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REGULAR SESSION, 1997



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 372

(By Senators TOUBLIN, MR. PRESIDENT, AND BUCKALOW,
By Request of the Executive)



PASSED APRIL 12, 1997

In Effect NINETY DAYS FROM Passage

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STATE OF WEST VIRGINIA

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FOR

Senate Bill No. 372

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND BUCKALEW,
BY REQUEST OF THE EXECUTIVE)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections fifteen, sixteen and seventeen, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article six of said chapter by adding thereto a new section, designated section seventeen; and to amend and reenact sections eleven and nineteen, article ten of said chapter, all relating generally to unemployment compensation; clarifying definitions of employer and employment; providing that agricultural labor if performed by certain aliens is not employment; authorizing food stamp overissuance intercept of unemployment benefits; codifying reporting requirements and required

information; providing exemptions to confidentiality requirements; allowing use of information; and clarifying that breach of confidentiality provisions are criminal violations.

Be it enacted by the Legislature of West Virginia:

That sections fifteen, sixteen and 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 article six of said chapter be amended by adding thereto a new section, designated section seventeen; and that sections eleven and nineteen, article ten of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1A. DEFINITIONS.

§21A-1A-15. Employer.

1 "Employer" means:

2 (1) Any employing unit which is or becomes a liable
3 employer under any federal unemployment tax act;

4 (2) Any employing unit which has acquired or acquires
5 the organization, trade or business, or substantially all the
6 assets thereof, of an employing unit which at the time of
7 such acquisition was an employer subject to this chapter;

8 (3) For the effective period of its election pursuant to
9 section three, article five of this chapter, any employing
10 unit which has elected to become subject to this chapter;

11 (4) Any employing unit which: (A) In any calendar
12 quarter in either the current or preceding calendar year
13 paid for service in employment wages of one thousand five
14 hundred dollars or more; or (B) for some portion of a day
15 in each of twenty different calendar weeks, whether or not
16 the weeks were consecutive, in either the current or the
17 preceding calendar year had in employment at least one
18 individual (irrespective of whether the same individual
19 was in employment in each day) except as provided in
20 subdivisions (7) and (8) of this section;

21 (5) Any employing unit for which service in employment,
22 as defined in subdivision (9), section sixteen of this article,
23 the definition of "employment" in this article is per-

24 formed;

25 (6) Any employing unit for which service in employment,
26 as defined in subdivision (10), section sixteen of this
27 article, the definition of “employment” in this article is
28 performed;

29 (7) Any employing unit for which agricultural labor, as
30 defined in subdivision (12), section sixteen of this article,
31 the definition of “employment”, is performed; or

32 (8) Any employing unit for which domestic service in
33 employment, as defined in subdivision (13), section sixteen
34 of this article, the definition of “employment”, is per-
35 formed.

§21A-1A-16. Employment.

1 “Employment”, subject to the other provisions of this
2 article, means:

3 (1) Service, including service in interstate commerce,
4 performed for wages or under any contract of hire, written
5 or oral, express or implied;

6 (2) Any service performed by an employee, as defined in
7 Section 3306(i) of the federal Unemployment Tax Act,
8 including service in interstate commerce;

9 (3) Any service performed, including service in interstate
10 commerce, by any officer of a corporation;

11 (4) An individual’s entire service, performed within or
12 both within and without this state if: (A) The service is
13 localized in this state; or (B) the service is not localized in
14 any state but some of the service is performed in this state
15 and: (i) The base of operations, or, if there is no base of
16 operations, then the place from which the service is
17 directed or controlled, is in this state; or (ii) the base of
18 operations or place from which the service is directed or
19 controlled is not in any state in which some part of the
20 service is performed but the individual’s residence is in
21 this state;

22 (5) Service not covered under subdivision (4) of this
23 section and performed entirely without this state with

24 respect to no part of which contributions are required and
25 paid under an unemployment compensation law of any
26 other state or of the federal government, is employment
27 subject to this chapter if the individual performing the
28 services is a resident of this state and the commissioner
29 approves the election of the employing unit for whom the
30 services are performed that the entire service of the
31 individual is employment subject to this chapter;

32 (6) Service is localized within a state, if: (A) The service
33 is performed entirely within the state; or (B) the service is
34 performed both within and without the state, but the
35 service performed without the state is incidental to the
36 individual's service within this state, as, for example, is
37 temporary or transitory in nature or consists of isolated
38 transactions;

39 (7) Services performed by an individual for wages are
40 employment subject to this chapter unless and until it is
41 shown to the satisfaction of the commissioner that: (A)
42 The individual has been and will continue to be free from
43 control or direction over the performance of the services,
44 both under his or her contract of service and in fact; and
45 (B) the service is either outside the usual course of the
46 business for which the service is performed or that such
47 service is performed outside of all the places of business of
48 the enterprise for which such service is performed; and (C)
49 the individual is customarily engaged in an independently
50 established trade, occupation, profession or business;

51 (8) All service performed by an officer or member of the
52 crew of an American vessel (as defined in Section 305 of
53 an act of Congress entitled Social Security Act Amend-
54 ment of 1946, approved the tenth day of August, one
55 thousand nine hundred forty-six), on or in connection with
56 the vessel, provided that the operating office, from which
57 the operations of the vessel operating on navigable waters
58 within and without the United States is ordinarily and
59 regularly supervised, managed, directed and controlled, is
60 within this state;

61 (9) (A) Service performed by an individual in the employ
62 of this state or any of its instrumentalities (or in the

63 employ of this state and one or more other states or their
64 instrumentalities) for a hospital or institution of higher
65 education located in this state: *Provided*, That the service
66 is excluded from "employment" as defined in the federal
67 Unemployment Tax Act solely by reason of Section
68 3306(c)(7) of that act and is not excluded from "employ-
69 ment" under subdivision (9), section seventeen of this
70 article;

71 (B) Service performed in the employ of this state or any
72 of its instrumentalities or political subdivisions thereof or
73 any of its instrumentalities or any instrumentality of more
74 than one of the foregoing or any instrumentality of any
75 foregoing and one or more other states or political subdivi-
76 sions: *Provided*, That the service is excluded from
77 "employment" as defined in the federal Unemployment
78 Tax Act by Section 3306(c)(7) of that act and is not
79 excluded from "employment" under subdivision (13),
80 section seventeen of this article; and

81 (C) Service performed in the employ of a nonprofit
82 educational institution which is not an institution of
83 higher education;

84 (10) Service performed by an individual in the employ of
85 a religious, charitable, educational or other organization
86 but only if the following conditions are met:

87 (A) The service is excluded from "employment" as
88 defined in the federal Unemployment Tax Act solely by
89 reason of Section 3306(c)(8) of that act; and

90 (B) The organization had four or more individuals in
91 employment for some portion of a day in each of twenty
92 different weeks, whether or not the weeks were consecu-
93 tive, within either the current or preceding calendar year,
94 regardless of whether they were employed at the same
95 moment of time;

96 (11) Service of an individual who is a citizen of the
97 United States, performed outside the United States after
98 the thirty-first day of December, one thousand nine
99 hundred seventy-one, (except in Canada and in the case of
100 the Virgin Islands after the thirty-first day of December,

101 one thousand nine hundred seventy-one, and before the
102 first day of January, the year following the year in which
103 the secretary of labor approves for the first time an
104 unemployment insurance law submitted to him or her by
105 the Virgin Islands for approval) in the employ of an
106 American employer (other than service which is consid-
107 ered "employment" under the provisions of subdivision
108 (4), (5) or (6) of this section or the parallel provisions of
109 another state's law) if:

110 (A) The employer's principal place of business in the
111 United States is located in this state; or

112 (B) The employer has no place of business in the United
113 States, but: (i) The employer is an individual who is a
114 resident of this state; or (ii) the employer is a corporation
115 which is organized under the laws of this state; or (iii) the
116 employer is a partnership or a trust and the number of the
117 partners or trustees who are residents of this state is
118 greater than the number who are residents of any one
119 other state; or

120 (C) None of the criteria of paragraphs (A) and (B) of this
121 subdivision is met but the employer has elected coverage
122 in this state or, the employer having failed to elect cover-
123 age in any state, the individual has filed a claim for
124 benefits, based on the service, under the law of this state.

125 (D) An "American employer", for purposes of this
126 subdivision, means a person who is: (i) An individual who
127 is a resident of the United States; or (ii) a partnership if
128 two thirds or more of the partners are residents of the
129 United States; or (iii) a trust, if all of the trustees are
130 residents of the United States; or (iv) a corporation
131 organized under the laws of the United States or of any
132 state;

133 (12) Service performed by an individual in agricultural
134 labor as defined in subdivision (3), section seventeen of
135 this article when:

136 (A) The service is performed for a person who: (i)
137 During any calendar quarter in either the current or the
138 preceding calendar year paid remuneration in cash of

139 twenty thousand dollars or more to individuals employed
140 in agricultural labor including labor performed by an
141 alien referred to in paragraph (B) of this subdivision; or
142 (ii) for some portion of a day in each of twenty different
143 calendar weeks, whether or not the weeks were consecu-
144 tive, in either the current or the preceding calendar year,
145 employed in agricultural labor, including labor performed
146 by an alien referred to in paragraph (B) of this subdivi-
147 sion, ten or more individuals, regardless of whether they
148 were employed at the same moment of time;

149 (B) The service is not performed in agricultural labor if
150 performed by an individual who is an alien admitted to
151 the United States to perform service in agricultural labor
152 pursuant to Sections 214(e) and 101(a)(15)(H) of the
153 Immigration and Nationality Act;

154 (C) For the purposes of the definition of employment,
155 any individual who is a member of a crew furnished by a
156 crew leader to perform service in agricultural labor for
157 any other person shall be treated as an employee of the
158 crew leader: (i) If the crew leader holds a valid certificate
159 of registration under the Migrant and Seasonal Agricul-
160 tural Worker Protection Act; or substantially all the
161 members of the crew operate or maintain tractors, mecha-
162 nized harvesting or crop-dusting equipment, or any other
163 mechanized equipment, which is provided by the crew
164 leader; and (ii) if the other person is not otherwise an
165 employer of the individual;

166 (D) For the purposes of this subdivision, in the case of
167 any individual who is furnished by a crew leader to
168 perform service in agricultural labor for any other person
169 and who is not treated as an employee of the crew leader
170 under paragraph (C) of this subdivision: (i) The other
171 person and not the crew leader shall be treated as the
172 employer of the individual; and (ii) the other person shall
173 be treated as having paid cash remuneration to the
174 individual in an amount equal to the amount of cash
175 remuneration paid to the individual by the crew leader
176 (either on his or her own behalf or on behalf of the other
177 person) for the service in agricultural labor performed for
178 the other person; and

179 (E) For the purposes of this subdivision, the term “crew
180 leader” means an individual who: (i) Furnishes individu-
181 als to perform service in agricultural labor for any other
182 person; (ii) pays (either on his or her own behalf or on
183 behalf of the other person) the individuals so furnished by
184 him or her for the service in agricultural labor performed
185 by them; and (iii) has not entered into a written agreement
186 with the other person under which the individual is
187 designated as an employee of the other person;

188 (13) (A) The term “employment” includes domestic
189 service in a private home, local college club or local
190 chapter of a college fraternity or sorority performed for a
191 person who paid cash remuneration of one thousand
192 dollars or more in any calendar quarter in the current
193 calendar year or the preceding calendar year to individu-
194 als employed in domestic service; and

195 (B) Notwithstanding the foregoing definition of “em-
196 ployment”, if the services performed during one half or
197 more of any pay period by an employee for the person
198 employing him or her constitute employment, all the
199 services of the employee for the period are employment;
200 but if the services performed during more than one half of
201 any such pay period by an employee for the person
202 employing him or her do not constitute employment, then
203 none of the services of the employee for the period are
204 employment.

§21A-1A-17. Employment does not include.

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 shall permit states to
7 require 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 shall be 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 Section 1603(c) of the
16 federal Internal Revenue Code, the payments required of
17 the instrumentalities with respect to the year shall be
18 refunded by the commissioner from the fund in the same
19 manner and within the same period as is provided in
20 section nineteen, article five of this chapter, with respect
21 to payments 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".
40 For purposes of this subdivision, the term "agricultural
41 labor" 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, or in connection with the ginning of cotton, or
59 in connection with the operation or maintenance of
60 ditches, canals, reservoirs or waterways, not owned or
61 operated for profit, used exclusively for supplying and
62 storing water for farming purposes;

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

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

90 (4) Domestic service in a private home except as pro-

91 vided in subdivision (13), section sixteen of this article, the
92 definition of "employment";

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

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

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

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

109 (9) Service performed: (A) In the employ of a church or
110 convention or association of churches, or an organization
111 which is operated primarily for religious purposes and
112 which is operated, supervised, controlled or principally
113 supported by a church or convention or association of
114 churches; or (B) by a duly ordained, commissioned or
115 licensed minister of a church in the exercise of his or her
116 ministry or by a member of a religious order in the
117 exercise of duties required by the order; or (C) in a facility
118 conducted for the purpose of carrying out a program of
119 rehabilitation for individuals whose earning capacity is
120 impaired by age or physical or mental deficiency or injury
121 or providing remunerative work for individuals who
122 because of their impaired physical or mental capacity
123 cannot be readily absorbed in the competitive labor
124 market by an individual receiving the rehabilitation or
125 remunerative work; or (D) as part of an unemployment
126 work-relief or work-training program assisted or fi-
127 nanced, in whole or in part, by any federal agency or an
128 agency of a state or political subdivision thereof, by an
129 individual receiving the work relief or work training; or

130 (E) by an inmate of a custodial or penal institution;

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

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

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

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

169 (ii) a policymaking or advisory position the performance
170 of the duties of which ordinarily does not require more
171 than eight hours per week.

172 Notwithstanding the foregoing exclusions from the
173 definition of "employment", services, except agricultural
174 labor and domestic service in a private home, are in
175 employment if with respect to the services a tax is re-
176 quired to be paid under any federal law imposing a tax
177 against which credit may be taken for contributions
178 required to be paid into a state unemployment compensa-
179 tion fund, or which as a condition for full tax credit
180 against the tax imposed by the federal Unemployment Tax
181 Act are required to be covered under this chapter.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

**§21A-6-17. Food stamp overissuance intercept of unemploy-
ment benefits.**

1 (a) Notwithstanding the provisions of section two,
2 article ten of this chapter, the commissioner shall deduct
3 and withhold from any unemployment compensation
4 payable to an individual that owes an uncollected
5 overissuance of food stamp coupons, as defined under
6 subsection (f) of this section:

7 (1) The amount, if any, determined pursuant to a written
8 agreement between the individual and the department of
9 health and human resources under section 13(c)(3)(A) of
10 the Food Stamp Act of 1977, as codified in 7 U.S.C.
11 2022(c)(3)(A), and submitted to the commissioner; or

12 (2) Any amount otherwise required to be deducted and
13 withheld from such unemployment compensation pursu-
14 ant to legal process, as that term is used in section
15 13(c)(3)(B) of the Food Stamp Act of 1977, as codified in 7
16 U.S.C. 2022(c)(3)(B) properly served upon the commis-
17 sioner.

18 (b) Any amount deducted and withheld under subsection
19 (a) of this section shall be paid by the commissioner to the
20 department of health and human resources.

21 (c) Any amount deducted and withheld under subsection
22 (a) of this section shall for all purposes be treated as if it

23 were paid to the individual as unemployment compensa-
24 tion and paid by the individual to the department of
25 health and human resources in satisfaction of the individ-
26 ual's uncollected overissuance.

27 (d) For purposes of this section, the term "unemploy-
28 ment compensation" means any compensation payable
29 under this chapter, including amounts payable by the
30 commissioner pursuant to an agreement under any federal
31 law providing for compensation, assistance or allowances
32 with respect to unemployment.

33 (e) This section applies only if appropriate arrangements
34 have been made for reimbursement by the department of
35 health and human resources for the administrative costs
36 incurred by the commissioner under this section which are
37 attributable to uncollected overissuance being enforced by
38 the state or department of health and human resources.

39 (f) The term "uncollected overissuance" means, for
40 purposes of this section, obligations which are being
41 enforced pursuant to a plan described in section 13(c)(1) of
42 the Food Stamp Act of 1977, as codified in 7 U.S.C.
43 2022(c)(1).

ARTICLE 10. GENERAL PROVISIONS.

**§21A-10-11. Reporting requirements and required information;
use of information; libel and slander actions
prohibited.**

1 (a) Each employer, including labor organizations as
2 defined in subsection (i) of this section, shall, quarterly,
3 submit certified reports on or before the last day of the
4 month next following the calendar quarter, on forms to be
5 prescribed by the commissioner. The reports shall con-
6 tain:

7 (1) The employer's assigned unemployment compensa-
8 tion registration number, the employer's name and the
9 address at which the employer's payroll records are
10 maintained;

11 (2) Each employee's social security account number,
12 name, and the gross wages paid to each employee, which
13 shall include the first eight thousand dollars of remunera-

14 tion and all amounts in excess of such amount, notwith-
15 standing subdivision (1), subsection (b), section twenty-
16 eight, article one-a of this chapter;

17 (3) The total gross wages paid within the quarter for
18 employment, which includes money wages and the cash
19 value of other remuneration, and shall include the first
20 eight thousand dollars of remuneration paid to each
21 employee and all amounts in excess of such amount,
22 notwithstanding subdivision (1), subsection (b), section
23 twenty-eight, article one-a of this chapter; and

24 (4) Other information as is reasonably connected with
25 the administration of this chapter.

26 (b) Information thus obtained may not be published or
27 be open to public inspection so as to reveal the identity of
28 the employing unit or the individual.

29 (c) Notwithstanding the provisions of subsection (b) of
30 this section, the commissioner may provide information
31 thus obtained to the following governmental entities for
32 purposes consistent with state and federal laws:

33 (1) The United States department of agriculture;

34 (2) The state agency responsible for enforcement of the
35 medicaid program under Title XIX of the Social Security
36 Act;

37 (3) The United States department of health and human
38 services or any state or federal program operating and
39 approved under Title I, Title II, Title X, Title XIV or Title
40 XVI of the Social Security Act;

41 (4) Those agencies of state government responsible for
42 economic and community development; secondary, post-
43 secondary and vocational education; vocational rehabili-
44 tation, employment and training, including, but not
45 limited to, the administration of the Perkins Act and the
46 Job Training and Partnership Act;

47 (5) The tax division, but only for the purposes of collec-
48 tion and enforcement;

49 (6) The division of labor for purposes of enforcing the

50 wage bond and the contractor licensing provisions of
51 chapter twenty-one of this code;

52 (7) Any agency of this or any other state, or any federal
53 agency, charged with the administration of an unemploy-
54 ment compensation law or the maintenance of a system of
55 public employment offices;

56 (8) Any claimant for benefits or any other interested
57 party to the extent necessary for the proper presentation
58 or defense of a claim; and

59 (9) The division of workers' compensation for purposes
60 of collection and enforcement: *Provided*, That the division
61 of workers' compensation shall provide similar informa-
62 tion to the other divisions of the bureau of employment
63 programs.

64 (d) The agencies or organizations which receive informa-
65 tion under subsection (c) of this section shall agree that
66 the information shall remain confidential so as not to
67 reveal the identity of the employing unit or the individual
68 consistent with the provisions of this chapter.

69 (e) The commissioner may, before furnishing any
70 information permitted under this section, require that
71 those who request the information shall reimburse the
72 bureau of employment programs for any cost associated
73 therewith.

74 (f) The commissioner may refuse to provide any informa-
75 tion requested under this section if the agency or organi-
76 zation making the request does not certify that it will
77 comply with the state and federal law protecting the
78 confidentiality of the information.

79 (g) A person who violates the confidentiality provisions
80 of this section is guilty of a misdemeanor and, upon
81 conviction thereof, shall be fined not less than twenty
82 dollars nor more than two hundred dollars, or imprisoned
83 not longer than ninety days, or both.

84 (h) No action for slander or libel, either criminal or civil,
85 shall be predicated upon information furnished by any
86 employer or any employee to the commissioner in connec-

87 tion with the administration of any of the provisions of
88 this chapter.

89 (i) For purposes of subsection (a) of this section, the term
90 "labor organization" means any organization of any kind,
91 or any agency or employee representation committee or
92 plan, in which employees participate and which exists for
93 the purpose, in whole or in part, of dealing with employers
94 concerning grievances, labor disputes, wages, rates of pay,
95 hours of employment, or conditions of work. It includes
96 any entity, also known as a hiring hall, which is used by
97 the organization and an employer to carry out require-
98 ments described in 29 U.S.C. 158(f)(3) of an agreement
99 between the organization and the employer.

§21A-10-19. Disclosure of information to child support agencies.

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, which
11 has been approved by the secretary of health and human
12 services under Part D, Title IV of the Social Security Act.

13 (b) The requesting agency shall agree that the informa-
14 tion is to be used only for the purpose of establishing and
15 collecting child support obligations from, and locating,
16 individuals owing the obligations which are being en-
17 forced pursuant to a plan described in section 453, 453a or
18 454 of the Social Security Act which has been approved by
19 the secretary of health and human services under Part D,
20 Title IV of the Social Security Act.

21 (c) The information may not be released unless the
22 requesting agency agrees to reimburse the costs involved
23 for furnishing the information.

24 (d) In addition to the requirements of this section, all
25 other requirements with respect to confidentiality of
26 information obtained in the administration of this chapter
27 and the sanctions imposed on improper disclosure shall
28 apply to the use of the information by officers, and
29 employees of child support enforcement agencies. A state
30 or local child support enforcement agency may disclose to
31 any agent of the agency that is under contract with the
32 agency to carry out the purposes described in subsection
33 (b) of this section, wage information that is disclosed to an
34 officer or employee of the agency under subsection (a) of
35 this section. Any agent of a state or local child support
36 agency that receives wage information under this para-
37 graph shall comply with the safeguards established to
38 keep the information confidential and is subject to the
39 criminal provisions of subsection (g), section eleven of this
40 article.

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

Raymond Hoover
.....
Chairman Senate Committee

Nick Santoro
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll E. Adams
.....
Clerk of the Senate

Bryan W. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Pat Kie
.....
Speaker House of Delegates

The within *is approved* this the *7th*
day of *May*, 1997.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date

4/28/97

Time

2:30 pm