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**WEST VIRGINIA LEGISLATURE**

Regular Session, 2003

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**ENROLLED**

**SENATE BILL NO.** 626

(By Senator Prezioso)

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**PASSED** March 8, 2003

**In Effect** 90 days from **Passage**

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### Senate Bill No. 626

(BY SENATOR PREZIOSO)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to repeal section twenty-one, article nine, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, sixteen and nineteen of said article, all relating to the “West Virginia Works Act”; repealing rainy day fund; amending short title throughout article; revising legislative findings and purpose; eliminating performance-based measures for evaluating the program; redefining terms; striking out provision that the secretary shall ensure availability of support services to help meet program’s requirements; reducing period of exemption from work requirement for beneficiaries with newborn children; requiring beneficiaries to participate in family assessments; providing that personal responsibility contract is defined by time limits, availability of support services, program work requirements and family assessments; eliminating consideration of participants’ challenges in meeting program require-

ments for purposes of the personal responsibility contract; deleting guidelines for developing individualized personal responsibility contracts and authorizing secretary to define contracts by rule instead; retaining cash incentive for married beneficiaries; reducing child support pass-through by fifty percent; providing sanctions for breach of contract by beneficiary; providing for reduction of benefits rather than revocation; providing for good cause exceptions to imposition of sanctions; reducing the period of benefit termination; reducing the period for obtaining diversionary assistance; and deleting provision that at-risk families may retain a portion of cash assistance when earnings are below the federal poverty guideline.

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

That section twenty-one, article nine, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, sixteen and nineteen of said article be amended and reenacted, all to read as follows:

**ARTICLE 9. WV WORKS ACT.**

**§9-9-1. Short title.**

1 This article may be cited as the “ WV WORKS Act”.

**§9-9-2. Legislative findings; purpose.**

1 (a) The Legislature hereby finds and declares that:

2 (1) The entitlement of any person to receive federal-state  
3 cash assistance is hereby discontinued;

4 (2) At-risk families are capable of becoming self-sup-  
5 porting;

6 (3) An assistance program should both expect and assist  
7 a parent and caretaker-relatives in at-risk families to  
8 support their dependent children and children for which  
9 they are caretakers;

10 (4) Every parent or caretaker-relative can exhibit  
11 responsible patterns of behavior so as to be a positive role  
12 model;

13 (5) Every parent or caretaker-relative who receives cash  
14 assistance has a responsibility to participate in an activity  
15 to help them prepare for, obtain and maintain gainful  
16 employment;

17 (6) For a parent or caretaker-relative who receives cash  
18 assistance and for whom full-time work is not feasible,  
19 participation in some activity is required to further  
20 himself or herself, his or her family or his or her commu-  
21 nity;

22 (7) The state should promote the value of work and the  
23 capabilities of individuals;

24 (8) Job development efforts should enhance the employ-  
25 ment opportunities of participants;

26 (9) Education is the key to achieving and maintaining  
27 life-long self-sufficiency; and

28 (10) An assistance program should be structured to  
29 achieve a clear set of outcomes; deliver services in an  
30 expedient, effective and efficient manner; and maximize  
31 community support for participants.

32 (b) The goals of the program are to achieve more effi-  
33 cient and effective use of public assistance funds; reduce  
34 dependency on public programs by promoting self-suffi-  
35 ciency; and structure the assistance programs to emphasize  
36 employment and personal responsibility. The success of  
37 the program is to be evaluated on the following activities,  
38 including, but not limited to: Job entry, job retention,  
39 federal work participation requirements and completion  
40 of educational activities.

### §9-9-3. Definitions.

1 In addition to the rules for the construction of statutes in  
2 section ten, article two, chapter two of this code and the

3 words and terms defined in section two, article one of this  
4 chapter, unless a different meaning appears from the  
5 context:

6 (a) "At-risk family" means a group of persons living in  
7 the same household, living below the federally designated  
8 poverty level, lacking the resources to become self-sup-  
9 porting and consisting of a dependent minor child or  
10 children living with a parent, stepparent or caretaker-  
11 relative; an "at-risk family" may include an unmarried  
12 minor parent and his or her dependent child or children  
13 who live in an adult-supervised setting;

14 (b) "Beneficiary" or "participant" means any parent or  
15 caretaker-relative in an at-risk family who receives cash  
16 assistance for himself or herself and family members;

17 (c) "Cash assistance" means temporary assistance for  
18 needy families;

19 (d) "Challenge" means any fact, circumstance or situa-  
20 tion that prevents a person from becoming self-sufficient  
21 or from seeking, obtaining or maintaining employment of  
22 any kind, including physical or mental disabilities, lack of  
23 education, testing, training, counseling, child care ar-  
24 rangements, transportation, medical treatment or sub-  
25 stance abuse treatment;

26 (e) "Community or personal development" means  
27 activities designed or intended to eliminate challenges to  
28 participation in self-sufficiency activities. These activities  
29 are to provide community benefit and enhance personal  
30 responsibility, including, but not limited to, classes or  
31 counseling for learning life skills or parenting, dependent  
32 care, job readiness, volunteer work, participation in  
33 sheltered workshops or substance abuse treatment;

34 (f) "Department" means the state department of health  
35 and human resources;

36 (g) "Education and training" means hours spent regu-  
37 larly attending and preparing for classes in any approved  
38 course of schooling or training;

39 (h) "Family Assessments" means evaluation of the  
40 following: Work skills, prior work experience, employabil-  
41 ity, education and challenges to becoming self-sufficient  
42 such as mental health and physical health issues along  
43 with lack of transportation and child care;

44 (i) "Income" means money received by any member of an  
45 at-risk family which can be used at the discretion of the  
46 household to meet its basic needs: *Provided*, That income  
47 does not include:

48 (1) Supplemental security income paid to any member or  
49 members of the at-risk family;

50 (2) Earnings of minor children;

51 (3) Payments received from earned income tax credit or  
52 tax refunds;

53 (4) Earnings deposited in an individual development  
54 account approved by the department;

55 (5) Any educational grant or scholarship income regard-  
56 less of source; or

57 (6) Any moneys specifically excluded from countable  
58 income by federal law;

59 (j) "Personal responsibility contract" means a written  
60 agreement entered into by the department and a benefi-  
61 ciary for purposes of participation in the WV works  
62 program;

63 (k) "Secretary" means the secretary of the state depart-  
64 ment of health and human resources;

65 (l) "Subsidized employment" means employment with  
66 earnings provided by an employer who receives a subsidy  
67 from the department for the creation and maintenance of  
68 the employment position;

69 (m) "Support services" includes, but is not limited to, the  
70 following services: Child care; medicaid; transportation

71 assistance; information and referral; resource development  
72 services which includes assisting families to receive child  
73 support and supplemental security income; family support  
74 services which includes parenting, budgeting and family  
75 planning; relocation assistance; and mentoring services;

76 (n) "Transitional Assistance" may include medical  
77 assistance, food stamp assistance, child care and support-  
78 ive services as defined by the secretary and as funding  
79 permits;

80 (o) "Unsubsidized employment" means employment with  
81 earnings provided by an employer who does not receive a  
82 subsidy from the department for the creation and mainte-  
83 nance of the employment position;

84 (p) "Work" means unsubsidized employment, subsidized  
85 employment, work experience, community or personal  
86 development and education and training; and

87 (q) "Work experience" means unpaid structured work  
88 activities that are provided in an environment where  
89 performance expectations are similar to those existing in  
90 unsubsidized employment and which provide training in  
91 occupational areas that can realistically be expected to  
92 lead to unsubsidized employment.

**§9-9-4. Authorization for program.**

1 (a) The secretary shall conduct the WV works program in  
2 accordance with this article and any applicable regula-  
3 tions promulgated by the secretary of the federal depart-  
4 ment of health and human services in accordance with  
5 federal block-grant funding or similar federal funding  
6 stream. This program shall expend only the funds appro-  
7 priated by the Legislature to establish and operate the  
8 program or any other funds available to the program;  
9 establish administrative due process procedures for  
10 reduction or termination proceedings; and implement any  
11 other procedures necessary to accomplish the purpose of  
12 this article.

13 (b) The WV works program authorized pursuant to this  
14 article does not create an entitlement to that program or  
15 any services offered within that program, unless entitle-  
16 ment is created pursuant to a federal law or regulation.  
17 The WV works program and each component of that  
18 program established by this article or the expansion of any  
19 component established pursuant to federal law or regula-  
20 tion is subject to the annual appropriation of funds by the  
21 Legislature.

22 (c) Copies of all rules proposed pursuant to authority  
23 granted in this article by the secretary shall be filed with  
24 the legislative oversight commission on health and human  
25 resources accountability established pursuant to article  
26 twenty-nine-e, chapter sixteen of this code.

**§9-9-5. WV works program fund.**

1 There is continued a special account within the state  
2 treasury to be known as the “ WV works Program Fund”.  
3 Expenditures from the fund shall be used exclusively to  
4 meet the necessary expenditures of the program, including  
5 wage reimbursements to participating employers, tempo-  
6 rary assistance to needy families, payments for support  
7 services, employment-related child care payments, trans-  
8 portation expenses and administrative costs directly  
9 associated with the operation of the program. Moneys  
10 paid into the account shall be from specific annual appro-  
11 priations of funds by the Legislature.

**§9-9-6. Program participation.**

1 (a) Unless otherwise noted in this article, all adult  
2 beneficiaries of cash assistance shall participate in the WV  
3 works program in accordance with the provisions of this  
4 article. The level of participation, services to be delivered  
5 and work requirements shall be defined through rules  
6 established by the secretary.

7 (b) Any individual exempt under the provisions of  
8 section eight of this article may participate in the activi-  
9 ties and programs offered through the WV works program.



10 (c) Support services other than cash assistance through  
11 the WV works program may be provided to at-risk families  
12 to assist in meeting the work requirements or to eliminate  
13 the need for cash assistance.

14 (d) Cash assistance through the WV works program may  
15 be provided to an at-risk family if the combined family  
16 income, as defined in subsection (h), section three of this  
17 article, is below the income test levels established by the  
18 department: *Provided*, That any adult member of an at-  
19 risk family who receives supplemental security income  
20 shall be excluded from the benefit group: *Provided*,  
21 *however*, That, within the limits of funds appropriated  
22 therefor, an at-risk family that includes a married man  
23 and woman and dependent children of either one or both  
24 may receive an additional cash assistance benefit in an  
25 amount of one hundred dollars or less: *Provided further*,  
26 That an at-risk family shall receive an additional cash  
27 assistance benefit in the amount of twenty-five dollars  
28 regardless of the amount of child support collected in a  
29 month on behalf of a child or children of the at-risk  
30 family, as allowed by federal law.

**§9-9-7. Work requirements.**

1 (a) Unless otherwise exempted by the provisions of  
2 section eight of this article, the WV works program shall  
3 require that anyone who possesses a high school diploma,  
4 or its equivalent, or anyone who is of the age of twenty  
5 years or more, work or attend an educational or training  
6 program for at least the minimum number of hours per  
7 week required by federal law under the work participation  
8 rate requirements for all families in order to receive any  
9 form of cash assistance. Participation in any education or  
10 training activity, as defined in section three of this article,  
11 shall be counted toward satisfaction of the work require-  
12 ment imposed by this section to the extent permissible  
13 under federal law and regulation: *Provided*, That the  
14 participant demonstrates adequate progress toward  
15 completion of the program: *Provided, however*, That

16 participants who are enrolled in post-secondary courses  
17 leading to a two- or four-year degree may be required to  
18 engage in no more than ten hours per week of federally  
19 defined work activities, unless the department certifies  
20 that allowing education to count toward required work  
21 activities would affect the state's ability to meet federal  
22 work participation rates. In accordance with federal law  
23 or regulation, the work, education and training require-  
24 ments of this section are waived for any qualifying partici-  
25 pant with a child under six years of age if the participant  
26 is unable to obtain appropriate and available child care  
27 services.

28 (b) The department and representatives of all college and  
29 university systems of West Virginia shall develop and  
30 implement a plan to use and expand the programs avail-  
31 able at the state's community and technical colleges,  
32 colleges and universities to assist beneficiaries or partici-  
33 pants who are enrolled or wish to become enrolled in two  
34 and four-year degree programs of post-secondary educa-  
35 tion to meet the work requirements of this section.

#### §9-9-8. Exemptions.

1 The secretary shall establish by rule categories of  
2 persons exempt, but the exemption applies only to the  
3 work requirements of the program: *Provided*, That a  
4 person who is exempt from the work requirements may  
5 nevertheless participate voluntarily in work activities.  
6 The categories of exemption shall include, but are not  
7 limited to, the following:

8 (a) A parent caring for a dependent child with a  
9 life-threatening illness;

10 (b) Individuals over the age of sixty years;

11 (c) Full-time students who are less than twenty years of  
12 age and are pursuing a high school diploma or its equiva-  
13 lent;

14 (d) Persons with a physical or mental incapacity or  
15 persons suffering from a temporary debilitating injury  
16 lasting more than thirty days, as defined by the secretary;

17 (e) Relatives providing in-home care for an individual  
18 who would otherwise be institutionalized; and

19 (f) Any beneficiary who has a child in his or her at-risk  
20 family which has not attained twelve months of age, for a  
21 period of six months, and for a period of six months upon  
22 the birth of any additional child: *Provided*, That no more  
23 than one beneficiary in an at-risk family may be exempt at  
24 the same time.

**§9-9-9. Personal responsibility contract.**

1 (a) (1) Every eligible adult beneficiary shall participate  
2 in a program orientation, family assessments and in the  
3 development, and subsequent revisions, of a personal  
4 responsibility contract. The contract shall be defined  
5 based on the program time limits, support services avail-  
6 able, work requirements and family assessments.

7 (2) The participant's contract shall include the following  
8 requirements: That the participant develop and maintain,  
9 with the appropriate health care provider, a schedule of  
10 preventive care for his or her dependent child or children,  
11 including routine examinations and immunizations;  
12 assurance of school attendance for school-age children  
13 under his or her care; assurance of properly supervised  
14 child care, including after-school care; and establishment  
15 of paternity or active pursuit of child support, or both, if  
16 applicable and if considered necessary; and nutrition or  
17 other counseling, parenting or family-planning classes.

18 (3) If the participant is a teenage parent, he or she may  
19 work, but the contract shall include the requirements that  
20 the participant:

21 (A) Remain in an educational activity to complete high  
22 school, obtain a general equivalency diploma or obtain

23 vocational training and make satisfactory scholastic  
24 progress;

25 (B) Attend parenting classes or participate in a  
26 mentorship program, or both, if appropriate; and

27 (C) Live at home with his or her parent or guardian or in  
28 some other adult-supervised arrangements if he or she is  
29 an unemancipated minor.

30 (4) If the participant is under the age of twenty years and  
31 does not have a high school diploma or its equivalent, the  
32 contract shall include requirements to participate in  
33 mandatory education or training which, if the participant  
34 is unemployed, may include a return to high school, with  
35 satisfactory scholastic progress required.

36 (b) In order to receive cash assistance, the participant  
37 shall enter into a personal responsibility contract. If the  
38 participant refuses to sign the personal responsibility  
39 contract, the participant and family members are ineligi-  
40 ble to receive cash assistance: *Provided*, That a participant  
41 who alleges that the terms of a personal responsibility  
42 contract are inappropriate based on his or her individual  
43 circumstances may request and shall be provided a fair  
44 and impartial hearing in accordance with administrative  
45 procedures established by the department and due process  
46 of law. A participant who signs a personal responsibility  
47 contract or complies with a personal responsibility con-  
48 tract does not waive his or her right to request and receive  
49 a hearing under this subsection.

50 (c) Personal responsibility contracts shall be drafted by  
51 the department on a case-by-case basis; take into consid-  
52 eration the individual circumstances of each beneficiary;  
53 reviewed and reevaluated periodically, but not less than on  
54 an annual basis; and, in the discretion of the department,  
55 amended on a periodic basis.

**§9-9-10. Participation limitation; exceptions.**

1 The length of time a participant may receive cash  
2 assistance through the WV works program may not exceed

3 a period longer than sixty months, except in circumstances  
4 as defined by the secretary.

**§9-9-11. Breach of contract; notice; sanctions.**

1 (a) The department may terminate cash assistance  
2 benefits to an at-risk family if it finds any of the follow-  
3 ing:

4 (1) Fraud or deception by the beneficiary in applying for  
5 or receiving program benefits;

6 (2) A substantial breach by the beneficiary of the re-  
7 quirements and obligations set forth in the personal  
8 responsibility contract and any amendments or addenda to  
9 the contract; or

10 (3) A violation by the beneficiary of any provision of the  
11 personal responsibility contract or any amendments or  
12 addenda to the contract, this article, or any rule promul-  
13 gated by the secretary pursuant to this article.

14 (b) In the event the department determines that benefits  
15 received by the beneficiary are subject to reduction or  
16 termination, written notice of the reduction or termination  
17 and the reason for the reduction or termination shall be  
18 deposited in the United States mail, postage prepaid and  
19 addressed to the beneficiary at his or her last known  
20 address at least thirteen days prior to the termination or  
21 reduction. The notice shall state the action being taken by  
22 the department and grant to the beneficiary a reasonable  
23 opportunity to be heard at a fair and impartial hearing  
24 before the department in accordance with administrative  
25 procedures established by the department and due process  
26 of law.

27 (c) In any hearing conducted pursuant to the provisions  
28 of this section, the beneficiary has the burden of proving  
29 that his or her benefits were improperly reduced or  
30 terminated and shall bear his or her own costs, including  
31 attorneys fees.

32 (d) The secretary shall determine by rule what consti-  
33 tutes de minimis violations and those violations subject to  
34 sanctions and maximum penalties. In the event the  
35 department finds that a beneficiary has violated any  
36 provision of this article, of his or her personal responsibil-  
37 ity contract or any amendment or addenda to the contract,  
38 or any applicable department rule, the department shall  
39 impose sanctions against the beneficiary as follows:

40 (1) For the first violation, a one-third reduction of  
41 benefits for three months;

42 (2) For a second violation, a two-thirds reduction of  
43 benefits for three months;

44 (3) For a third or subsequent violation, a total termina-  
45 tion of benefits for three months.

46 (e) For any sanction imposed pursuant to subsection (d)  
47 of this section, if the beneficiary is found to have good  
48 cause for noncompliance, as defined by the secretary, the  
49 reduction or termination in benefits shall not be imposed  
50 and the violation shall not count in determining the level  
51 of sanction to be imposed for any future violation. Once a  
52 reduction in benefits is in effect, it shall remain in effect  
53 for the designated time period: *Provided*, That if a partici-  
54 pant incurs a subsequent sanction before the sanction for  
55 a previous violation has expired, the sanctions shall run  
56 concurrently: *Provided, however*, That if a third violation  
57 occurs before the period for a previous sanction has  
58 expired, benefits shall be terminated and may not be  
59 reinstated until the three-month termination period has  
60 expired.

**§9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.**

1 (a) In order to encourage at-risk families not to apply for  
2 ongoing monthly cash assistance from the state, the  
3 secretary may issue one-time diversionary assistance  
4 allowances to families in an amount not to exceed the

5 equivalent of three months of cash assistance in order to  
6 enable the families to become immediately self-support-  
7 ing.

8 (b) The secretary shall establish by rule the standards to  
9 be considered in making diversionary assistance allow-  
10 ances.

11 (c) Nothing in this section may be construed to require  
12 that the department or any assistance issued pursuant to  
13 this section be subject to any of the provisions of chapter  
14 thirty-one or chapter forty-six-a of this code.

#### **§9-9-13. Subsidized employment.**

1 (a) To the extent that resources are available, an em-  
2 ployer may be paid a subsidy by the department to employ  
3 a parent or caretaker-relative of an at-risk family if the  
4 employer agrees to hire the WV works program participant  
5 at the end of the subsidized period. If the employer does  
6 not hire the participant at the end of the subsidized period,  
7 the program may not use that employer for subsidized  
8 employment for the next twelve months.

9 (b) If the department determines that an employer has  
10 demonstrated a pattern of discharging employees hired  
11 pursuant to the provisions of this section subsequent to the  
12 expiration of the subsidized period without good cause,  
13 the employer shall no longer be eligible for participation  
14 in the subsidized employment program for a period to be  
15 determined by the department.

#### **§9-9-14. Transitional assistance.**

1 The WV works program may provide transitional  
2 assistance in the form of supportive services.

#### **§9-9-16. Intergovernmental coordination.**

1 (a) The commissioner of the bureau of employment  
2 programs and the superintendent of the department of  
3 education shall assist the secretary in the establishment of  
4 the WV works program. Before implementation of this

5 program, each department shall address in its respective  
6 plan the method in which its resources will be devoted to  
7 facilitate the identification of or delivery of services for  
8 participants and shall coordinate its respective programs  
9 with the department in the provision of services to partici-  
10 pants and their families. Each county board of education  
11 shall designate a person to coordinate with the local  
12 department of health and human resources office the  
13 board's services to participant families and that person  
14 shall work to achieve coordination at the local level.

15 (b) The secretary and the superintendent shall develop a  
16 plan for program implementation to occur with the use of  
17 existing state facilities and county transportation systems  
18 within the project areas whenever practicable. This  
19 agreement shall include, but not be limited to, the use of  
20 buildings, grounds and buses. Whenever possible, the  
21 supportive services, education and training programs  
22 should be offered at the existing school facilities.

23 (c) The commissioner shall give priority to participants  
24 of the WV works program within the various programs of  
25 the bureau of employment programs. The secretary and  
26 the commissioner shall develop reporting and monitoring  
27 mechanisms between their respective agencies.

#### **§9-9-19. Legislative oversight.**

1 The legislative oversight commission on health and  
2 human resources accountability is charged with immediate  
3 and ongoing oversight of the program created by this  
4 article. This commission shall study, review and examine  
5 the work of the program, the department and its staff;  
6 study, review and examine all rules proposed by the  
7 department; and monitor the development and implemen-  
8 tation of the WV works program. The commission shall  
9 review and make recommendations to the Legislature and  
10 the legislative rule-making review committee regarding  
11 any plan, policy or rule proposed by the secretary, the  
12 department or the program.



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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *1<sup>st</sup>* .....  
Day of *April* ..... *Bob Wise* ..... 2003.  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/27/03

Time 10:10am