

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **Senate Bill 534**

BY SENATORS TRUMP, BLAIR, HAMILTON, AND IHLENFELD

[Introduced January 17, 2020; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §21A-1A-17 of the Code of West Virginia, 1931, as amended,  
2 relating to employees serving the Legislature on a temporary basis, or in support of the  
3 legislative session, are not exempt from workers' compensation coverage.

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

## **ARTICLE 1A. DEFINITIONS.**

### **§21A-1A-17. Exclusions from employment.**

1 The term "employment" does not include:

2 (1) Service performed in the employ of the United States or any instrumentality of the  
3 United States exempt under the Constitution of the United States from the payments imposed by  
4 this law, except that to the extent that the Congress of the United States permits states to require  
5 any instrumentalities of the United States to make payments into an unemployment fund under a  
6 state unemployment compensation law, all of the provisions of this law are applicable to the  
7 instrumentalities and to service performed for the instrumentalities in the same manner, to the  
8 same extent, and on the same terms as to all other employers, employing units, individuals, and  
9 services: *Provided*, That if this state is not certified for any year by the Secretary of Labor under  
10 26 U.S.C. § 3404, subsection (c), the payments required of the instrumentalities with respect to  
11 the year shall be refunded by the commissioner from the fund in the same manner and within the  
12 same period as is provided in §21A-5-19 of this code with respect to payments erroneously  
13 collected;

14 (2) Service performed with respect to which unemployment compensation is payable  
15 under the Railroad Unemployment Insurance Act and service with respect to which  
16 unemployment benefits are payable under an unemployment compensation system for maritime  
17 employees established by an Act of Congress. The commissioner may enter into agreements with  
18 the proper agency established under an Act of Congress to provide reciprocal treatment to  
19 individuals who, after acquiring potential rights to unemployment compensation under an Act of  
20 Congress or who have, after acquiring potential rights to unemployment compensation under an

21 Act of Congress, acquired rights to benefit under this chapter. Such agreement shall become  
22 effective 10 days after the publications which shall comply with the general rules of the  
23 department;

24 (3) Service performed by an individual in agricultural labor, except as provided in §21A-  
25 1A-16(12) of this code, the definition of “employment”. For purposes of this subdivision, the term  
26 “agricultural labor” includes all services performed:

27 (A) On a farm, in the employ of any person, in connection with cultivating the soil, or in  
28 connection with raising or harvesting any agricultural or horticultural commodity, including the  
29 raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and  
30 fur-bearing animals and wildlife;

31 (B) In the employ of the owner or tenant or other operator of a farm, in connection with the  
32 operation, management, conservation, improvement, or maintenance of the farm and its tools and  
33 equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if  
34 the major part of the service is performed on a farm;

35 (C) In connection with the production or harvesting of any commodity defined as an  
36 agricultural commodity in § 15(g) of the Agricultural Marketing Act, as amended, as codified in 12  
37 U.S.C. § 1141j, subsection (g), or in connection with the ginning of cotton, or in connection with  
38 the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated  
39 for profit, used exclusively for supplying and storing water for farming purposes;

40 (D) (i) In the employ of the operator of a farm in handling, planting, drying, packing,  
41 packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a  
42 carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural  
43 commodity; but only if the operator produced more than one half of the commodity with respect  
44 to which the service is performed; or (ii) in the employ of a group of operators of farms (or a  
45 cooperative organization of which the operators are members) in the performance of service  
46 described in subparagraph (i) of this paragraph, but only if the operators produced more than one

47 half of the commodity with respect to which the service is performed; but the provisions of  
48 subparagraphs (i) and (ii) of this paragraph are not applicable with respect to service performed  
49 in connection with commercial canning or commercial freezing or in connection with any  
50 agricultural or horticultural commodity after its delivery to a terminal market for distribution for  
51 consumption;

52 (E) On a farm operated for profit if the service is not in the course of the employer's trade  
53 or business or is domestic service in a private home of the employer. As used in this subdivision,  
54 the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations,  
55 ranches, greenhouses, ranges, and nurseries, or other similar land areas or structures used  
56 primarily for the raising of any agricultural or horticultural commodities;

57 (4) Domestic service in a private home except as provided in §21A-1A-16(13) of this code,  
58 the definition of "employment";

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

60 (6) Service performed by a child under the age of 18 years in the employ of his or her  
61 father or mother;

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

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

69 (9) Service performed: (A) In the employ of a church or convention or association of  
70 churches, or an organization which is operated primarily for religious purposes and which is  
71 operated, supervised, controlled, or principally supported by a church or convention or association  
72 of churches; or (B) by a duly ordained, commissioned, or licensed minister of a church in the

73 exercise of his or her ministry or by a member of a religious order in the exercise of duties required  
74 by the order; or (C) by an individual receiving rehabilitation or remunerative work in a facility  
75 conducted for the purpose of carrying out a program of either: (i) Rehabilitation for individuals  
76 whose earning capacity is impaired by age or physical or mental deficiency or injury; or (ii)  
77 providing remunerative work for individuals who because of their impaired physical or mental  
78 capacity cannot be readily absorbed in the competitive labor market: *Provided*, That this  
79 exemption does not apply to services performed by individuals if they are not receiving  
80 rehabilitation or remunerative work on account of their impaired capacity; or (D) as part of an  
81 unemployment work-relief or work-training program assisted or financed, in whole or in part, by  
82 any federal agency or an agency of a state or political subdivision thereof, by an individual  
83 receiving the work relief or work training; or (E) by an inmate of a custodial or penal institution;

84 (10) Service performed in the employ of a school, college, or university, if the service is  
85 performed: (A) By a student who is enrolled and is regularly attending classes at the school,  
86 college, or university; or (B) by the spouse of a student, if the spouse is advised, at the time the  
87 spouse commences to perform the service, that: (i) The employment of the spouse to perform the  
88 service is provided under a program to provide financial assistance to the student by the school,  
89 college, or university; and (ii) the employment will not be covered by any program of  
90 unemployment insurance;

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

98 (12) Service performed in the employ of a hospital, if the service is performed by a patient

99 of the hospital, as defined in this article;

100 (13) Service in the employ of a governmental entity referred to in §21A-1A-16(9) of this  
 101 code, the definition of “employment”, if the service is performed by an individual in the exercise of  
 102 duties: (A) As an elected official; (B) as a member of a legislative body, or a member of the  
 103 judiciary, of a state or political subdivision; ~~(C) as an employee serving on a temporary basis for~~  
 104 ~~the legislature during, or in support of, the legislative session~~ (D) (C) as a member of the state  
 105 National Guard or air National Guard, except as provided in §21A-1A-28 of this code; ~~(E)~~ (D) as  
 106 an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or  
 107 similar emergency; ~~(F)~~ (E) in a position which, under or pursuant to the laws of this state, is  
 108 designated as: (i) A major nontenured policymaking or advisory position; or (ii) a policymaking or  
 109 advisory position the performance of the duties of which ordinarily does not require more than  
 110 eight hours per week; or ~~(G)~~ (F) as any election official appointed to serve during any municipal,  
 111 county, or state election, if the amount of remuneration received by the individual during the  
 112 calendar year for services as an election official is less than \$1,000;

113 (14) Service performed by a bona fide partner of a partnership for the partnership; and

114 (15) Service performed by a person for his or her own sole proprietorship.

115 Notwithstanding the foregoing exclusions from the definition of “employment”, services,  
 116 except agricultural labor and domestic service in a private home, are in employment if with respect  
 117 to the services a tax is required to be paid under any federal law imposing a tax against which  
 118 credit may be taken for contributions required to be paid into a State Unemployment  
 119 Compensation Fund, or which as a condition for full tax credit against the tax imposed by the  
 120 federal Unemployment Tax Act are required to be covered under this chapter.

NOTE: The purpose of this bill is to bring state law into compliance with federal law by removing the Workers’ Compensation exclusion for employees serving the Legislature on a temporary basis or in support of the legislative session.

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