

SB 497

FILED

2002 APR -3 P 7:22

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

Committee Substitute for

SENATE BILL NO. 497

(By Senator Unger)

PASSED March 8, 2002

In Effect ninety days from Passage

FILED

2002 APR -3 P 7:23

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 497

(SENATOR UNGER, *original sponsor*)

[Passed March 8, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections seventeen and twenty-eight, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to eligibility for unemployment compensation; clarifying the eligibility for benefits of certain members of the state national guard and the air national guard; and excluding appointed election officials from eligibility for benefits.

Be it enacted by the Legislature of West Virginia:

That sections seventeen and twenty-eight, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

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
3 or any instrumentality of the United States exempt under
4 the constitution of the United States from the payments
5 imposed by this law, except that to the extent that the
6 Congress of the United States permits states to require any
7 instrumentalities of the United States to make payments
8 into an unemployment fund under a state unemployment
9 compensation law, all of the provisions of this law are
10 applicable to the instrumentalities and to service per-
11 formed for the instrumentalities in the same manner, to
12 the same extent and on the same terms as to all other
13 employers, employing units, individuals and services:
14 *Provided*, That if this state is not certified for any year by
15 the secretary of labor under 26 U.S.C. §3404, subsection
16 (c), the payments required of the instrumentalities with
17 respect to the year shall be refunded by the commissioner
18 from the fund in the same manner and within the same
19 period as is provided in section nineteen, article five of this
20 chapter with respect to payments erroneously collected;

21 (2) Service performed with respect to which unemploy-
22 ment compensation is payable under the Railroad Unem-
23 ployment Insurance Act and service with respect to which
24 unemployment benefits are payable under an unemploy-
25 ment compensation system for maritime employees
26 established by an act of Congress. The commissioner may
27 enter into agreements with the proper agency established
28 under an act of Congress to provide reciprocal treatment
29 to individuals who, after acquiring potential rights to
30 unemployment compensation under an act of Congress or
31 who have, after acquiring potential rights to unemploy-
32 ment compensation under an act of Congress, acquired
33 rights to benefit under this chapter. Such agreement shall
34 become effective ten days after the publications which
35 shall comply with the general rules of the department;

36 (3) Service performed by an individual in agricultural
37 labor, except as provided in subdivision (12), section
38 sixteen of this article, the definition of "employment". For
39 purposes of this subdivision, the term "agricultural labor"
40 includes all services performed:

41 (A) On a farm, in the employ of any person, in connection
42 with cultivating the soil, or in connection with raising or
43 harvesting any agricultural or horticultural commodity,
44 including the raising, shearing, feeding, caring for, train-
45 ing and management of livestock, bees, poultry and fur-
46 bearing animals and wildlife;

47 (B) In the employ of the owner or tenant or other opera-
48 tor of a farm, in connection with the operation, manage-
49 ment, conservation, improvement or maintenance of the
50 farm and its tools and equipment, or in salvaging timber
51 or clearing land of brush and other debris left by a hurri-
52 cane, if the major part of the service is performed on a
53 farm;

54 (C) In connection with the production or harvesting of
55 any commodity defined as an agricultural commodity in
56 section fifteen (g) of the Agricultural Marketing Act, as
57 amended, as codified in 12 U.S.C. §1141j, subsection (g),
58 or in connection with the ginning of cotton, or in connec-
59 tion with the operation or maintenance of ditches, canals,
60 reservoirs or waterways, not owned or operated for profit,
61 used exclusively for supplying and storing water for
62 farming purposes;

63 (D) (i) In the employ of the operator of a farm in han-
64 dling, planting, drying, packing, packaging, processing,
65 freezing, grading, storing or delivering to storage or to
66 market or to a carrier for transportation to market, in its
67 unmanufactured state, any agricultural or horticultural
68 commodity; but only if the operator produced more than
69 one half of the commodity with respect to which the
70 service is performed; or (ii) in the employ of a group of
71 operators of farms (or a cooperative organization of which

72 the operators are members) in the performance of service
73 described in subparagraph (i) of this paragraph, but only
74 if the operators produced more than one half of the
75 commodity with respect to which the service is performed;
76 but the provisions of subparagraphs (i) and (ii) of this
77 paragraph are not applicable with respect to service
78 performed in connection with commercial canning or
79 commercial freezing or in connection with any agricultural
80 or horticultural commodity after its delivery to a terminal
81 market for distribution for consumption;

82 (E) On a farm operated for profit if the service is not in
83 the course of the employer's trade or business or is domes-
84 tic service in a private home of the employer. As used in
85 this subdivision, the term "farm" includes stock, dairy,
86 poultry, fruit, fur-bearing animals, truck farms, planta-
87 tions, ranches, greenhouses, ranges and nurseries, or other
88 similar land areas or structures used primarily for the
89 raising of any agricultural or horticultural commodities;

90 (4) Domestic service in a private home except as pro-
91 vided in subdivision (13), section sixteen of this article, the
92 definition of "employment";

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

95 (6) Service performed by a child under the age of eigh-
96 teen years in the employ of his or her father or mother;

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

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

107 (9) Service performed: (A) In the employ of a church or
108. convention or association of churches, or an organization
109 which is operated primarily for religious purposes and
110 which is operated, supervised, controlled or principally
111 supported by a church or convention or association of
112 churches; or (B) by a duly ordained, commissioned or
113 licensed minister of a church in the exercise of his or her
114 ministry or by a member of a religious order in the exer-
115 cise of duties required by the order; or (C) by an individual
116 receiving rehabilitation or remunerative work in a facility
117 conducted for the purpose of carrying out a program of
118 either: (i) Rehabilitation for individuals whose earning
119 capacity is impaired by age or physical or mental defi-
120 ciency or injury; or (ii) providing remunerative work for
121 individuals who because of their impaired physical or
122 mental capacity cannot be readily absorbed in the compet-
123 itive labor market: *Provided*, That this exemption does not
124 apply to services performed by individuals if they are not
125 receiving rehabilitation or remunerative work on account
126 of their impaired capacity; or (D) as part of an unemploy-
127 ment work-relief or work-training program assisted or
128 financed, in whole or in part, by any federal agency or an
129 agency of a state or political subdivision thereof, by an
130 individual receiving the work relief or work training; or
131 (E) by an inmate of a custodial or penal institution;

132 (10) Service performed in the employ of a school, college
133 or university, if the service is performed: (A) By a student
134 who is enrolled and is regularly attending classes at the
135 school, college or university; or (B) by the spouse of a
136 student, if the spouse is advised, at the time the spouse
137 commences to perform the service, that: (i) The employ-
138 ment of the spouse to perform the service is provided
139 under a program to provide financial assistance to the
140 student by the school, college or university; and (ii) the
141 employment will not be covered by any program of
142 unemployment insurance;

143 (11) Service performed by an individual who is enrolled
144 at a nonprofit or public educational institution which

145 normally maintains a regular faculty and curriculum and
146 normally has a regularly organized body of students in
147 attendance at the place where its educational activities are
148 carried on as a student in a full-time program, taken for
149 credit at the institution, which combines academic instruc-
150 tion with work experience, if the service is an integral part
151 of the program and the institution has so certified to the
152 employer, except that this subdivision does not apply to
153 service performed in a program established for or on
154 behalf of an employer or group of employers;

155 (12) Service performed in the employ of a hospital, if the
156 service is performed by a patient of the hospital, as defined
157 in this article;

158 (13) Service in the employ of a governmental entity
159 referred to in subdivision (9), section sixteen of this article,
160 the definition of "employment", if the service is performed
161 by an individual in the exercise of duties: (A) As an elected
162 official; (B) as a member of a legislative body, or a member
163 of the judiciary, of a state or political subdivision; (C) as a
164 member of the state national guard or air national guard,
165 except as provided in section twenty-eight of this article;
166 (D) as an employee serving on a temporary basis in case of
167 fire, storm, snow, earthquake, flood or similar emergency;
168 (E) in a position which, under or pursuant to the laws of
169 this state, is designated as: (i) A major nontenured
170 policymaking or advisory position; or (ii) a policymaking
171 or advisory position the performance of the duties of
172 which ordinarily does not require more than eight hours
173 per week; or (F) as any election official appointed to serve
174 during any municipal, county or state election;

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

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

179 Notwithstanding the foregoing exclusions from the
180 definition of "employment", services, except agricultural

181 labor and domestic service in a private home, are in
182 employment if with respect to the services a tax is required
183 to be paid under any federal law imposing a tax against
184 which credit may be taken for contributions required to be
185 paid into a state unemployment compensation fund, or
186 which as a condition for full tax credit against the tax
187 imposed by the federal Unemployment Tax Act are
188 required to be covered under this chapter.

§21A-1A-28. Wages.

1 (a) "Wages" means all remuneration for personal service,
2 including commissions, gratuities customarily received by
3 an individual in the course of employment from persons
4 other than the employing unit, as long as such gratuities
5 equal or exceed an amount of not less than twenty dollars
6 each month and which are required to be reported to the
7 employer by the employee, bonuses, and the cash value of
8 all remuneration in any medium other than cash except for
9 agricultural labor and domestic service. The term wages
10 includes remuneration for service rendered to the state as
11 a member of the state national guard or air national guard
12 only when serving on a temporary basis pursuant to a call
13 made by the governor under sections one and two, article
14 one-d, chapter fifteen of this code.

15 (b) The term "wages" does not include:

16 (1) That part of the remuneration which, after remunera-
17 tion equal to eight thousand dollars is paid during a
18 calendar year to an individual by an employer or his or her
19 predecessor with respect to employment during any
20 calendar year, is paid to such individual by such employer
21 during such calendar year unless that part of the remunera-
22 tion is subject to a tax under a federal law imposing a tax
23 against which credit may be taken for contributions
24 required to be paid into a state unemployment fund. For
25 the purposes of this section, the term "employment"
26 includes service constituting employment under any
27 unemployment compensation law of another state; or

28 which as a condition for full tax credit against the tax
29 imposed by the federal Unemployment Tax Act is required
30 to be covered under this chapter; and, except that for the
31 purposes of sections one, ten, eleven and thirteen, article
32 six of this chapter, all remuneration earned by an individ-
33 ual in employment shall be credited to the individual and
34 included in his or her computation of base period wages:
35 *Provided*, That the remuneration paid to an individual by
36 an employer with respect to employment in another state
37 or other states upon which contributions were required of
38 and paid by such employer under an unemployment
39 compensation law of such other state or states shall be
40 included as a part of the remuneration equal to the
41 amounts of eight thousand dollars herein referred to. In
42 applying such limitation on the amount of remuneration
43 that is taxable, an employer shall be accorded the benefit
44 of all or any portion of such amount which may have been
45 paid by its predecessor or predecessors: *Provided, how-*
46 *ever*, That if the definition of the term "wages" as con-
47 tained in Section 3306(b) of the Internal Revenue Code of
48 1954, as amended, is amended to include remuneration in
49 excess of eight thousand dollars, paid to an individual by
50 an employer under the federal Unemployment Tax Act
51 during any calendar year, wages for the purposes of this
52 definition shall include remuneration paid in a calendar
53 year to an individual by an employer subject to this
54 chapter or his or her predecessor with respect to employ-
55 ment during any calendar year up to an amount equal to
56 the amount of remuneration taxable under the federal
57 Unemployment Tax Act;

58 (2) The amount of any payment made (including any
59 amount paid by an employer for insurance or annuities, or
60 into a fund, to provide for any such payment) to, or on
61 behalf of, an individual in its employ or any of his or her
62 dependents, under a plan or system established by an
63 employer which makes provision for individuals in its
64 employ generally (or for such individuals and their de-

65 pendants), or for a class or classes of such individuals (or
66 for a class or classes of such individuals and their depend-
67 ents) on account of: (A) Retirement; or (B) sickness or
68 accident disability payments made to an employee under
69 an approved state workers' compensation law; or (C)
70 medical or hospitalization expenses in connection with
71 sickness or accident disability; or (D) death;

72 (3) Any payment made by an employer to an individual
73 in its employ (including any amount paid by an employer
74 for insurance or annuities, or into a fund, to provide for
75 any such payment) on account of retirement;

76 (4) Any payment made by an employer on account of
77 sickness or accident disability, or medical or hospitaliza-
78 tion expenses in connection with sickness or accident
79 disability to, or on behalf of, an individual in its employ
80 after the expiration of six calendar months following the
81 last calendar month in which such individual worked for
82 such employer;

83 (5) Any payment made by an employer to, or on behalf
84 of, an individual in its employ or his or her beneficiary: (A)
85 From or to a trust described in Section 401(a) which is
86 exempt from tax under Section 501(a) of the federal
87 Internal Revenue Code at the time of such payments unless
88 such payment is made to such individual as an employee
89 of the trust as remuneration for services rendered by such
90 individual and not as a beneficiary of the trust; or (B)
91 under or to an annuity plan which, at the time of such
92 payment, is a plan described in Section 403(a) of the
93 federal Internal Revenue Code;

94 (6) The payment by an employer of the tax imposed upon
95 an employer under Section 3101 of the federal Internal
96 Revenue Code with respect to remuneration paid to an
97 employee for domestic service in a private home or the
98 employer of agricultural labor;

99 (7) Remuneration paid by an employer in any medium
100 other than cash to an individual in its employ for service
101 not in the course of the employer's trade or business;

102 (8) Any payment (other than vacation or sick pay) made
103 by an employer to an individual in its employ after the
104 month in which he or she attains the age of sixty-five, if he
105 or she did not work for the employer in the period for
106 which such payment is made;

107 (9) Payments, not required under any contract of hire,
108 made to an individual with respect to his or her period of
109 training or service in the armed forces of the United States
110 by an employer by which such individual was formerly
111 employed; and

112 (10) Vacation pay, severance pay or savings plans
113 received by an individual before or after becoming totally
114 or partially unemployed but earned prior to becoming
115 totally or partially unemployed: *Provided*, That the term
116 totally or partially unemployed does not include: (A)
117 Employees who are on vacation by reason of the request of
118 the employees or their duly authorized agent, for a vaca-
119 tion at a specific time, and which request by the employees
120 or their agent is acceded to by their employer; (B) employ-
121 ees who are on vacation by reason of the employer's
122 request provided they are so informed at least ninety days
123 prior to such vacation; or (C) employees who are on
124 vacation by reason of the employer's request where such
125 vacation is in addition to the regular vacation and the
126 employer compensates such employee at a rate equal to or
127 exceeding their regular daily rate of pay during the
128 vacation period.

129 (c) The reasonable cash value of remuneration in any
130 medium other than cash shall be estimated and determined
131 in accordance with rules prescribed by the commissioner,
132 except for remuneration other than cash for services
133 performed in agricultural labor and domestic service.

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates
President of the Senate
Speaker House of Delegates

The within is approved this the 2nd
Day of April, 2002.

Governor

DELIVERED TO THE

COMMISSION

Date 3/26/02

Time 3:10 pm