

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 621

BY SENATORS PALUMBO, ASHLEY, GAUNCH, KARNES,

MULLINS, WALTERS AND FERNS, *original sponsors*

[Passed March 12, 2016; in effect 90 days from
passage]

1 AN ACT to amend and reenact §23-2-1 the Code of West Virginia, 1931, as amended, relating
2 to exempting taxicab companies whose drivers are independent contractors from
3 providing workers' compensation coverage for the drivers.

Be it enacted by the Legislature of West Virginia:

1 That §23-2-1 of the Code of West Virginia, 1931 as amended, be amended and
2 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 or departments created by
2 it, including county boards of education, political subdivisions of the state, any volunteer fire
3 department or company and other emergency service organizations as defined by article five,
4 chapter fifteen of this code, and all persons, firms, associations and corporations regularly
5 employing another person or persons for the purpose of carrying on any form of industry, service
6 or business in this state, are employers within the meaning of this chapter and are required to
7 subscribe to and pay premium taxes into the Workers' Compensation Fund for the protection of
8 their employees and are subject to all requirements of this chapter and all rules prescribed by the
9 Workers' Compensation Commission with reference to rate, classification and premium payment:
10 *Provided, That rates will be adjusted by the commission to reflect the demand on the*
11 *compensation fund by the covered employer.*

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

14 (1) Employers of employees in domestic services;

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

Enr CS for SB 621

16 (3) Employers of employees while the employees are employed without the state except
17 in cases of temporary employment without the state;

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

21 (5) Churches;

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

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

33 (8) Taxicab drivers of taxicab companies operating under article two, chapter twenty-four-
34 a of this code, who provide taxicab service pursuant to a written or electronic agreement that
35 identifies the taxicab driver as an independent contractor consistent with the United States
36 Internal Revenue code requirements for persons acting as independent contractors: *Provided,*
37 That any such taxicab driver identified as an independent contractor shall not be eligible for
38 workers' compensation benefits under this chapter as an employee of the taxicab company.

39 ~~(8)~~ (9) Any employer whose employees are eligible to receive benefits under the federal
40 Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901, *et seq.*, but only for those

Enr CS for SB 621

41 employees eligible for those benefits.

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

47 (d) Employers who are not required to subscribe to the Workers' Compensation Fund may
48 voluntarily choose to subscribe to and pay premiums into the fund for the protection of their
49 employees and in that case are subject to all requirements of this chapter and all rules and
50 regulations prescribed by the commission with reference to rates, classifications and premium
51 payments and shall afford to them the protection of this chapter, including section six of this article,
52 but the failure of the employers to choose to subscribe to and to pay premiums into the fund shall
53 not impose any liability upon them other than any liability that would exist notwithstanding the
54 provisions of this chapter.

55 (e) Any foreign corporation employer whose employment in this state is to be for a definite
56 or limited period which could not be considered "regularly employing" within the meaning of this
57 section may choose to pay into the Workers' Compensation Fund the premiums provided for in
58 this section, and at the time of making application to the Workers' Compensation Commission,
59 the employer shall furnish a statement under oath showing the probable length of time the
60 employment will continue in this state, the character of the work, an estimate of the monthly payroll
61 and any other information which may be required by the commission. At the time of making
62 application the employer shall deposit with the commission to the credit of the Workers'
63 Compensation Fund the amount required by section five of this article. That amount shall be
64 returned to the employer if the employer's application is rejected by the commission. Upon notice
65 to the employer of the acceptance of his or her application by the commission, he or she is an

Enr CS for SB 621

66 employer within the meaning of this chapter and subject to all of its provisions.

67 (f) Any foreign corporation employer choosing to comply with the provisions of this chapter
68 and to receive the benefits under this chapter shall, at the time of making application to the
69 commission in addition to other requirements of this chapter, furnish the commission with a
70 certificate from the Secretary of State, where the certificate is necessary, showing that it has
71 complied with all the requirements necessary to enable it legally to do business in this state and
72 no application of a foreign corporation employer shall be accepted by the commission until the
73 certificate is filed.

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

76 (1) Any political subdivision of the state including county commissions and municipalities,
77 boards of education, or emergency services organizations organized under the auspices of a
78 county commission may elect not to provide coverage to any elected official. The election not to
79 provide coverage does not apply to individuals in appointed positions or to any other employees
80 of the political subdivision;

81 (2) If an employer is a partnership, sole proprietorship, association or corporation, the
82 employer may elect not to include as an "employee" within this chapter, any member of the
83 partnership, the owner of the sole proprietorship or any corporate officer or member of the board
84 of directors of the association or corporation. The officers of a corporation or an association shall
85 consist of a president, a vice president, a secretary and a treasurer, each of whom is elected by
86 the board of directors at the time and in the manner prescribed by the bylaws. Other officers and
87 assistant officers that are considered necessary may be elected or appointed by the board of
88 directors or chosen in any other manner prescribed by the bylaws and, if elected, appointed or
89 chosen, the employer may elect not to include the officer or assistant officer as an "employee"
90 within the meaning of this chapter: *Provided*, That except for those persons who are members of

Enr CS for SB 621

91 the board of directors or who are the corporation's or association's president, vice president,
92 secretary and treasurer and who may be excluded by reason of their positions from the benefits
93 of this chapter even though their duties, responsibilities, activities or actions may have a dual
94 capacity of work which is ordinarily performed by an officer and also of work which is ordinarily
95 performed by a worker, an administrator or an employee who is not an officer, no other officer or
96 assistant officer who is elected or appointed shall be excluded by election from coverage or be
97 denied the benefits of this chapter merely because he or she is an officer or assistant officer if, as
98 a matter of fact:

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

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

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

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

110 (h) In the event of election under subsection (g) of this section, the employer shall serve
111 upon the commission written notice naming the positions not to be covered and shall not include
112 the "employee's" remuneration for premium purposes in all future payroll reports, and the partner,
113 proprietor or corporate or executive officer is not considered an employee within the meaning of
114 this chapter after the notice has been served. Notwithstanding the provisions of subsection (g),
115 section five of this article, if an employer is delinquent or in default or has not subscribed to the

Enr CS for SB 621

116 Fund even though it is obligated to do so under the provisions of this article, any partner, proprietor
117 or corporate or executive officer shall not be covered and shall not receive the benefits of this
118 chapter.

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

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