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H. B. 2817

(By Delegates Hicks, Rodighiero, Pushkin, Fleischauer, Lynch,
Perdue, Eldridge, Morgan, Perry, Campbell and Byrd)

[Introduced February 19, 2015; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
designated §21-5-14b, relating to providing for security of private, employer-sponsored
insurance and/or retirement plans.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
section, designated §21-5-14b, to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-14b. Employer's bond for retirement benefits.

(a) The Legislature finds that employer-sponsored insurance and/or retirement benefits,
important fringe benefits of employment, are often at risk as the financial well-being and capability
of the employer is subject to change over the period of time spanning a worker's employment and
retirement years. In order to further secure the benefits offered to working West Virginians in
private, employer-sponsored insurance and/or pension plans, the Legislature finds it prudent to
establish this security bond requirement.

1 (b) Employers with fewer than fifty employees who offer an employee insurance and/or
2 retirement plans as a benefit of employment shall provide and maintain a security bond in any form
3 prescribed or approved by the commissioner, as security for insurance and/or retirement-related
4 obligations of the employer, payable to the State of West Virginia, with the condition that the person,
5 firm, bank or corporation pay benefits due members of the retirement plan. The amount of the bond
6 shall equal or exceed the actuarially accrued liability of the plan, as determined annually by an
7 independent actuary. The bond may include, with the approval of the commissioner, surety bonding,
8 collateral bonding (including cash and securities), letters of credit, establishment of an escrow
9 account or a combination of these methods. The commissioner shall, upon receipt of any deposit
10 of cash, securities, certificates or other assets offered to fulfill the bond requirement, promptly place
11 the same with the State Treasurer whose duty it shall be to receive and hold the same in the name
12 of the state in trust for the purpose for which the deposit is made. The employer making the deposit
13 shall be entitled from time to time to receive from the State Treasurer, upon the written approval of
14 the commissioner, the whole or any portion of any cash, securities, certificates or other assets so
15 deposited, upon depositing with him or her in lieu thereof, cash or other securities or certificates of
16 the classes herein specified having value equal to or greater than the sum of the bond. The bond
17 requirement may not be waived based on the financial strength or demonstrated responsibility of the
18 employer. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of
19 the county commission of the county wherein the person, firm or corporation is doing business to
20 be available for public inspection.

21 (c) Any employee whose insurance and/or retirement benefits are secured by the security
22 bond specified in this section has a direct cause of action against the security bond for retirement

1 benefits that are due and unpaid.

2 (d) Any person entitled to benefits from the insurance and/or retirement plan having those
3 benefits unpaid, may inform the commissioner of the claim for unpaid benefits and request
4 certification thereof. If the commissioner, upon notice to the employer and investigation, finds that
5 the benefits or a portion thereof are unpaid, the commissioner shall make demand of the employer
6 for the payment of the benefits. If payment is not forthcoming within the time specified by the
7 commissioner, not to exceed thirty days, the commissioner shall certify the claim or portion thereof,
8 and forward the certification to the bonding company or the State Treasurer, who shall provide
9 payment to the affected employee within fourteen days of receipt of the certification. The bonding
10 company, or any person, firm or corporation posting a bond, thereafter shall have the right to proceed
11 against a defaulting employer for that part of the claim the employee was paid. The procedure
12 specified herein shall not be construed to preclude other actions by the commissioner or employee
13 to seek enforcement of the provisions of this article by any civil proceedings for the payment of
14 benefits or by criminal proceedings as may be determined appropriate.

15 (e) Benefits due persons under the employer-sponsored insurance and/or retirement plans are
16 not an obligation of the state except for the state's responsibility to administer and pay out funds held
17 for security pursuant to this section.

NOTE: The purpose of this bill is to require security in the form of bond, cash or other collateral to protect private, employer-sponsored insurance and pension plans.

§21-5-14b is new; therefore, it has been completely underscored.