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2011 MAR 24 PM 4: 22

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2517**

(By Delegates Perry, Boggs and Ellem)



Passed March 11, 2011

In Effect Ninety Days From Passage

HB 2517

FILED

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**E N R O L L E D**

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**H. B. 2517**

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(BY DELEGATES PERRY, BOGGS AND ELLEM)

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[Passed March 11, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §23-4-1e of the Code of West Virginia, 1931, as amended, and to amend and reenact §25-7-14 and §25-7-16 of said code, all relating to providing workers compensation benefits for persons participating in the prison industry enhancement certification program; creating exception for prohibition of purchase of temporary total disability benefits coverage for persons participating in the program; authorizing purchase of workers compensation insurance by commissioner of the division of corrections for prison and jail inmates participating in the prison certification program; and authorizing purchase of workers compensation insurance by the director of juvenile services for persons under his or her supervision that are participating in the prison certification program for incurred while confined.

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

That §23-4-1e of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that §25-7-14 and §25-7-16 of said code be amended and reenacted, all to read as follows:

**CHAPTER 23. WORKERS' COMPENSATION.**

**ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

**§23-4-1e. Temporary total disability benefits not to be paid for periods of correctional center or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while confined.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, no person shall be jurisdictionally entitled to  
3 temporary total disability benefits for that period of time in  
4 excess of three days during which that person is confined in  
5 a state correctional facility or jail: *Provided*, That  
6 confinement shall not affect the claimant's eligibility for  
7 payment of expenses: *Provided, however*, That this  
8 subsection is applicable only to injuries and diseases incurred  
9 prior to any period of confinement. Upon release from  
10 confinement, the payment of benefits for the remaining  
11 period of temporary total disability shall be made if justified  
12 by the evidence and authorized by order of the commission,  
13 successor to the commission, other private carrier or self-  
14 insured employer, whichever is applicable.

15 (b) Notwithstanding any provision of this code to the  
16 contrary, no person confined in a state correctional facility or  
17 jail who suffers injury or a disease in the course of and  
18 resulting from his or her work during the period of  
19 confinement which work is imposed by the administration of  
20 the state correctional facility or jail and is not suffered during

21 the person's usual employment with his or her usual  
22 employer when not confined shall receive benefits under the  
23 provisions of this chapter for the injury or disease: *Provided,*  
24 That individuals otherwise confined in a state correctional  
25 facility or jail, or at a juvenile services facility, and working  
26 in a program authorized by sections fourteen or sixteen of  
27 article seven, chapter twenty-five of this code, shall be  
28 eligible to receive benefits under the provisions of this  
29 chapter while working in an authorized program. The  
30 coverage for benefits may be obtained either by the private  
31 entity or by agreement with the state agency as specified in  
32 subsection (5), subsection (a) of sections fourteen and sixteen  
33 of article seven, chapter twenty-five of this code.

**CHAPTER 25. DIVISION OF CORRECTIONS.**

**ARTICLE 7. CORRECTIONAL INDUSTRIES ACT OF 2009.**

**§25-7-14. Agreement between commissioner and private person  
for manufacturing pursuant to Prison Industry  
Enhancement (PIE) Certification Program; wages;  
inmate participation on voluntary basis; and  
workers' compensation.**

1 (a) The Commissioner of the Division of Corrections and  
2 a private person or entity may enter into an agreement to  
3 establish a program for inmates to manufacture articles and  
4 products pursuant to the federal Prison Industry Enhancement  
5 (PIE) Certification Program. The agreement shall include the  
6 following:

7 (1) That a participating inmate be paid at a rate not less  
8 than that paid for similar work in the same locality's private  
9 sector, including applicable wage increases for overtime  
10 work;

11 (2) That an inmate's work or participation in a PIE  
12 certification program shall be only on a voluntary basis and  
13 only after the inmate has been informed of the conditions of  
14 participation;

15 (3) That, in the discretion of the commissioner or the  
16 commissioner's designee, any inmate may be removed from  
17 or refused participation in the PIE certification program;

18 (4) That the agreement will not result in the displacement  
19 of civilian workers; and

20 (5) That the private person or entity shall provide for  
21 workers' compensation insurance, or equivalent coverage, to  
22 inmates participating in the PIE certification program:  
23 *Provided*, That the commissioner of the division of  
24 corrections may provide workers compensation or equivalent  
25 insurance coverage for persons participating in the PIE  
26 certification program, if reimbursement is made to the  
27 division by the private person or entity for all costs of the  
28 workers' compensation insurance or equivalent coverage, as  
29 a condition of the agreement.

30 (b) The provisions of this section shall not apply to  
31 correctional industry service contracts under section four of  
32 this article or to operations authorized in section three of this  
33 article that are restricted from sale in the open market.

34 (c) A commercial or agricultural enterprise established  
35 under this chapter is a private enterprise subject to federal  
36 and state laws governing the operation of similar enterprises.

37 (d) The earnings of an inmate participating in a PIE  
38 certification program under this article shall be deposited in  
39 the Inmate Trust Account with the Division of Corrections.  
40 The earnings shall be paid to the inmate after withholding of

41 state, federal and local taxes, and after other deductions  
42 provided for in this chapter, including expenses for room and  
43 board: *Provided*, That the commissioner shall adopt policies  
44 and procedures for the additional deduction from an inmate's  
45 earnings of not less than five percent nor more than twenty  
46 percent, to be paid into the Crime Victims Compensation Fund  
47 created by article two-a, chapter fourteen of this code. Total  
48 deductions shall not exceed eighty percent of the inmate's  
49 gross earnings. Earnings deposited by the commissioner, with  
50 accrued interest, shall be paid to the inmate no later than at the  
51 inmate's discharge or release on parole.

52 (e) Spousal support or child support shall be deducted  
53 from an inmate's earnings as directed by the inmate or by  
54 court order. If the inmate's dependents are receiving  
55 Temporary Assistance for Needy Families (TANF), the  
56 disbursements shall be made to the Bureau for Child Support  
57 Enforcement or any other state's public assistance agency.

**§25-7-16. Agreement between director and private person for  
manufacturing pursuant to Prison Industry  
Enhancement (PIE) Certification Program;  
wages; resident participation on voluntary basis;  
workers' compensation and unemployment  
compensation.**

1 (a) The Director of the Division of Juvenile Services and  
2 a private person or entity may enter into an agreement to  
3 establish a program for residents to manufacture articles and  
4 products pursuant to the federal Prison Industry Enhancement  
5 (PIE) Certification Program. The agreement shall include the  
6 following:

7 (1) That a participating resident be paid at a rate not less  
8 than that paid for similar work in the same locality's private  
9 sector, including applicable wage increases for overtime work;

10 (2) That a resident's work or participation in a PIE  
11 certification program shall be only on a voluntary basis and  
12 only after the resident has been informed of the conditions of  
13 participation;

14 (3) That, in the discretion of the director or the director's  
15 designee, any resident may be removed from or refused  
16 participation in the PIE certification program;

17 (4) That the agreement will not result in the displacement  
18 of civilian workers; and

19 (5) That the private person or entity shall provide for  
20 workers' compensation insurance, or equivalent coverage, to  
21 residents participating in the PIE certification program:  
22 *Provided*, That, the director of the division of juvenile  
23 services may provide workers compensation or equivalent  
24 insurance coverage for persons participating in the PIE  
25 certification program, if reimbursement is made to the  
26 division by the private person or entity for all costs of the  
27 workers' compensation insurance or equivalent coverage, as  
28 a condition of the agreement.

29 (b) The provisions of this section shall not apply to  
30 correctional industry service contracts provided for in section  
31 four of this article or to operations authorized by section three  
32 of this article that are restricted from sale in the open market.

33 (c) A commercial or agricultural enterprise established  
34 under this chapter is a private enterprise subject to federal  
35 and state laws governing the operation of similar enterprises.

36 (d) The earnings of a resident participating in a PIE  
37 certification program under this article shall be deposited in  
38 the Resident Trust Account with the Division of Juvenile

39 Services. The earnings shall be paid to the resident after  
40 withholding of state, federal and local taxes, and after other  
41 deductions provided for in this chapter. The expenses of  
42 room and board, as fixed by the director and the budget  
43 agency for facilities operated by the director or, if the  
44 resident is housed in a facility not operated by the director,  
45 the amount paid by the Division of Juvenile Services to the  
46 operator of the facility or other appropriate authority for  
47 room and board, and other incidentals as established by  
48 agreement between the Division of Juvenile Services and the  
49 appropriate authority, shall be deducted: *Provided*, That the  
50 director shall adopt policies and procedures for the additional  
51 deduction from a resident's earnings of not less than five  
52 percent nor more than twenty percent, to be paid into the  
53 Crime Victims Compensation Fund created by article two-a,  
54 chapter fourteen of this code. Total deductions shall not  
55 exceed eighty percent of the resident's gross earnings.  
56 Earnings deposited by the director, with accrued interest,  
57 shall be paid to the resident no later than at the resident's  
58 discharge or release on parole.

59 When special circumstances warrant, or for just cause,  
60 the director may waive room and board charges by a facility  
61 operated by the Division of Juvenile Services or, if the  
62 resident is housed in a facility not operated by the Division of  
63 Juvenile Services, authorize payment of room and board  
64 charges from other available funds.

65 (e) Spousal support or child support shall be deducted  
66 from a resident's earnings as directed by the resident or by  
67 court order. If the resident's dependents are receiving  
68 Temporary Assistance for Needy Families (TANF), the  
69 disbursements shall be made to the Bureau for Child Support  
70 Enforcement or any other state's public assistance agency.



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

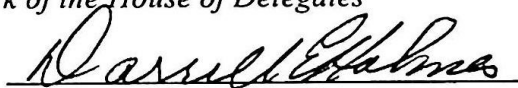
  
Chairman, House Committee

  
Chairman, Senate Committee


Originating in the House.

To take effect ninety days from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

  
Acting President of the Senate

The within is approved this the 24<sup>th</sup>  
day of March, 2011.

  
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2011

Time 110 AM