

1 **ENROLLED**

2 **H. B. 4523**

3
4 (By Delegates Poore, Moore, Mahan, Guthrie,
5 Wells, Michael, Frazier, White and Miley)
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7 [Passed March 7, 2012; in effect ninety days from passage.]
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10 AN ACT to amend and reenact §48-18-125 of the Code of West
11 Virginia, 1931, as amended, relating to the Bureau for Child
12 Support enforcement; reporting employment and income;
13 providing definition of independent contractor; and reporting
14 income of an independent contractor if the contract for
15 services is over \$2500.

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

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

19 **ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.**

20 **§48-18-125. Employment and income reporting.**

21 (a) For purposes of this section:

22 (1) "Employee" means an individual who is an "employee" for
23 purposes of federal income tax withholding, as defined in 26 U.S.C.
24 §3401;

25 (2) "Employer" means the person or entity for whom an

1 individual performs or performed any service of whatever nature and
2 who has control of the payment of the individual's wages for
3 performance of the service or services, as defined in 26 U.S.C.
4 §3401;

5 (3) "Independent Contractor" means an individual who is not an
6 employee of the employer and who receives compensation or executes
7 a contract for services performed for that employer. Independent
8 contractor does not include a direct seller as defined in 26 U. S.
9 C. §3508(b) (2) .

10 (4) An individual is considered a "new hire" on the first day
11 in which that individual performs services for remuneration and on
12 which an employer begins to withhold amounts for income tax
13 purposes.

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

17 (1) The hiring of any person who resides or works in this
18 state to whom the employer anticipates paying earnings;

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

21 (3) The contracting for services in the state with an
22 independent contractor when payment for the services is \$2500 or
23 more. Payment for the services shall be reported within fourteen
24 days of the earlier of first making payments that in the aggregate

1 equal or exceed \$2500 in any year or contracts with an independent
2 contractor providing for payments that in the aggregate equal or
3 exceed \$2500 in any year.

4 (c) Employers are not required to report the hiring, rehiring
5 or return to work of any person who is an employee or independent
6 contractor of a federal or state agency performing intelligence or
7 counterintelligence functions if the head of the agency has
8 determined that reporting could endanger the safety of the employee
9 or independent contractor or compromise an ongoing investigation or
10 intelligence mission.

11 (d) An employer that has employees or independent contractors
12 in states other than this state and that transmits reports
13 magnetically or electronically is not required to report to the
14 Bureau for Child Support enforcement the hiring, rehiring or return
15 to work of any employee or independent contractor if the employer
16 has filed with the secretary of the federal department of health
17 and human services, as required by 42 U.S.C. §653A, a written
18 designation of another state in which it has employees or
19 independent contractors as the reporting state.

20 (e) Employers shall report by mailing the required information
21 to the Bureau for Child Support enforcement or may transmit the
22 information through another means if approved in writing by the
23 Bureau for Child Support enforcement prior to the transmittal. The
24 report shall include the employee's or independent contractor's

1 name, address and social security number, start date, the
2 employer's name and address, any different address of the payroll
3 office and the employer's federal tax identification number. The
4 employer may report other information, such as date of birth or
5 income information, if desired.

6 (f) Employers shall submit a report within fourteen days of
7 the date of the hiring, rehiring or return to work of the employee
8 or independent contractor. However, if the employer transmits the
9 reports magnetically or electronically by two monthly submissions,
10 the reports shall be submitted not less than twelve days nor more
11 than sixteen days apart.

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

16 (h) Any employer who fails to report in accordance with the
17 provisions of this section shall be assessed a civil penalty of no
18 more than \$25 per failure. If the failure to report is the result
19 of a conspiracy between the employer and the employee or
20 independent contractor not to supply the required report or to
21 supply a false or incomplete report, the employer shall be assessed
22 a civil penalty of no more than \$500.

23 (i) Employers required to report under this section may assess
24 each employee or independent contractor reported \$1 for the

1 administrative costs of reporting.

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

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

6 (2) The Bureau for Child Support enforcement shall use
7 information received pursuant to this section to locate individuals
8 for purposes of establishing paternity and of establishing,
9 modifying and enforcing child support obligations and may disclose
10 the information to any agent of the agency that is under contract
11 with the bureau to carry out those purposes;

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

16 (4) The Bureau of Employment Programs and the Workers'
17 Compensation Commission shall have access to information reported
18 by employers for purposes of administering employment security and
19 Workers' Compensation Programs.