

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 40**

4 (By Senator Jenkins)

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6 [Originating in the Committee on Transportation and
7 Infrastructure; reported February 21, 2011.]
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11 A BILL to amend and reenact §23-2-1 of the Code of West Virginia,
12 1931, as amended, relating to providing that taxicab companies
13 are not required to subscribe to or pay into the Workers'
14 Compensation Fund by having insurance policies approved by the
15 Insurance Commissioner.

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**
23 **registration certificates.**

24 (a) The State of West Virginia and all governmental agencies
25 or departments created by it, including county boards of education,

1 political subdivisions of the state, any volunteer fire department
2 or company and other emergency service organizations as defined by
3 article five, chapter fifteen of this code, and all persons, firms,
4 associations and corporations regularly employing another person or
5 persons for the purpose of carrying on any form of industry,
6 service or business in this state, are employers within the meaning
7 of this chapter and are required to subscribe to and pay premium
8 taxes into the Workers' Compensation Fund for the protection of
9 their employees and are subject to all requirements of this chapter
10 and all rules prescribed by the Workers' Compensation Commission
11 with reference to rate, classification and premium payment:

12 *Provided*, That rates will be adjusted by the commission to reflect
13 the demand on the compensation fund by the covered employer.

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

16 (1) Employers of employees in domestic services;

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

19 (3) Employers of employees while the employees are employed
20 without the state except in cases of temporary employment without
21 the state;

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

1 (5) Churches;

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

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

18 (8) Taxicab companies that submit proof to the Public Service
19 Commission of the existence of a liability insurance policy,
20 including accidental death and dismemberment, issued by an
21 insurance company licensed by the Insurance Commissioner and in an
22 amount prescribed by the Insurance Commissioner, covering taxicab
23 drivers who lease taxicabs from such taxicab companies pursuant to
24 a lease prescribed by the Public Service Commission, or pursuant to
25 a modification of such a lease approved by the Public Service
26 Commission. The policy of insurance may be in the form of a

1 separate policy for each taxicab or may be in the form of a fleet
2 policy covering all taxicabs operated by the owner if the policy
3 provides for the same amount of liability for each taxicab
4 operated. The Insurance Commissioner may approve insurance coverage
5 policies developed by the taxicab industry for those states that
6 consider taxi drivers as independent contractors. Any taxicab
7 company that elects not to provide workers' compensation coverage
8 under this subdivision may only exercise that election as to taxi
9 drivers who lease taxicabs as set forth in this subdivision and
10 shall provide coverage under this chapter for all other employees.

11 ~~(8)~~ (9) Any employer whose employees are eligible to receive
12 benefits under the federal Longshore and Harbor Workers'
13 Compensation Act, 33 U.S.C. §901, *et seq.*, but only for those
14 employees eligible for those benefits.

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

21 (d) Employers who are not required to subscribe to the
22 Workers' Compensation Fund may voluntarily choose to subscribe to
23 and pay premiums into the fund for the protection of their
24 employees and in that case are subject to all requirements of this
25 chapter and all rules ~~and regulations~~ prescribed by the commission
26 with reference to rates, classifications and premium payments and

1 shall afford to them the protection of this chapter, including
2 section six of this article, but the failure of the employers to
3 choose to subscribe to and to pay premiums into the fund shall not
4 impose any liability upon them other than any liability that would
5 exist notwithstanding the provisions of this chapter.

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

24 (f) Any foreign corporation employer choosing to comply with
25 the provisions of this chapter and to receive the benefits under
26 this chapter shall, at the time of making application to the

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

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

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

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

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

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

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

26 (C) He or she is engaged in an employment palpably separate

1 and distinct from his or her official duties as an officer of the
2 association or corporation;

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

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

21 (I) "Regularly employing" or "regular employment" means
22 employment by an employer which is not a casual employer under this
23 section.

24 (j) Upon the termination of the commission, the criteria
25 governing which employer shall or may subscribe to the Workers'
26 Compensation Commission shall also govern which employers shall or

1 may purchase Workers' Compensation insurance under article two-c of
2 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 by 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.