

H. B. 4523

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[Introduced February 14, 2012; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §48-18-125 of the Code of West Virginia, 1931, as amended, relating to the Bureau for Child Support enforcement; reporting employment and income; providing definition of independent contractor; and reporting income of an independent contractor if the contract for services is over \$2500.

Be it enacted by the Legislature of West Virginia:

That §48-18-125 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-125. Employment and income reporting.

1 (a) For purposes of this section:

2 (1) “Employee” means an individual who is an
3 “employee” for purposes of federal income tax withholding,
4 as defined in 26 U.S.C. §3401;

5 (2) “Employer” means the person or entity for whom an
6 individual performs or performed any service of whatever
7 nature and who has control of the payment of the individual’s
8 wages for performance of the service or services, as defined
9 in 26 U.S.C. §3401;

10 (3) “Independent Contractor” means an individual who is
11 not an employee of the employer and who receives
12 compensation or executes a contract for services performed
13 for that employer. Independent contractor does not include a
14 direct seller as defined in 26 U. S. C. §3508(b)(2).

15 ~~(3)~~ (4) An individual is considered a “new hire” on the
16 first day in which that individual performs services for
17 remuneration and on which an employer begins to withhold
18 amounts for income tax purposes.

19 (b) Except as provided in subsections (c) and (d) of this
20 section, all employers doing business in the state shall report
21 to the Bureau for Child Support enforcement:

22 (1) The hiring of any person who resides or works in this
23 state to whom the employer anticipates paying earnings; ~~and~~

24 (2) The rehiring or return to work of any employee or
25 independent contractor who resides or works in this state; and

26 (3) The contracting for services in the state with an
27 independent contractor when payment for the services is
28 \$2500 or more. Payment for the services shall be reported
29 within fourteen days of the earlier of first making payments
30 that in the aggregate equal or exceed \$2500 in any year or
31 contracts with an independent contractor providing for
32 payments that in the aggregate equal or exceed \$2500 in any
33 year.

34 (c) Employers are not required to report the hiring,
35 rehiring or return to work of any person who is an employee
36 or independent contractor of a federal or state agency
37 performing intelligence or counterintelligence functions if the
38 head of the agency has determined that reporting could
39 endanger the safety of the employee or independent
40 contractor or compromise an ongoing investigation or
41 intelligence mission.

42 (d) An employer that has employees or independent
43 contractors in states other than this state and that transmits
44 reports magnetically or electronically is not required to report
45 to the Bureau for Child Support enforcement the hiring,
46 rehiring or return to work of any employee or independent
47 contractor if the employer has filed with the secretary of the
48 federal department of health and human services, as required
49 by 42 U.S.C. §653A, a written designation of another state in
50 which it has employees or independent contractors as the
51 reporting state.

52 (e) Employers shall report by mailing the required
53 information to the Bureau for Child Support enforcement a
54 ~~copy of the employee's W-4 form; however, an employer or~~
55 may transmit the information through another means if
56 approved in writing by the Bureau for Child Support
57 enforcement prior to the transmittal. The report shall include
58 the employee's or independent contractor's name, address
59 and social security number, start date, the employer's name
60 and address, any different address of the payroll office and

61 the employer's federal tax identification number. The
62 employer may report other information, such as date of birth
63 or income information, if desired.

64 (f) Employers shall submit a report within fourteen days
65 of the date of the hiring, rehiring or return to work of the
66 employee or independent contractor. However, if the
67 employer transmits the reports magnetically or electronically
68 by two monthly submissions, the reports shall be submitted
69 not less than twelve days nor more than sixteen days apart.

70 (g) An employer shall provide to the Bureau for Child
71 Support enforcement, upon its written request, information
72 regarding an obligor's employment, wages or salary, medical
73 insurance, start date and location of employment.

74 (h) Any employer who fails to report in accordance with
75 the provisions of this section shall be assessed a civil penalty
76 of no more than \$25 per failure. If the failure to report is the
77 result of a conspiracy between the employer and the
78 employee or independent contractor not to supply the
79 required report or to supply a false or incomplete report, the

80 employer shall be assessed a civil penalty of no more than
81 \$500.

82 (i) Employers required to report under this section may
83 assess each employee or independent contractor reported \$1
84 for the administrative costs of reporting.

85 (j) Uses for the new hire information include, but are not
86 limited to, the following:

87 (1) The state directory of new hires shall furnish the
88 information to the national directory of new hires;

89 (2) The Bureau for Child Support enforcement shall use
90 information received pursuant to this section to locate
91 individuals for purposes of establishing paternity and of
92 establishing, modifying and enforcing child support
93 obligations and may disclose the information to any agent of
94 the agency that is under contract with the bureau to carry out
95 those purposes;

96 (3) State agencies responsible for administering a
97 program specified in 42 U.S.C. §1320b-7(b) shall have
98 access to information reported by employers for purposes of
99 verifying eligibility for the program; and

100 (4) The Bureau of Employment Programs and the
101 Workers' Compensation Commission shall have access to
102 information reported by employers for purposes of
103 administering employment security and Workers'
104 Compensation Programs.

NOTE: The purpose of this bill is to require employers to report the contracting of services with an independent contractor and report payment made to an independent contractor if over \$2500.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.