

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 70

**FISCAL
NOTE**

BY SENATOR YOST

[Introduced January 13, 2016;

Referred to the Committee on Banking and Insurance;

then to the Committee on the Judiciary; and then to

the Committee on Finance.]

1 A BILL to amend and reenact §23-1-1 of the Code of West Virginia, 1931, as amended, relating
 2 generally to workers' compensation; acknowledging that deficit crisis is over; recognizing
 3 that West Virginia's labor force is its greatest asset and resource; stating that injured
 4 workers should receive preeminent and efficient treatment; and stating that it is the intent
 5 of the Legislature that a rule of liberal construction based on any remedial basis of workers'
 6 compensation legislation shall be applied when deciding cases.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

**§23-1-1. Workers' Compensation; findings; transfer of responsibility to Insurance
 Commissioner.**

1 ~~(a) The Legislature finds that a deficit exists in the Workers' Compensation Fund of such~~
 2 ~~critical proportions that it constitutes an imminent threat to the immediate and long-term solvency~~
 3 ~~of the fund and constitutes a substantial deterrent to the economic development of this state. The~~
 4 ~~Legislature further finds that addressing the workers' compensation crisis requires the efforts of~~
 5 ~~all persons and entities involved and resolution of the crisis is in the best interest of the public.~~
 6 ~~Modification to the rate system, alteration of the benefit structure, improvement of current~~
 7 ~~management practices and changes in perception must be merged into a unified effort to make~~
 8 ~~the workers' compensation system viable and solvent through the mutualization of the system~~
 9 ~~and the opening of the market to private workers' compensation insurance carriers. It was and~~
 10 ~~remains the intent of the Legislature that the amendments to this chapter enacted in the year 2003~~
 11 ~~be applied from the date upon which the enactment was made effective by the Legislature. The~~
 12 ~~Legislature finds that an emergency exists as a result of the combined effect of this deficit, other~~
 13 ~~state budgetary deficits and liabilities and other grave social and economic circumstances~~
 14 ~~currently confronting the state and that unless the changes provided by the enactment of the~~

15 ~~amendments to this chapter, as well as other legislation designed to address the problem are~~
16 ~~made effective immediately, the fiscal stability of this state will suffer irreparable harm.~~
17 ~~Accordingly, the Legislature finds that the need of the citizens of this state for the protection of~~
18 ~~the State Treasury and the solvency of the Workers' Compensation Funds requires the limitations~~
19 ~~on any expectations that may have arisen from prior enactments of this chapter. The Legislature~~
20 ~~finds that the Workers' Compensation deficit has been resolved and, therefore, the Legislature~~
21 ~~finds that West Virginia's labor force is its greatest asset and resource. The Legislature further~~
22 ~~finds that a worker injured during the course and as a result of his or her occupation should receive~~
23 ~~preeminent and efficient treatment to protect and preserve the state's greatest assets and~~
24 ~~resources.~~

25 (b) It is the further intent of the Legislature that this chapter be interpreted so as to assure
26 the quick and efficient delivery of indemnity and medical benefits to injured workers at a
27 reasonable cost to the employers who are subject to the provisions of this chapter. It is the
28 specific intent of the Legislature that workers' compensation cases shall be decided on their merits
29 and that a rule of "liberal construction" based on any "remedial" basis of workers' compensation
30 legislation shall ~~not affect the weighing of evidence in resolving such cases~~ be applied. The
31 workers' compensation system in this state is based on a mutual renunciation of common law
32 rights and defenses by employers and employees alike. Employees' rights to sue for damages
33 over and above medical and health care benefits and wage loss benefits are to a certain degree
34 limited by the provisions of this chapter and employers' rights to raise common law defenses,
35 such as lack of negligence, contributory negligence on the part of the employee, and others, are
36 curtailed as well. Accordingly, the Legislature hereby declares that any remedial component of
37 the workers' compensation laws is ~~not to cause the workers' compensation laws to receive liberal~~
38 ~~construction. that alters in any way the proper weighing of evidence as required by section one-~~
39 ~~g, article four of this chapter.~~

40 (c) The “Workers’ Compensation Division of the Bureau of Employment Programs” is, on
41 or after October 1, 2003, reestablished, reconstituted and continued as the Workers’
42 Compensation Commission, an agency of the state. The purpose of the commission is to ensure
43 the fair, efficient and financially stable administration of the workers’ compensation system of the
44 State of West Virginia. The powers and duties heretofore imposed upon the Workers’
45 Compensation Division and the Commissioner of the Bureau of Employment Programs as they
46 relate to workers’ compensation are hereby transferred to and imposed upon the Workers’
47 Compensation Commission and its executive director in the manner prescribed by this chapter.

48 (d) It is the intent of the Legislature that the transfer of the administration of the workers’
49 compensation system of this state from the Workers’ Compensation Division under the
50 Commissioner of the Bureau of Employment Programs to the Workers’ Compensation
51 Commission under its executive director and the workers’ compensation board of managers is to
52 become effective October 1, 2003. Any provisions of the enactment of Enrolled Senate Bill No.
53 2013 in the year 2003 relating to the transfer of the administration of the workers’ compensation
54 system of this state that conflict with the intent of the Legislature as described in this subsection
55 shall, to that extent, become operative on October 1, 2003, and until that date, prior enactments
56 of this code in effect on the effective date of Enrolled Senate Bill No. 2013 relating to the
57 administration of the workers’ compensation system of this state, whether amended and
58 reenacted or repealed by the passage of Enrolled Senate Bill No. 2013, have full force and effect.
59 All provisions of the enactment of Enrolled Senate Bill No. 2013 in the year 2003 relating to
60 matters other than the transfer of the administration of the workers’ compensation system of this
61 state shall become operative on the effective date of that enactment, unless otherwise specifically
62 provided in that enactment.

63 (e) It is the intent of the Legislature, expressed through its enactment of legislation, to
64 transfer the regulation of the workers’ compensation system to the Insurance Commissioner. By
65 proclamation of the Governor, as authorized by article two-c of this chapter, the Workers’

66 Compensation Commission was terminated on December 31, 2005. To further the transition from
67 the state-operated workers' compensation system to a system of private insurance, the duties
68 and responsibilities of the Workers' Compensation Commission and the board of managers,
69 including, but not limited to, ratemaking and adjudication of claims now reside with the Insurance
70 Commissioner.

NOTE: The purpose of this bill is to acknowledge that the deficit crisis is over. The bill recognizes that West Virginia's labor force is its greatest asset and resource. The bill states that injured workers should receive preeminent and efficient treatment. The bill states that it is the intent of the Legislature that a rule of "liberal construction" based on any "remedial" basis of workers' compensation legislation shall be applied when deciding cases.

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