

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4351**

BY DELEGATE PAYNTER, PHILLIPS, MAYNARD, DEAN,  
MCGEEHAN, JENNINGS, HOWELL, HAMRICK, BUTLER,  
FAST AND KESSINGER

[Introduced January 30, 2018; Referred  
to the Committee on Industry and Labor then the  
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §23-2-1b, relating to the classification of owner operators and independent  
 3 contractors who contract with licensed and registered trucking companies as non-  
 4 employees under worker’s compensation law.

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

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

**§23-2-1b. Services provided to a trucking company.**

1 (a) Notwithstanding any provision of this code to the contrary, an owner operator or  
 2 independent contractor who provides trucking services to a trucking company is not an employee  
 3 within the meaning of this chapter.

4 (b) For the purposes of this chapter, the following provisions apply to owner operators,  
 5 independent contractors, or trucking companies:

6 (1) An owner operator or independent contractor who leases his or her services and his  
 7 or her tractor and/or trailer to a trucking company must meet the requirements set forth in the  
 8 Federal Motor Carrier Safety Administration’s regulations;

9 (2) An owner operator or independent contractor must provide his or her own tractor and/or  
 10 trailer and all necessary tools to perform functions satisfactorily to the shippers and consignee of  
 11 a trucking company;

12 (3) An owner operator or independent contractor may provide a letter of exemption to the  
 13 commissioner exempting the owner operator or independent contractor from the requirement that  
 14 he or she carry a worker’s compensation policy provided the owner operator or independent  
 15 contractor is a sole proprietor and has no employees. A trucking company who contracts with  
 16 such an owner operator or independent contractor would be held harmless from any on-the-job  
 17 injuries to the owner operator or independent contractor;

18 (4) A trucking company may require under a contract for services with an owner operator  
19 or independent contractor that the owner operator or independent contractor carry a personal  
20 injury policy. A trucking company may further require that a copy of that policy be provided to the  
21 trucking company at each contractual renewal period;

22 (5) A trucking company may require an owner operator or independent contractor to enter  
23 into a lease agreement, a signed copy of which shall be kept at the trucking company's domiciled  
24 office and in the power unit owned by the owner operator or independent contractor;

25 (6) If a trucking company and an owner operator or independent contractor have entered  
26 into a lease agreement under §23-2-1b(5) and that lease agreement meets the requirements  
27 set forth in Section 390.21 of the Federal Motor Carrier Safety Administration's regulations, then  
28 the trucking company may require the owner operator or independent contractor to have door  
29 signs and assigned unit numbers on its power units;

30 (7) A trucking company may require under a contract for services with an owner operator  
31 or independent contractor that the owner operator or independent contractor abide and work  
32 under the trucking company's policies;

33 (8) A trucking company may operate its business by utilizing the services of an owner  
34 operator or independent contractor and to instruct the owner operator or independent contractor  
35 in the method of delivering loads as required by the shippers and consignees;

36 (9) An owner operator or independent contractor shall pay all expenses so as to maintain  
37 his or her status as an owner operator or independent contractor. Expenses included, but are not  
38 limited to, fuel, tires, truck and/or trailer maintenance, tolls, taxes, clothing, assessorial tools  
39 necessary to perform jobs to the satisfaction of the trucking company, the shipper, or the  
40 consignee;

41 (10) A trucking company may provide to the owner operator or independent contractor  
42 preprinted log books until such time as laws related to "e-log" requirements become effective.  
43 When laws related to "e-log" requirements become effective, a trucking company may lease to

44 and install “e-log” in an owner operator or independent contractor’s power unit;

45 (11) A trucking company may enforce the Federal Motor Carrier Safety Administration’s  
46 regulations during the duration of a lease agreement between the trucking company and an owner  
47 operator or independent contractor;

48 (12) An owner operator or independent contractor shall comply with all alcohol and drug  
49 testing requirements set forth in the Federal Motor Carrier Safety Administration’s regulations,  
50 including Sections 382.405, 382.311, 382.413, 382.303, 382.305, 382.307, 382.211, and  
51 382.209.

52 (13) No requirement or lease agreement set forth in this subdivision shall be construed to  
53 classify an owner operator or independent contractor as an employee within the meaning of this  
54 chapter;

55 (c) As used in this section, “trucking company” means a trucking company that is licensed  
56 and registered by the Federal Motor Carrier Safety Administration.

NOTE: The purpose of this bill is to classify owner operators and independent contractors who contract with licensed and registered trucking companies as nonemployees under worker’s compensation law.

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