

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2517**

4 (By Delegates Perry, Boggs and Ellem)

5
6 (Originating in the House Committee on the Judiciary)

7
8 [January 24, 2011]

9
10 A Bill to amend and reenact §23-4-1e of the Code of West Virginia,
11 1931, as amended, and to amend and reenact §25-7-14 and §25-7-
12 16 of said code, all relating to providing workers
13 compensation benefits for persons participating in the prison
14 industry enhancement certification program; creating exception
15 for prohibition of purchase of temporary total disability
16 benefits coverage for persons participating in the program;
17 authorizing purchase of workers compensation insurance by
18 commissioner of the division of corrections for prison and
19 jail inmates participating in the prison certification
20 program; and authorizing purchase of workers compensation
21 insurance by the director of juvenile services for persons
22 under his or her supervision that are participating in the
23 prison certification program for incurred while confined.

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

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

4 **CHAPTER 23. WORKERS' COMPENSATION.**

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

6 **§23-4-1e. Temporary total disability benefits not to be paid for**
7 **periods of correctional center or jail confinement;**
8 **denial of workers' compensation benefits for injuries**
9 **or disease incurred while confined.**

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

23 (b) Notwithstanding any provision of this code to the
24 contrary, no person confined in a state correctional facility or

1 jail who suffers injury or a disease in the course of and resulting
2 from his or her work during the period of confinement which work is
3 imposed by the administration of the state correctional facility or
4 jail and is not suffered during the person's usual employment with
5 his or her usual employer when not confined shall receive benefits
6 under the provisions of this chapter for the injury or disease:
7 Provided, That individuals otherwise confined in a state
8 correctional facility or jail, or at a juvenile services facility,
9 and working in a program authorized by sections fourteen or sixteen
10 of article seven, chapter twenty-five of this code, shall be
11 eligible to receive benefits under the provisions of this chapter
12 while working in an authorized program. The coverage for benefits
13 may be obtained either by the private entity or by agreement with
14 the state agency as specified in subsection (5), subsection (a) of
15 sections fourteen and sixteen of article seven, chapter twenty-five
16 of this code.

17 **CHAPTER 25. DIVISION OF CORRECTIONS.**

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

19 **§25-7-14. Agreement between commissioner and private person for**
20 **manufacturing pursuant to Prison Industry Enhancement (PIE)**
21 **Certification Program; wages; inmate participation on**
22 **voluntary basis; and workers' compensation.**

23 (a) The Commissioner of the Division of Corrections and a
24 private person or entity may enter into an agreement to establish

1 a program for inmates to manufacture articles and products pursuant
2 to the federal Prison Industry Enhancement (PIE) Certification
3 Program. The agreement shall include the following:

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

7 (2) That an inmate's work or participation in a PIE
8 certification program shall be only on a voluntary basis and only
9 after the inmate has been informed of the conditions of
10 participation;

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

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

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

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

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

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

22 (e) Spousal support or child support shall be deducted from an
23 inmate's earnings as directed by the inmate or by court order. If
24 the inmate's dependents are receiving Temporary Assistance for

1 Needy Families (TANF), the disbursements shall be made to the
2 Bureau for Child Support Enforcement or any other state's public
3 assistance agency.

4 **§25-7-16. Agreement between director and private person for**
5 **manufacturing pursuant to Prison Industry Enhancement (PIE)**
6 **Certification Program; wages; resident participation on**
7 **voluntary basis; workers' compensation and unemployment**
8 **compensation.**

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

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

17 (2) That a resident's work or participation in a PIE
18 certification program shall be only on a voluntary basis and only
19 after the resident has been informed of the conditions of
20 participation;

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

24 (4) That the agreement will not result in the displacement of

1 civilian workers; and

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

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

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

18 (d) The earnings of a resident participating in a PIE
19 certification program under this article shall be deposited in the
20 Resident Trust Account with the Division of Juvenile Services. The
21 earnings shall be paid to the resident after withholding of state,
22 federal and local taxes, and after other deductions provided for in
23 this chapter. The expenses of room and board, as fixed by the
24 director and the budget agency for facilities operated by the

1 director or, if the resident is housed in a facility not operated
2 by the director, the amount paid by the Division of Juvenile
3 Services to the operator of the facility or other appropriate
4 authority for room and board, and other incidentals as established
5 by agreement between the Division of Juvenile Services and the
6 appropriate authority, shall be deducted: *Provided*, That the
7 director shall adopt policies and procedures for the additional
8 deduction from a resident's earnings of not less than five percent
9 nor more than twenty percent, to be paid into the Crime Victims
10 Compensation Fund created by article two-a, chapter fourteen of
11 this code. Total deductions shall not exceed eighty percent of the
12 resident's gross earnings. Earnings deposited by the director,
13 with accrued interest, shall be paid to the resident no later than
14 at the resident's discharge or release on parole.

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

21 (e) Spousal support or child support shall be deducted from a
22 resident's earnings as directed by the resident or by court order.
23 If the resident's dependents are receiving Temporary Assistance for
24 Needy Families (TANF), the disbursements shall be made to the

1 Bureau for Child Support Enforcement or any other state's public
2 assistance agency.