

1 **Senate Bill No. 603**

2 (By Senators Jenkins and Plymale)

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4 [Introduced February 21, 2011; referred to the Committee on
5 Government Organization; and then to the Committee on Finance.]

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7 **FISCAL**
8 **NOTE**

9
10 A BILL to amend and reenact §23-2-1, §23-2-1a and §23-2-1b of the
11 Code of West Virginia, 1931, as amended, all relating to
12 workers' compensation programs of state government entities
13 and their employees; defining participants and exceptions
14 thereto; including the West Virginia Wing of the Civil Air
15 Patrol in such coverage when performing a mission within the
16 state and for state agencies that do not qualify for funded
17 federal mission status; and designating the National Guard as
18 the employer of record of members of the West Virginia Wing of
19 the Civil Air Patrol for purposes of workers' compensation
20 coverage.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §23-2-1, §23-2-1a and §23-2-1b of the Code of West
23 Virginia, 1931, as amended, be amended and reenacted, all to read
24 as follows:

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

3 **§23-2-1. Employers subject to chapter; elections not to provide**
4 **certain coverages; notices; filing of business**
5 **registration certificates.**

6 (a) The State of West Virginia and all governmental agencies
7 or departments created by it, including county boards of education,
8 political subdivisions of the state, the West Virginia Wing of the
9 Civil Air Patrol when performing a mission within the state and for
10 state agencies that do not qualify for funded federal mission
11 status, any volunteer fire department or company and other
12 emergency service organizations as defined by article five, chapter
13 fifteen of this code, and all persons, firms, associations and
14 corporations regularly employing another person or persons for the
15 purpose of carrying on any form of industry, service or business in
16 this state, are employers within the meaning of this chapter and
17 are required to subscribe to and pay premium taxes into the
18 Workers' Compensation Fund for the protection of their employees
19 and are subject to all requirements of this chapter and all rules
20 prescribed by the Workers' Compensation Commission with reference
21 to rate, classification and premium payment: *Provided,* That rates
22 will be adjusted by the commission to reflect the demand on the
23 compensation fund by the covered employer.

24 (b) The following employers are not required to subscribe to

1 the fund, but may elect to do so:

2 (1) Employers of employees in domestic services;

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

5 (3) Employers of employees while the employees are employed
6 without the state except in cases of temporary employment without
7 the state;

8 (4) Casual employers. An employer is a casual employer when
9 the number of his or her employees does not exceed three and the
10 period of employment is temporary, intermittent and sporadic in
11 nature and does not exceed ten calendar days in any calendar
12 quarter;

13 (5) Churches;

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

17 (7) Any volunteer rescue squad or volunteer police auxiliary
18 unit organized under the auspices of a county commission,
19 municipality or other government entity or political subdivision;
20 volunteer organizations created or sponsored by government
21 entities, political subdivisions; or area or regional emergency
22 medical services boards of directors in furtherance of the purposes
23 of the Emergency Medical Services Act of article four-c, chapter
24 sixteen of this code: *Provided*, That if any of the employers

1 described in this subdivision have paid employees, to the extent of
2 those paid employees, the employer shall subscribe to and pay
3 premium taxes into the Workers' Compensation Fund based upon the
4 gross wages of the paid employees but with regard to the
5 volunteers, the coverage remains optional.

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

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

16 (d) Employers who are not required to subscribe to the
17 Workers' Compensation Fund may voluntarily choose to subscribe to
18 and pay premiums into the fund for the protection of their
19 employees and in that case are subject to all requirements of this
20 chapter and all rules and regulations prescribed by the commission
21 with reference to rates, classifications and premium payments and
22 shall afford to them the protection of this chapter, including
23 section six of this article, but the failure of the employers to
24 choose to subscribe to and to pay premiums into the fund shall not

1 impose any liability upon them other than any liability that would
2 exist notwithstanding the provisions of this chapter.

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

21 (f) Any foreign corporation employer choosing to comply with
22 the provisions of this chapter and to receive the benefits under
23 this chapter shall, at the time of making application to the
24 commission in addition to other requirements of this chapter,

1 furnish the commission with a certificate from the Secretary of
2 State, where the certificate is necessary, showing that it has
3 complied with all the requirements necessary to enable it legally
4 to do business in this state and no application of a foreign
5 corporation employer shall be accepted by the commission until the
6 certificate is filed.

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

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

16 (2) If an employer is a partnership, sole proprietorship,
17 association or corporation, the employer may elect not to include
18 as an "employee" within this chapter, any member of the
19 partnership, the owner of the sole proprietorship or any corporate
20 officer or member of the board of directors of the association or
21 corporation. The officers of a corporation or an association shall
22 consist of a president, a vice president, a secretary and a
23 treasurer, each of whom is elected by the board of directors at the
24 time and in the manner prescribed by the bylaws. Other officers

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

19 (A) He or she is engaged in a dual capacity of having the
20 duties and responsibilities for work ordinarily performed by an
21 officer and also having duties and work ordinarily performed by a
22 worker, administrator or employee who is not an officer;

23 (B) He or she is engaged ordinarily in performing the duties
24 of a worker, an administrator or an employee who is not an officer

1 and receives pay for performing the duties in the capacity of an
2 employee; or

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

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

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

24 (i) "Regularly employing" or "regular employment" means

1 employment by an employer which is not a casual employer under this
2 section.

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

8 **§23-2-1a. Employees subject to chapter.**

9 (a) Employees subject to this chapter are all persons in the
10 service of employers and employed by them for the purpose of
11 carrying on the industry, business, service or work in which they
12 are engaged, including, but not limited to:

13 (1) Persons regularly employed in the state whose duties
14 necessitate employment of a temporary or transitory nature by the
15 same employer without the state;

16 (2) Every person in the service of the state or of any
17 political subdivision or agency thereof, under any contract of
18 hire, express or implied, and every appointed official or officer
19 thereof while performing his or her official duties;

20 (3) Checkweighmen employed according to law;

21 (4) All members of rescue teams assisting in mine accidents
22 with the consent of the owner who, in such case, shall be deemed
23 the employer, or at the direction of the director of the department
24 of mines;

1 (5) All forest firefighters who, under the supervision of the
2 director of the Department of Natural Resources or his or her
3 designated representative, assist in the prevention, confinement
4 and suppression of any forest fire; ~~and~~

5 (6) Students while participating in a work-based learning
6 experience with an employer approved as a part of the curriculum by
7 the county board. The county board shall be the employer of record
8 of students while participating in unpaid work-based experiences
9 off school premises with employers other than the county board.
10 Students in unpaid work-based learning experiences shall be
11 considered to be paid the amount of wages so as to provide the
12 minimum workers' compensation weekly benefits required by section
13 six, article four of this chapter; and

14 (7) Members of the West Virginia Wing of the Civil Air Patrol
15 when performing a mission within the state and for state agencies
16 that do not qualify for funded federal mission status. The
17 National Guard shall be the employer of record of members of the
18 West Virginia Wing of the Civil Air Patrol when performing a
19 mission within the state and for state agencies for purposes of
20 workers' compensation coverage, as provided by this article.

21 (b) The right to receive compensation under this chapter shall
22 not be affected by the fact that a minor is employed or is
23 permitted to be employed in violation of the laws of this state
24 relating to the employment of minors, or that he or she obtained

1 his or her employment by misrepresenting his or her age.

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

3 (a) Except as provided for in subsection (b) of this section,
4 every executive officer of an association or of a corporation, any
5 member of a partnership or owner of a sole proprietorship which has
6 not elected to forgo coverage under this chapter for such officer,
7 member or owner shall pay premiums based upon the actual salary
8 paid to such employee up to an amount sufficient to qualify such
9 employee to receive the maximum level of benefits, but in no event
10 shall the basis for premium be less than the salary necessary to
11 provide such employee with the minimum level of benefits.

12 (b) Every executive officer of a not-for-profit association or
13 of a not-for-profit corporation which has not elected to forgo
14 coverage under this chapter for such officer, member or owner shall
15 pay premiums based upon the actual salary paid to such employee up
16 to an amount sufficient to qualify such employee to receive the
17 maximum level of benefits, but in no event shall the basis for
18 premium be less than \$100.

19 (c) Every elected official or officer, whether full time or
20 part time and including members of the Legislature, whose
21 governmental entity elects coverage under this chapter for such
22 elected official or officer, shall pay or have paid for him or her
23 premiums based upon the actual salary paid to such elected official
24 or officer up to an amount sufficient to qualify such elected

1 official or officer to receive the maximum level of benefits, but
2 in no event shall the basis for premium be less than the salary
3 necessary to provide such elected official or officer with the
4 minimum level of benefits. For the purposes of this subsection, an
5 elected official or officer shall include a person appointed to an
6 elected position to complete a term for that elected position.

7 (d) The premium and actual expenses in connection with
8 governmental agencies and departments of the State of West Virginia
9 shall be paid out of the State Treasury from appropriations made
10 for such agencies and departments, in the same manner as other
11 disbursements are made by such agencies and departments.

12 (e) County commissions, municipalities, other political
13 subdivisions of the state, county boards of education, emergency
14 service organizations organized as aforesaid and volunteer fire
15 departments or companies or the West Virginia Wing of the Civil Air
16 Patrol when performing a mission within the state and for state
17 agencies that do not qualify for funded federal mission status,
18 shall provide for the funds to pay their prescribed premiums into
19 the fund and such premiums and premiums of state agencies and
20 departments, including county boards of education, shall be paid
21 into the fund in the same manner as herein provided for other
22 employers subject to this chapter.

23 (f) County commissions and municipalities and the National
24 Guard are hereby authorized to pay all or any part of the premiums

1 prescribed for such emergency service organizations organized as
2 aforesaid and such duly incorporated volunteer fire departments or
3 companies or the West Virginia Wing of the Civil Air Patrol when
4 performing a mission within the state and for state agencies that
5 do not qualify for funded federal mission status, as may provide
6 services within the county or municipality.

NOTE: The purpose of this bill is to include the West Virginia Wing of the Civil Air Patrol in workers' compensation coverage when performing a mission within the state and for state agencies that do not qualify for funded federal mission status. The bill designates the National Guard as the employer of record of members of the West Virginia Wing of the Civil Air Patrol for purposes of workers' compensation coverage.

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