WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

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ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 2517

(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.

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

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

(b) Notwithstanding any provision of this code to the contrary, no person confined in a state correctional facility or jail who suffers injury or a disease in the course of and resulting from his or her work during the period of confinement which work is imposed by the administration of the state correctional facility or jail and is not suffered during
the person’s usual employment with his or her usual
employer when not confined shall receive benefits under the
provisions of this chapter for the injury or disease: Provided,
That individuals otherwise confined in a state correctional
facility or jail, or at a juvenile services facility, and working
in a program authorized by sections fourteen or sixteen of
article seven, chapter twenty-five of this code, shall be
eligible to receive benefits under the provisions of this
chapter while working in an authorized program. The
coverage for benefits may be obtained either by the private
entity or by agreement with the state agency as specified in
subsection (5), subsection (a) of sections fourteen and sixteen
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.

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

(1) That a participating inmate be paid at a rate not less
than that paid for similar work in the same locality’s private
sector, including applicable wage increases for overtime
work;
(2) That an inmate’s work or participation in a PIE certification program shall be only on a voluntary basis and only after the inmate has been informed of the conditions of participation;

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

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

(5) That the private person or entity shall provide for workers’ compensation insurance, or equivalent coverage, to inmates participating in the PIE certification program: Provided, That the commissioner of the division of corrections may provide workers compensation or equivalent insurance coverage for persons participating in the PIE certification program, if reimbursement is made to the division by the private person or entity for all costs of the workers’ compensation insurance or equivalent coverage, as a condition of the agreement.

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

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

(d) The earnings of an inmate participating in a PIE certification program under this article shall be deposited in the Inmate Trust Account with the Division of Corrections. The earnings shall be paid to the inmate after withholding of
state, federal and local taxes, and after other deductions provided for in this chapter, including expenses for room and board: Provided, That the commissioner shall adopt policies and procedures for the additional deduction from an inmate’s earnings of not less than five percent nor more than twenty percent, to be paid into the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code. Total deductions shall not exceed eighty percent of the inmate’s gross earnings. Earnings deposited by the commissioner, with accrued interest, shall be paid to the inmate no later than at the inmate’s discharge or release on parole.

(c) Spousal support or child support shall be deducted from an inmate’s earnings as directed by the inmate or by court order. If the inmate’s dependents are receiving Temporary Assistance for Needy Families (TANF), the disbursements shall be made to the Bureau for Child Support 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.

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

1. That a participating resident be paid at a rate not less than that paid for similar work in the same locality’s private sector, including applicable wage increases for overtime work;
(2) That a resident's work or participation in a PIE certification program shall be only on a voluntary basis and only after the resident has been informed of the conditions of participation;

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

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

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

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

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

(d) The earnings of a resident participating in a PIE certification program under this article shall be deposited in the Resident Trust Account with the Division of Juvenile
Services. The earnings shall be paid to the resident after withholding of state, federal and local taxes, and after other deductions provided for in this chapter. The expenses of room and board, as fixed by the director and the budget agency for facilities operated by the director or, if the resident is housed in a facility not operated by the director, the amount paid by the Division of Juvenile Services to the operator of the facility or other appropriate authority for room and board, and other incidentals as established by agreement between the Division of Juvenile Services and the appropriate authority, shall be deducted: Provided, That the director shall adopt policies and procedures for the additional deduction from a resident's earnings of not less than five percent nor more than twenty percent, to be paid into the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code. Total deductions shall not exceed eighty percent of the resident's gross earnings. Earnings deposited by the director, with accrued interest, shall be paid to the resident no later than at the resident's discharge or release on parole.

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

(c) Spousal support or child support shall be deducted from a resident's earnings as directed by the resident or by court order. If the resident's dependents are receiving Temporary Assistance for Needy Families (TANF), the disbursements shall be made to the Bureau for Child Support Enforcement or any other state's public assistance agency.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

[Signatures]

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 24th day of March, 2011.

Governor