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Regular Session 2002

ENROLLED
Committee Substitute for
SENATE BILL NO. 497

(By Senator Ungare)

PASSED March 8, 2002

In Effect ninety days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 497

(SENATOR UNGER, original sponsor)

[Passed March 8, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections seventeen and twenty-eight, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to eligibility for unemployment compensation; clarifying the eligibility for benefits of certain members of the state national guard and the air national guard; and excluding appointed election officials from eligibility for benefits.

Be it enacted by the Legislature of West Virginia:

That sections seventeen and twenty-eight, 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, all to read as follows:
ARTICLE 1A. DEFINITIONS.

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

The term "employment" does not include:

(1) Service performed in the employ of the United States or any instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law are applicable to the instrumentalities and to service performed for the instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state is not certified for any year by the secretary of labor under 26 U.S.C. §3404, subsection (c), the payments required of the instrumentalities with respect to the year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter with respect to payments erroneously collected;

(2) Service performed with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after the publications which shall comply with the general rules of the department;
(3) Service performed by an individual in agricultural labor, except as provided in subdivision (12), section sixteen of this article, the definition of "employment". For purposes of this subdivision, the term "agricultural labor" includes all services performed:

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

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

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, as codified in 12 U.S.C. §114lj, subsection (g), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one half of the commodity with respect to which the service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which
the operators are members) in the performance of service described in subparagraph (i) of this paragraph, but only if the operators produced more than one half of the commodity with respect to which the service is performed; but the provisions of subparagraphs (i) and (ii) of this paragraph are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

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

(4) Domestic service in a private home except as provided in subdivision (13), section sixteen of this article, the definition of "employment";

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

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

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

(8) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;
(9) Service performed: (A) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (B) by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order; or (C) by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of either: (i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or (ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market. Provided, That this exemption does not apply to services performed by individuals if they are not receiving rehabilitation or remunerative work on account of their impaired capacity; or (D) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training; or (E) by an inmate of a custodial or penal institution;

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

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

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

(13) Service in the employ of a governmental entity
referred to in subdivision (9), section sixteen of this article,
the definition of “employment”, if the service is performed
by an individual in the exercise of duties: (A) As an elected
official; (B) as a member of a legislative body, or a member
of the judiciary, of a state or political subdivision; (C) as a
member of the state national guard or air national guard,
except as provided in section twenty-eight of this article;
(D) as an employee serving on a temporary basis in case of
fire, storm, snow, earthquake, flood or similar emergency;
(E) in a position which, under or pursuant to the laws of
this state, is designated as: (i) A major nontenured
policymaking or advisory position; or (ii) a policymaking
or advisory position the performance of the duties of
which ordinarily does not require more than eight hours
per week; or (F) as any election official appointed to serve
during any municipal, county or state election;

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

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

Notwithstanding the foregoing exclusions from the
definition of “employment”, services, except agricultural
labor and domestic service in a private home, are in employment if with respect to the services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act are required to be covered under this chapter.


(a) "Wages" means all remuneration for personal service, including commissions, gratuities customarily received by an individual in the course of employment from persons other than the employing unit, as long as such gratuities equal or exceed an amount of not less than twenty dollars each month and which are required to be reported to the employer by the employee, bonuses, and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service. The term wages includes remuneration for service rendered to the state as a member of the state national guard or air national guard only when serving on a temporary basis pursuant to a call made by the governor under sections one and two, article one-d, chapter fifteen of this code.

(b) The term "wages" does not include:

(1) That part of the remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this section, the term "employment" includes service constituting employment under any unemployment compensation law of another state; or
which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter; and, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his or her computation of base period wages: \(\text{Provided, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of eight thousand dollars herein referred to.}\) In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: \(\text{Provided, however, That if the definition of the term “wages” as contained in Section 3306(b) of the Internal Revenue Code of 1954, as amended, is amended to include remuneration in excess of eight thousand dollars, paid to an individual by an employer under the federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this chapter or his or her predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the federal Unemployment Tax Act;}\)

\(\text{(2) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an individual in its employ or any of his or her dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their de-}\)
pendents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of: (A) Retirement; or (B) sickness or accident disability payments made to an employee under an approved state workers' compensation law; or (C) medical or hospitalization expenses in connection with sickness or accident disability; or (D) death;

(3) Any payment made by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made by an employer to, or on behalf of, an individual in its employ or his or her beneficiary: (A) From or to a trust described in Section 401(a) which is exempt from tax under Section 501(a) of the federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under Section 3101 of the federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home or the employer of agricultural labor;

(7) Remuneration paid by an employer in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;
(8) Any payment (other than vacation or sick pay) made by an employer to an individual in its employ after the month in which he or she attains the age of sixty-five, if he or she did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his or her period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed; and

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, That the term totally or partially unemployed does not include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation; or (C) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

(c) The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

Governor