

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



# ENROLLED

## House Bill No. 4523

(By Delegates Poore, Moore, Mahan, Guthrie,  
Wells, Michael, Frazier, White and Miley)



Passed March 7, 2012

To Take Effect Ninety Days from Passage

# ENROLLED

## H. B. 4523

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(BY DELEGATES POORE, MOORE, MAHAN, GUTHRIE,  
WELLS, MICHAEL, FRAZIER, WHITE AND MILEY)

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[Passed March 7, 2012; to take effect ninety days from passage.]

AN ACT 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       (4) An individual is considered a “new hire” on the first  
16 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;

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 or  
54 may transmit the information through another means if  
55 approved in writing by the Bureau for Child Support  
56 enforcement prior to the transmittal. The report shall include  
57 the employee's or independent contractor's name, address  
58 and social security number, start date, the employer's name  
59 and address, any different address of the payroll office and  
60 the employer's federal tax identification number. The  
61 employer may report other information, such as date of birth  
62 or income information, if desired.

63 (f) Employers shall submit a report within fourteen days  
64 of the date of the hiring, rehiring or return to work of the  
65 employee or independent contractor. However, if the  
66 employer transmits the reports magnetically or electronically

67 by two monthly submissions, the reports shall be submitted  
68 not less than twelve days nor more than sixteen days apart.

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

73 (h) Any employer who fails to report in accordance with the  
74 provisions of this section shall be assessed a civil penalty of no  
75 more than \$25 per failure. If the failure to report is the result of  
76 a conspiracy between the employer and the employee or  
77 independent contractor not to supply the required report or to  
78 supply a false or incomplete report, the employer shall be  
79 assessed a civil penalty of no more than \$500.

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

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

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

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

94 (3) State agencies responsible for administering a  
95 program specified in 42 U.S.C. §1320b-7(b) shall have access

96 to information reported by employers for purposes of  
97 verifying eligibility for the program; and

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



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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

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*Governor*