municipality or other government entity or political subdivision;
12 volunteer organizations created or sponsored by government
13 entities, political subdivisions; or area or regional emergency
14 medical services boards of directors in furtherance of the purposes
15 of the Emergency Medical Services Act of article four-c, chapter
16 sixteen of this code: *Provided*, That if any of the employers
17 described in this subdivision have paid employees, to the extent of
18 those paid employees, the employer shall subscribe to and pay
19 premium taxes into the Workers' Compensation Fund based upon the
20 gross wages of the paid employees but with regard to the
21 volunteers, the coverage remains optional; or

22 (8) Taxicab companies that submit proof of the existence of a
23 liability insurance policy, including accidental death and
24 dismemberment, issued by an insurance company approved by the

1 Insurance Commissioner and in an amount prescribed by the Insurance
2 Commissioner. The policy of insurance may be in the form of a
3 separate policy for each taxicab or may be in the form of a fleet
4 policy covering all taxicabs operated by the owner if the policy
5 provides for the same amount of liability for each taxicab
6 operated. The Insurance Commissioner may approve insurance
7 coverage policies developed by the taxicab industry for those
8 states that consider taxi drivers as independent contractors.

9 ~~(8)~~ (9) Any employer whose employees are eligible to receive
10 benefits under the federal Longshore and Harbor Workers'
11 Compensation Act, 33 U.S.C. §901, et seq., but only for those
12 employees eligible for those benefits.

13 (c) Notwithstanding any other provision of this chapter to the
14 contrary, whenever there are churches in a circuit which employ one
15 individual clergyman and the payments to the clergyman from the
16 churches constitute his or her full salary, such circuit or group
17 of churches may elect to be considered a single employer for the
18 purpose of premium payment into the Workers' Compensation Fund.

19 (d) Employers who are not required to subscribe to the
20 Workers' Compensation Fund may voluntarily choose to subscribe to
21 and pay premiums into the fund for the protection of their
22 employees and in that case are subject to all requirements of this
23 chapter and all rules ~~and regulations~~ prescribed by the commission
24 with reference to rates, classifications and premium payments and

1 shall afford to them the protection of this chapter, including
2 section six of this article, but the failure of the employers to
3 choose to subscribe to and to pay premiums into the fund shall not
4 impose any liability upon them other than any liability that would
5 exist notwithstanding the provisions of this chapter.

6 (e) Any foreign corporation employer whose employment in this
7 state is to be for a definite or limited period which could not be
8 considered "regularly employing" within the meaning of this section
9 may choose to pay into the Workers' Compensation Fund the premiums
10 provided ~~for~~ in this section, and at the time of making application
11 to the Workers' Compensation Commission, the employer shall furnish
12 a statement under oath showing the probable length of time the
13 employment will continue in this state, the character of the work,
14 an estimate of the monthly payroll and any other information which
15 may be required by the commission. At the time of making
16 application the employer shall deposit with the commission to the
17 credit of the Workers' Compensation Fund the amount required by
18 section five of this article. That amount shall be returned to the
19 employer if the employer's application is rejected by the
20 commission. Upon notice to the employer of the acceptance of his
21 or her application by the commission, he or she is an employer
22 within the meaning of this chapter and subject to all of its
23 provisions.

24 (f) Any foreign corporation employer choosing to comply with

1 the provisions of this chapter and to receive the benefits under
2 this chapter shall, at the time of making application to the
3 commission in addition to other requirements of this chapter,
4 furnish the commission with a certificate from the Secretary of
5 State, where the certificate is necessary, showing that it has
6 complied with all the requirements necessary to enable it legally
7 to do business in this state and no application of a foreign
8 corporation employer shall be accepted by the commission until the
9 certificate is filed.

10 (g) The following employers may elect not to provide coverage
11 to certain of their employees under the provisions of this chapter:

12 (1) Any political subdivision of the state including county
13 commissions and municipalities, boards of education or emergency
14 services organizations organized under the auspices of a county
15 commission may elect not to provide coverage to any elected
16 official. The election not to provide coverage does not apply to
17 individuals in appointed positions or to any other employees of the
18 political subdivision;

19 (2) If an employer is a partnership, sole proprietorship,
20 association or corporation, the employer may elect not to include
21 as an "employee" within this chapter, any member of the
22 partnership, the owner of the sole proprietorship or any corporate
23 officer or member of the board of directors of the association or
24 corporation. The officers of a corporation or an association shall

1 consist of a president, a vice president, a secretary and a
2 treasurer, each of whom is elected by the board of directors at the
3 time and in the manner prescribed by the bylaws. Other officers
4 and assistant officers that are considered necessary may be elected
5 or appointed by the board of directors or chosen in any other
6 manner prescribed by the bylaws and, if elected, appointed or
7 chosen, the employer may elect not to include the officer or
8 assistant officer as an "employee" within the meaning of this
9 chapter: *Provided*, That except for those persons who are members
10 of the board of directors or who are the corporation's or
11 association's president, vice president, secretary and treasurer
12 and who may be excluded by reason of their positions from the
13 benefits of this chapter even though their duties,
14 responsibilities, activities or actions may have a dual capacity of
15 work which is ordinarily performed by an officer and also of work
16 which is ordinarily performed by a worker, an administrator or an
17 employee who is not an officer, no other officer or assistant
18 officer who is elected or appointed shall be excluded by election
19 from coverage or be denied the benefits of this chapter merely
20 because he or she is an officer or assistant officer if, as a
21 matter of fact:

22 (A) He or she is engaged in a dual capacity of having the
23 duties and responsibilities for work ordinarily performed by an
24 officer and also having duties and work ordinarily performed by a

1 worker, administrator or employee who is not an officer;

2 (B) He or she is engaged ordinarily in performing the duties
3 of a worker, an administrator or an employee who is not an officer
4 and receives pay for performing the duties in the capacity of an
5 employee; or

6 (C) He or she is engaged in an employment palpably separate
7 and distinct from his or her official duties as an officer of the
8 association or corporation;

9 (3) If an employer is a limited liability company, the
10 employer may elect not to include as an "employee" within this
11 chapter a total of no more than four persons, each of whom are
12 acting in the capacity of manager, officer or member of the
13 company.

14 (h) In the event of election under subsection (g) of this
15 section, the employer shall serve upon the commission written
16 notice naming the positions not to be covered and shall not include
17 the "employee's" remuneration for premium purposes in all future
18 payroll reports and the partner, proprietor or corporate or
19 executive officer is not considered an employee within the meaning
20 of this chapter after the notice has been served. Notwithstanding
21 the provisions of subsection (g), section five of this article, if
22 an employer is delinquent or in default or has not subscribed to
23 the fund even though it is obligated to do so under the provisions
24 of this article, any partner, proprietor or corporate or executive

1 officer shall not be covered and shall not receive the benefits of
2 this chapter.

3 (I) "Regularly employing" or "regular employment" means
4 employment by an employer which is not a casual employer under this
5 section.

6 (j) Upon the termination of the commission, the criteria
7 governing which employer shall or may subscribe to the Workers'
8 Compensation Commission shall also govern which employers shall or
9 may purchase Workers' Compensation insurance under article two-c of
10 this chapter.

NOTE: The purpose of this bill is to provide that taxicab
companies are not required to subscribe to or pay into the Workers'
Compensation Fund by having insurance policies approved by the
Insurance Commissioner.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.