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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998

## ENROLLED

SENATE BILL NO. 605

(By Senator WOOTEN, ET AL)

PASSED MARCH 13, 1998  
In Effect FROM Passage

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SENATE OF WEST VIRGINIA  
CHARLOTTE, WEST VIRGINIA

## ENROLLED

### Senate Bill No. 605

(BY SENATORS WOOTON, BALL, BOWMAN, DITTMAR,  
KESSLER, OLIVERIO, ROSS, SCHOONOVER, SNYDER,  
WHITE, BUCKALEW AND SCOTT)

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[Passed March 13, 1998; in effect from passage.]

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AN ACT to amend and reenact section seventeen, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section sixteen, article six of said chapter; to amend and reenact section nine, article nine of said chapter; and to amend and reenact sections two and nineteen, article ten of said chapter, all relating generally to unemployment compensation; clarifying certain exclusions from the definition of employment; changing references to federal statutes; recognizing authority of certain federal levies against benefits; allowing disclosure of unemployment compensation information to child support agencies; and continuing authority to expend Reed Act funds.

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

That section seventeen, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section sixteen, article six of said chapter be amended and reenacted; that section nine, article nine of said chapter be amended and reenacted; and that sections two and nineteen, article ten of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 1A. DEFINITIONS.**

**§21A-1A-17. Exclusions from employment.**

1     The term "employment" does not include:

2     (1) Service performed in the employ of the United States  
3     or any instrumentality of the United States exempt under  
4     the constitution of the United States from the payments  
5     imposed by this law, except that to the extent that the  
6     Congress of the United States permits states to require  
7     any instrumentalities of the United States to make  
8     payments into an unemployment fund under a state  
9     unemployment compensation law, all of the provisions of  
10    this law are applicable to the instrumentalities and to  
11    service performed for the instrumentalities in the same  
12    manner, to the same extent and on the same terms as to all  
13    other employers, employing units, individuals and ser-  
14    vices: *Provided*, That if this state is not certified for any  
15    year by the secretary of labor under 26 U.S.C. §3404,  
16    subsection (c), the payments required of the instrumentali-  
17    ties with respect to the year shall be refunded by the  
18    commissioner from the fund in the same manner and  
19    within the same period as is provided in section nineteen,  
20    article five of this chapter, with respect to payments  
21    erroneously collected;

22    (2) Service performed with respect to which unemploy-  
23    ment compensation is payable under the Railroad Unem-  
24    ployment Insurance Act and service with respect to which  
25    unemployment benefits are payable under an unemploy-  
26    ment compensation system for maritime employees  
27    established by an act of Congress. The commissioner may

28 enter into agreements with the proper agency established  
29 under an act of Congress to provide reciprocal treatment  
30 to individuals who, after acquiring potential rights to  
31 unemployment compensation under an act of Congress, or  
32 who have, after acquiring potential rights to unemploy-  
33 ment compensation under an act of Congress, acquired  
34 rights to benefit under this chapter. Such agreement shall  
35 become effective ten days after the publications which  
36 shall comply with the general rules of the department;

37 (3) Service performed by an individual in agricultural  
38 labor, except as provided in subdivision (12), section  
39 sixteen of this article, the definition of "employment". For  
40 purposes of this subdivision, the term "agricultural labor"  
41 includes all services performed:

42 (A) On a farm, in the employ of any person, in connec-  
43 tion with cultivating the soil, or in connection with raising  
44 or harvesting any agricultural or horticultural commodity,  
45 including the raising, shearing, feeding, caring for,  
46 training and management of livestock, bees, poultry and  
47 fur-bearing animals and wildlife;

48 (B) In the employ of the owner or tenant or other  
49 operator of a farm, in connection with the operation,  
50 management, conservation, improvement or maintenance  
51 of the farm and its tools and equipment, or in salvaging  
52 timber or clearing land of brush and other debris left by a  
53 hurricane, if the major part of the service is performed on  
54 a farm;

55 (C) In connection with the production or harvesting of  
56 any commodity defined as an agricultural commodity in  
57 section fifteen (g) of the Agricultural Marketing Act, as  
58 amended, as codified in 12 U.S.C. §1141j, subsection (g),  
59 or in connection with the ginning of cotton, or in connec-  
60 tion with the operation or maintenance of ditches, canals,  
61 reservoirs or waterways, not owned or operated for profit,  
62 used exclusively for supplying and storing water for  
63 farming purposes;

64 (D) (i) In the employ of the operator of a farm in han-  
65 dling, planting, drying, packing, packaging, processing,  
66 freezing, grading, storing or delivering to storage or to  
67 market or to a carrier for transportation to market, in its  
68 unmanufactured state, any agricultural or horticultural  
69 commodity; but only if the operator produced more than  
70 one half of the commodity with respect to which the  
71 service is performed; or (ii) in the employ of a group of  
72 operators of farms (or a cooperative organization of which  
73 the operators are members) in the performance of service  
74 described in subparagraph (i) of this paragraph, but only  
75 if the operators produced more than one half of the  
76 commodity with respect to which the service is performed;  
77 but the provisions of subparagraphs (i) and (ii) of this  
78 paragraph are not applicable with respect to service  
79 performed in connection with commercial canning or  
80 commercial freezing or in connection with any agricul-  
81 tural or horticultural commodity after its delivery to a  
82 terminal market for distribution for consumption;

83 (E) On a farm operated for profit if the service is not in  
84 the course of the employer's trade or business or is domes-  
85 tic service in a private home of the employer. As used in  
86 this subdivision, the term "farm" includes stock, dairy,  
87 poultry, fruit, fur-bearing animals, truck farms, planta-  
88 tions, ranches, greenhouses, ranges and nurseries, or other  
89 similar land areas or structures used primarily for the  
90 raising of any agricultural or horticultural commodities;

91 (4) Domestic service in a private home except as pro-  
92 vided in subdivision (13), section sixteen of this article, the  
93 definition of "employment";

94 (5) Service performed by an individual in the employ of  
95 his or her son, daughter or spouse;

96 (6) Service performed by a child under the age of  
97 eighteen years in the employ of his or her father or  
98 mother;

99       (7) Service as an officer or member of a crew of an  
100 American vessel, performed on or in connection with the  
101 vessel, if the operating office, from which the operations  
102 of the vessel operating on navigable waters within or  
103 without the United States are ordinarily and regularly  
104 supervised, managed, directed and controlled, is without  
105 this state;

106       (8) Service performed by agents of mutual fund broker-  
107 dealers or insurance companies, exclusive of industrial  
108 insurance agents, or by agents of investment companies,  
109 who are compensated wholly on a commission basis;

110       (9) Service performed: (A) In the employ of a church or  
111 convention or association of churches, or an organization  
112 which is operated primarily for religious purposes and  
113 which is operated, supervised, controlled or principally  
114 supported by a church or convention or association of  
115 churches; or (B) by a duly ordained, commissioned or  
116 licensed minister of a church in the exercise of his or her  
117 ministry or by a member of a religious order in the  
118 exercise of duties required by the order; or (C) by an  
119 individual receiving rehabilitation or remunerative work  
120 in a facility conducted for the purpose of carrying out a  
121 program of either: (i) rehabilitation for individuals whose  
122 earning capacity is impaired by age or physical or mental  
123 deficiency or injury; or (ii) providing remunerative work  
124 for individuals who because of their impaired physical or  
125 mental capacity cannot be readily absorbed in the compet-  
126 itive labor market: *Provided*, That this exemption does  
127 not apply to services performed by individuals if they are  
128 not receiving rehabilitation or remunerative work on  
129 account of their impaired capacity; or (D) as part of an  
130 unemployment work-relief or work-training program  
131 assisted or financed, in whole or in part, by any federal  
132 agency or an agency of a state or political subdivision  
133 thereof, by an individual receiving the work relief or work  
134 training; or (E) by an inmate of a custodial or penal  
135 institution;

136 (10) Service performed in the employ of a school, college  
137 or university, if the service is performed: (A) By a student  
138 who is enrolled and is regularly attending classes at the  
139 school, college or university; or (B) by the spouse of a  
140 student, if the spouse is advised, at the time the spouse  
141 commences to perform the service, that: (i) The employ-  
142 ment of the spouse to perform the service is provided  
143 under a program to provide financial assistance to the  
144 student by the school, college or university; and (ii) the  
145 employment will not be covered by any program of  
146 unemployment insurance;

147 (11) Service performed by an individual who is enrolled  
148 at a nonprofit or public educational institution which  
149 normally maintains a regular faculty and curriculum and  
150 normally has a regularly organized body of students in  
151 attendance at the place where its educational activities are  
152 carried on as a student in a full-time program, taken for  
153 credit at the institution, which combines academic  
154 instruction with work experience, if the service is an  
155 integral part of the program, and the institution has so  
156 certified to the employer, except that this subdivision does  
157 not apply to service performed in a program established  
158 for or on behalf of an employer or group of employers;

159 (12) Service performed in the employ of a hospital, if the  
160 service is performed by a patient of the hospital, as  
161 defined in this article;

162 (13) Service in the employ of a governmental entity  
163 referred to in subdivision (9), section sixteen of this  
164 article, the definition of "employment" if the service is  
165 performed by an individual in the exercise of duties: (A)  
166 As an elected official; (B) as a member of a legislative  
167 body, or a member of the judiciary, of a state or political  
168 subdivision; (C) as a member of the state national guard or  
169 air national guard; (D) as an employee serving on a  
170 temporary basis in case of fire, storm, snow, earthquake,  
171 flood or similar emergency; (E) in a position which, under

172 or pursuant to the laws of this state, is designated as: (i)  
173 A major nontenured policymaking or advisory position; or  
174 (ii) a policymaking or advisory position the performance  
175 of the duties of which ordinarily does not require more  
176 than eight hours per week;

177 (14) Service performed by a bona fide partner of a  
178 partnership for the partnership; and

179 (15) Service performed by a person for his or her own  
180 sole proprietorship.

181 Notwithstanding the foregoing exclusions from the  
182 definition of "employment", services, except agricultural  
183 labor and domestic service in a private home, are in  
184 employment if with respect to the services a tax is re-  
185 quired to be paid under any federal law imposing a tax  
186 against which credit may be taken for contributions  
187 required to be paid into a state unemployment compensa-  
188 tion fund, or which as a condition for full tax credit  
189 against the tax imposed by the federal Unemployment Tax  
190 Act are required to be covered under this chapter.

#### **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

##### **§21A-6-16. Child support intercept of unemployment benefits.**

1 (a) An individual filing a new claim for unemployment  
2 compensation shall, at the time of filing such claim,  
3 disclose whether or not the individual owes child support  
4 obligations as hereafter defined under subsection (g) of  
5 this section. If any such individual discloses that he or she  
6 owes child support obligations and is determined to be  
7 eligible for unemployment compensation, the commis-  
8 sioner shall notify the child support enforcement division  
9 of the department of health and human resources that the  
10 individual has been determined to be eligible for unem-  
11 ployment compensation.

12 (b) The commissioner shall deduct and withhold from  
13 any unemployment compensation payable to an individual  
14 that owes such child support obligations as defined under



15 subsection (g) of this section:

16 (1) The amount specified by the individual to the  
17 commissioner to be deducted and withheld under this  
18 subsection, if neither subdivision (2) nor subdivision (3) is  
19 applicable;

20 (2) The amount, if any, determined pursuant to an  
21 agreement submitted to the commissioner under section  
22 454 (19)(B)(i) of the Social Security Act, (B)(i), by the  
23 department of health and human resources, unless subdi-  
24 vision (3) is applicable; or

25 (3) Any amount otherwise required to be deducted and  
26 withheld from such unemployment compensation pursu-  
27 ant to legal process, as that term is defined in section 459  
28 (i)(5) of the Social Security Act, as codified in  
29 42 U.S.C. §659 (i)(5), properly served upon the commis-  
30 sioner.

31 (c) Any amount deducted and withheld under subsection  
32 (b) of this section shall be paid by the commissioner to the  
33 child support enforcement division of the department of  
34 health and human resources.

35 (d) Any amount deducted and withheld under subsection  
36 (b) of this section shall for all purposes be treated as if it  
37 were paid to the individual as unemployment compensa-  
38 tion and paid by such individual to the child support  
39 enforcement division of the department of health and  
40 human resources in satisfaction of the individual's child  
41 support obligations.

42 (e) For purposes of subsections (a) through (d) of this  
43 section, the term "unemployment compensation" means  
44 any compensation payable under this chapter, including  
45 amounts payable by the commissioner pursuant to an  
46 agreement under any federal law providing for compensa-  
47 tion, assistance or allowances with respect to unemploy-  
48 ment.

49 (f) This section applies only if appropriate arrangements  
50 have been made for reimbursement by the child support  
51 enforcement division of the department of health and  
52 human resources for the administrative costs incurred by  
53 the commissioner under this section which are attribut-  
54 able to child support obligations being enforced by the  
55 state or local child support enforcement agency.

56 (g) The term "child support obligations" means, for  
57 purposes of these provisions, only obligations which are  
58 being enforced pursuant to a plan described in section 454  
59 of the Social Security Act, as codified in 42 U.S.C. §654,  
60 which has been approved by the secretary of health and  
61 human services under Part D of Title IV of the Social  
62 Security Act, as codified in 42 U.S.C. §§651 through 669b.

**ARTICLE 9. UNEMPLOYMENT COMPENSATION ADMINISTRATION  
FUND.**

**§21A-9-9. Reed Act appropriations.**

1 (a) There is hereby appropriated out of funds made  
2 available to this state under section 903 of the Social  
3 Security Act, as amended, as codified in 42 U.S.C. §1103,  
4 the sum of four hundred thirty-four thousand five hun-  
5 dred seventy-four dollars and eighty-four cents, or so  
6 much thereof as may be necessary, to be used, for the  
7 purpose of property improvements and/or automation  
8 enhancements of the unemployment insurance or job  
9 service activities within the bureau of employment  
10 programs.

11 (b) No part of the money hereby appropriated may be  
12 obligated after the ninth day of March, two thousand.

13 (c) The amount obligated pursuant to this section shall  
14 not exceed at any time the amount by which: (1) The  
15 aggregate of the amounts transferred to the account of  
16 this state pursuant to section 903 of the Social Security  
17 Act, as codified in 42 U.S.C. §1103; exceeds (2) the aggre-  
18 gate of the amounts obligated for administration and paid

19 out for benefits and required by law to be charged against  
20 the amounts transferred to the account of this state.

21 (d) This section is effective on and after the ninth day of  
22 March, one thousand nine hundred ninety-eight.

23 (e) Notwithstanding any other provision of this section,  
24 moneys credited to the state under section 903 of the  
25 Social Security Act, as codified in 42 U.S.C. §1103, with  
26 respect to federal fiscal years 1999, 2000 and 2001 are  
27 authorized to be used only for the administration of the  
28 state's unemployment compensation program.

#### **ARTICLE 10. GENERAL PROVISIONS.**

##### **§21A-10-2. Assignment of benefits invalid; exemption from process; exception.**

1 (a) An assignment, pledge or encumbrance of any benefit  
2 due or payable under this chapter is invalid. Right to  
3 benefits is exempt from levy, execution, attachment or  
4 other processes for the collection of debt. Benefits re-  
5 ceived by an individual so long as they are not mingled  
6 with other funds of the recipient, are exempt from process  
7 for the collection of a debt. The waiver of any exemption  
8 provided in this section is void.

9 (b) The provisions of subsection (a) of this section do not  
10 apply to:

11 (1) The assignment or collection of child support pay-  
12 ments under the provisions of section sixteen, article six  
13 of this chapter;

14 (2) A levy by the internal revenue service authorized by  
15 26 U.S.C. §6331 subsection (h); or

16 (3) Collection of debts incurred for necessities furnished  
17 to an individual, the individual's spouse or dependents,  
18 during a period of unemployment.

##### **§21A-10-19. Disclosure of information to child support agen- cies.**

1 (a) The bureau of employment programs shall disclose,  
2 upon request, to officers or employees of any state or local  
3 child support enforcement agency, and to employees of the  
4 federal secretary of health and human services, any wage  
5 and benefit information with respect to individuals which  
6 is contained in its records.

7 The term “state or local child support enforcement  
8 agency” means any agency of a state or political subdivi-  
9 sion thereof operating pursuant to a plan described in  
10 section 453, 453a or 454 of the Social Security Act, as  
11 codified in 42 U.S.C. §§653, 653a and 654 which has been  
12 approved by the secretary of health and human services  
13 under Part D, Title IV of the Social Security Act, as  
14 codified in 42 U.S.C. §§651 through 669b.

15 (b) The requesting agency shall agree that the informa-  
16 tion is to be used only for the purpose of establishing and  
17 collecting child support obligations from, and locating,  
18 individuals owing the obligations which are being en-  
19 forced pursuant to a plan described in section 453, 453a or  
20 454 of the Social Security Act, as codified in 42 U.S.C.  
21 §§653, 653a and 654 respectively, which has been ap-  
22 proved by the secretary of health and human services  
23 under Part D, Title IV of the Social Security Act, as  
24 codified in 42 U.S.C. §§651 through 669b, or as otherwise  
25 authorized in 42 U.S.C. §653 (i)(1), (i)(3) and (j).

26 (c) The information may not be released unless the  
27 requesting agency agrees to reimburse the costs involved  
28 for furnishing the information.

29 (d) In addition to the requirements of this section, all  
30 other requirements with respect to confidentiality of  
31 information obtained in the administration of this chapter  
32 and the sanctions imposed on improper disclosure shall  
33 apply to the use of the information by officers, and  
34 employees of child support enforcement agencies. A state  
35 or local child support enforcement agency may disclose to  
36 any agent of the agency that is under contract with the

37 agency to carry out the purposes described in subsection  
38 (b) of this section, wage information that is disclosed to an  
39 officer or employee of the agency under subsection (a) of  
40 this section. Any agent of a state or local child support  
41 agency that receives wage information under this para-  
42 graph shall comply with the safeguards established to  
43 keep the information confidential and is subject to the  
44 criminal provisions of subsection (g), section eleven of this  
45 article.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
.....  
Chairman Senate Committee.

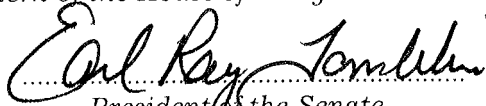
  
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Chairman House Committee

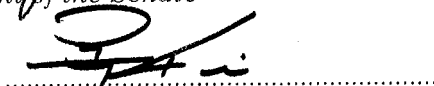
Originated in the Senate.

In effect from passage.

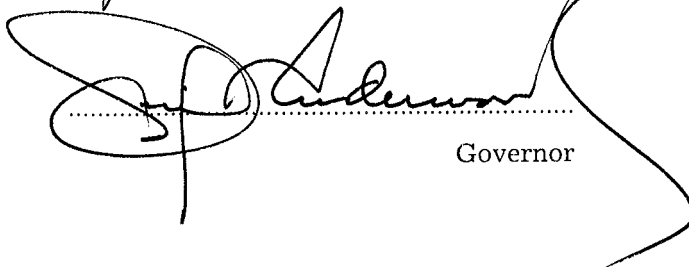
  
.....  
Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates

The within approved this the 1<sup>st</sup>  
day of April, 1998.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/30/98

Time

9:25am