

1 **Senate Bill No. 20**

2 (By Senator Jenkins)

3 _____
4 [Introduced February 13, 2013; referred to the Committee on the
5 Judiciary; 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 of the Code of West Virginia,
11 1931, as amended, relating to exempting a taxicab company from
12 being required to subscribe to or pay into the Workers'
13 Compensation Fund if it has a liability insurance policy
14 approved by the Insurance Commissioner; and setting forth
15 other conditions.

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

17 That §23-2-1 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

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

21 **§23-2-1. Employers subject to chapter; elections not to provide**
22 **certain coverages; notices; filing of business**

1 **registration certificates.**

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

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

19 (1) Employers of employees in domestic services;

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

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

1 the state;

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

7 (5) Churches;

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

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

1 (8) Taxicab companies that submit proof to the Public Service
2 Commission of the existence of a liability insurance policy,
3 including accidental death and dismemberment, issued by an
4 insurance company licensed by the Insurance Commissioner and in an
5 amount prescribed by the Insurance Commissioner, covering taxicab
6 drivers who lease taxicabs from those companies pursuant to a lease
7 prescribed by the Public Service Commission, or pursuant to a
8 modification of such a lease approved by the Public Service
9 Commission. The policy of insurance may be in the form of a
10 separate policy for each taxicab or may be in the form of a fleet
11 policy covering all taxicabs operated by the owner if the policy
12 provides for the same amount of liability for each taxicab
13 operated. The Insurance Commissioner may approve insurance coverage
14 policies developed by the taxicab industry for those states that
15 consider taxi drivers as independent contractors. Any taxicab
16 company that elects not to provide workers' compensation coverage
17 under this subdivision may only exercise that election as to taxi
18 drivers who lease taxicabs pursuant to this subdivision and shall
19 provide coverage under this chapter for all other employees; or

20 ~~(8)~~ (9) Any employer whose employees are eligible to receive
21 benefits under the federal Longshore and Harbor Workers'
22 Compensation Act, 33 U.S.C. §901, et seq., but only for those
23 employees eligible for those benefits.

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

7 (d) Employers who are not required to subscribe to the
8 Workers' Compensation Fund may voluntarily choose to subscribe to
9 and pay premiums into the fund for the protection of their
10 employees and in that case are subject to all requirements of this
11 chapter and all rules ~~and regulations~~ prescribed by the commission
12 with reference to rates, classifications and premium payments and
13 shall afford to them the protection of this chapter, including
14 section six of this article, but the failure of the employers to
15 choose to subscribe to and to pay premiums into the fund shall not
16 impose any liability upon them other than any liability that would
17 exist notwithstanding the provisions of this chapter.

18 (e) Any foreign corporation employer whose employment in this
19 state is to be for a definite or limited period which could not be
20 considered "regularly employing" within the meaning of this section
21 may choose to pay into the Workers' Compensation Fund the premiums
22 provided ~~for~~ in this section, and at the time of making application
23 to the Workers' Compensation Commission, the employer shall furnish

1 a statement under oath showing the probable length of time the
2 employment will continue in this state, the character of the work,
3 an estimate of the monthly payroll and any other information which
4 may be required by the commission. At the time of making
5 application the employer shall deposit with the commission to the
6 credit of the Workers' Compensation Fund the amount required by
7 section five of this article. That amount shall be returned to the
8 employer if the employer's application is rejected by the
9 commission. Upon notice to the employer of the acceptance of his
10 or her application by the commission, he or she is an employer
11 within the meaning of this chapter and subject to all of its
12 provisions.

13 (f) Any foreign corporation employer choosing to comply with
14 the provisions of this chapter and to receive the benefits under
15 this chapter shall, at the time of making application to the
16 commission in addition to other requirements of this chapter,
17 furnish the commission with a certificate from the Secretary of
18 State, where the certificate is necessary, showing that it has
19 complied with all the requirements necessary to enable it legally
20 to do business in this state and no application of a foreign
21 corporation employer shall be accepted by the commission until the
22 certificate is filed.

23 (g) The following employers may elect not to provide coverage

1 to certain of their employees under the provisions of this chapter:

2 (1) Any political subdivision of the state including county
3 commissions and municipalities, boards of education or emergency
4 services organizations organized under the auspices of a county
5 commission may elect not to provide coverage to any elected
6 official. The election not to provide coverage does not apply to
7 individuals in appointed positions or to any other employees of the
8 political subdivision;

9 (2) If an employer is a partnership, sole proprietorship,
10 association or corporation, the employer may elect not to include
11 as an "employee" within this chapter, any member of the
12 partnership, the owner of the sole proprietorship or any corporate
13 officer or member of the board of directors of the association or
14 corporation. The officers of a corporation or an association shall
15 consist of a president, a vice president, a secretary and a
16 treasurer, each of whom is elected by the board of directors at the
17 time and in the manner prescribed by the bylaws. Other officers
18 and assistant officers that are considered necessary may be elected
19 or appointed by the board of directors or chosen in any other
20 manner prescribed by the bylaws and, if elected, appointed or
21 chosen, the employer may elect not to include the officer or
22 assistant officer as an "employee" within the meaning of this
23 chapter: *Provided*, That except for those persons who are members

1 of the board of directors or who are the corporation's or
2 association's president, vice president, secretary and treasurer
3 and who may be excluded by reason of their positions from the
4 benefits of this chapter even though their duties,
5 responsibilities, activities or actions may have a dual capacity of
6 work which is ordinarily performed by an officer and also of work
7 which is ordinarily performed by a worker, an administrator or an
8 employee who is not an officer, no other officer or assistant
9 officer who is elected or appointed shall be excluded by election
10 from coverage or be denied the benefits of this chapter merely
11 because he or she is an officer or assistant officer if, as a
12 matter of fact:

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

17 (B) He or she is engaged ordinarily in performing the duties
18 of a worker, an administrator or an employee who is not an officer
19 and receives pay for performing the duties in the capacity of an
20 employee; or

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

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

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

19 (i) "Regularly employing" or "regular employment" means
20 employment by an employer which is not a casual employer under this
21 section.

22 (j) Upon the termination of the commission, the criteria
23 governing which employer shall or may subscribe to the Workers'

1 Compensation Commission shall also govern which employers shall or
2 may purchase Workers' Compensation insurance under article two-c of
3 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 if they meet certain conditions, including 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.