

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4374

BY DELEGATES HICKS AND FLEISCHAUER

[Introduced February 3, 2016; Referred
to the Committee on Banking and Insurance then
Finance.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

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

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

7 (b) Employers with fewer than fifty employees who offer an employee insurance or
8 retirement plans as a benefit of employment shall provide and maintain a security bond in any
9 form prescribed or approved by the commissioner, as security for insurance and retirement-
10 related obligations of the employer, payable to the State of West Virginia, with the condition that
11 the person, firm, bank or corporation pay benefits due members of the retirement plan. The
12 amount of the bond shall equal or exceed the actuarially accrued liability of the plan, as
13 determined annually by an independent actuary. The bond may include, with the approval of the
14 commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit,
15 establishment of an escrow account or a combination of these methods. The commissioner shall,
16 upon receipt of any deposit of cash, securities, certificates or other assets offered to fulfill the
17 bond requirement, promptly place the same with the State Treasurer whose duty it shall be to
18 receive and hold the same in the name of the state in trust for the purpose for which the deposit

19 is made. The employer making the deposit shall be entitled from time to time to receive from the
20 State Treasurer, upon the written approval of the commissioner, the whole or any portion of any
21 cash, securities, certificates or other assets so deposited, upon depositing with him or her in lieu
22 thereof, cash or other securities or certificates of the classes herein specified having value equal
23 to or greater than the sum of the bond. The bond requirement may not be waived based on the
24 financial strength or demonstrated responsibility of the employer. The commissioner shall cause
25 a copy of the bond to be filed in the office of the clerk of the county commission of the county
26 wherein the person, firm or corporation is doing business to be available for public inspection.

27 (c) Any employee whose insurance or retirement benefits are secured by the security bond
28 specified in this section has a direct cause of action against the security bond for retirement
29 benefits that are due and unpaid.

30 (d) Any person entitled to benefits from the insurance and/or retirement plan having those
31 benefits unpaid, may inform the commissioner of the claim for unpaid benefits and request
32 certification thereof. If the commissioner, upon notice to the employer and investigation, finds
33 that the benefits or a portion thereof are unpaid, the commissioner shall make demand of the
34 employer for the payment of the benefits. If payment is not forthcoming within the time specified
35 by the commissioner, not to exceed thirty days, the commissioner shall certify the claim or portion
36 thereof, and forward the certification to the bonding company or the State Treasurer, who shall
37 provide payment to the affected employee within fourteen days of receipt of the certification. The
38 bonding company, or any person, firm or corporation posting a bond, thereafter shall have the
39 right to proceed against a defaulting employer for that part of the claim the employee was paid.
40 The procedure specified herein shall not be construed to preclude other actions by the
41 commissioner or employee to seek enforcement of the provisions of this article by any civil
42 proceedings for the payment of benefits or by criminal proceedings as may be determined
43 appropriate.

44 (e) Benefits due persons under the employer-sponsored insurance and/or retirement plans

- 45 are not an obligation of the state except for the state's responsibility to administer and pay out
46 funds held 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.

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