

HB 301

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
THIRD EXTRAORDINARY SESSION, 2009



ENROLLED

House Bill No. 301

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]



Passed August 12, 2009

In Effect from Passage

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed August 12, 2009; in effect from passage.]

AN ACT to amend and reenact §21A-6A-1, §21A-6A-5 and §21A-6A-6 of the Code of West Virginia, 1931, as amended, all relating to extended unemployment compensation benefits; providing for a temporary “state ‘on’ indicator” based on the average rate of total unemployment; providing for temporary increases in the extended benefit period and total extended benefit amount during a high unemployment period; making technical amendments throughout; and correcting nomenclature throughout.

Be it enacted by the Legislature of West Virginia:

That §21A-6A-1, §21A-6A-5 and §21A-6A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions.

1 As used in this article, unless the context clearly requires
2 otherwise:

3 (1) "Extended benefit period" means a period which:

4 (A) Begins with the third week after a week for which
5 there is a state "on" indicator; and

6 (B) Ends with either of the following weeks, whichever
7 occurs later:

8 (i) The third week after the first week for which there is
9 a state "off" indicator; or

10 (ii) The thirteenth consecutive week of such period.
11 However, for periods beginning in a "high unemployment
12 period," as determined in accordance with subdivision (3),
13 section five of this article, paragraph (B)(ii) of this
14 subdivision shall be applied by substituting "twentieth" for
15 "thirteenth."

16 Notwithstanding the foregoing provisions of this
17 subdivision, no extended benefit period may begin by reason
18 of a state "on" indicator before the fourteenth week following
19 the end of a prior extended benefit period which was in effect
20 with respect to this state.

21 (2) After September 25, 1982, there is a "state 'on'
22 indicator" for this state for a week if the commissioner
23 determines, in accordance with the regulations of the United
24 States Secretary of Labor, that for the period consisting of
25 such week and the immediately preceding twelve weeks, the
26 rate of insured unemployment (not seasonally adjusted) under
27 this article:

28 (A) Equaled or exceeded one hundred twenty percent of
29 the average of such rates for the corresponding thirteen-week
30 period ending in each of the preceding two calendar years,
31 and

32 (B) Equaled or exceeded five percent.

33 (C) An extended benefit period shall be made hereunder
34 as if subdivision (2) did not contain paragraph (A) thereof,
35 but only if the commissioner determines that the rate of
36 insured unemployment (not seasonally adjusted) equals or
37 exceeds six percent.

38 (3) For weeks of unemployment beginning on or after
39 February 1, 2009, and ending on or before December 5, 2009,
40 or, if the application of section 2005(a) of Title II of Division
41 B of the American Recovery and Reinvestment Act of 2009,
42 Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”) is
43 extended by act of Congress, ending on or before a date to be
44 determined by the commissioner not to exceed the extended
45 application of section 2005(a) of the ARRA, there is a “state
46 ‘on’ indicator” for this state for a week if the commissioner
47 determines, in accordance with regulations of the United
48 States Secretary of Labor, that:

49 (A) The average rate of total unemployment (seasonally
50 adjusted) for the period consisting of the most recent three
51 months for which data for all states are published before the
52 close of such week equals or exceeds six and one-half
53 percent, and

54 (B) The average rate of total unemployment in the state
55 for the three-month period specified in paragraph (A) of this
56 subdivision equals or exceeds one hundred ten percent of
57 such average for either or both of the corresponding three-
58 month periods ending in the two preceding calendar years.

59 (4) There is a state “off” indicator for a week if, for the
60 period consisting of such week and the immediately
61 preceding twelve weeks, none of the options specified in
62 either subdivision (2) or subdivision (3) result in a “state ‘on’
63 indicator.”

64 (5) "Rate of insured unemployment" means the
65 percentage derived by dividing:

66 (A) The average weekly number of individuals filing
67 claims for regular compensation in this state for weeks of
68 unemployment with respect to the most recent thirteen-
69 consecutive-week period, as determined by the commissioner
70 on the basis of his or her reports to the United States
71 Secretary of Labor, by

72 (B) The average monthly employment covered under this
73 chapter for the first four of the most recent six completed
74 calendar quarters ending before the end of such thirteen-week
75 period.

76 (6) "Regular benefits" means benefits payable to an
77 individual under this chapter or under any other state law
78 (including benefits payable to federal civilian employees and
79 to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than
80 extended benefits.

81 (7) "Extended benefits" means benefits (including
82 benefits payable to federal civilian employees and to ex-
83 servicemen pursuant to 5 U.S.C., chapter 85) payable to an
84 individual under the provisions of this article for weeks of
85 unemployment in his or her eligibility period.

86 (8) "Eligibility period" of an individual means the period
87 consisting of the weeks in his or her benefit year which begin
88 in an extended benefit period and, if his or her benefit year
89 ends within such extended benefit period, any weeks
90 thereafter which begin in such period. Notwithstanding any
91 provision of this code to the contrary, an individual's
92 eligibility period shall include any eligibility period provided
93 in section 2005(b) of the ARRA.

94 (9) "Exhaustee" means an individual who, with respect to
95 any week of unemployment in his or her eligibility period:

96 (A) Has received, prior to such week, all of the regular
97 benefits which were available to him or her under this chapter
98 or any other state law (including dependents' allowances and
99 benefits payable to federal civilian employees and ex-
100 servicemen under 5 U.S.C., chapter 85) in his or her current
101 benefit year that includes such week: *Provided*, That for the
102 purposes of this subdivision, an individual shall be deemed
103 to have received all of the regular benefits which were
104 available to him or her although (i) as a result of a pending
105 appeal with respect to wages or employment which were not
106 considered in the original monetary determination in his or
107 her benefit year, he or she may subsequently be determined
108 to be entitled to added regular benefits, or (ii) he or she may
109 be entitled to regular benefits with respect to future weeks of
110 unemployment, but such benefits are not payable with respect
111 to such week of unemployment by reason of the provisions
112 of section one-a, article six of this chapter; or

113 (B) His or her benefit year having expired prior to such
114 week, has no, or insufficient, wages or employment on the
115 basis of which he or she could establish a new benefit year
116 which would include such week; and

117 (C) Has no right to unemployment benefits or
118 allowances, as the case may be, under the Railroad
119 Unemployment Insurance Act, 45 U.S.C., §361, *et seq.*, the
120 Trade Expansion Act of 1962, 19 U.S.C., §1801, *et seq.*, the
121 Automotive Products Trade Act of 1965, 19 U.S.C., §2001,
122 *et seq.*, and such other federal laws as are specified in
123 regulations issued by the United States Secretary of Labor;
124 and has not received and is not seeking unemployment
125 benefits under the unemployment compensation law of the
126 Virgin Islands or of Canada; but if he or she is seeking such

127 benefits and the appropriate agency finally determines that he
128 or she is not entitled to benefits under such law he or she is
129 considered an exhaustee.

130 (10) "State law" means the unemployment insurance law
131 of any state, approved by the United States Secretary of
132 Labor under 26 U.S.C., §3304.

133 (11) No individual shall be entitled to extended benefits
134 during a period of unemployment if he or she was
135 disqualified under the provisions of subdivision (1), (2) or (3)
136 of section three, article six of this chapter, which
137 disqualification shall not be terminated until such individual
138 has returned to covered employment and has been employed
139 in covered employment for at least thirty working days.

140 (12)(A) Notwithstanding any other provisions of this
141 section, an individual shall be ineligible for payment of
142 extended benefits for any week of unemployment in his or
143 her eligibility period if the commissioner finds that during
144 such period:

145 (i) He or she failed to accept an offer of suitable work or
146 failed to apply for suitable work (as defined under
147 subdivision (12)(C) of this section), to which he or she was
148 referred by the commissioner; or

149 (ii) He or she failed to actively engage in seeking work as
150 prescribed under subdivision (12)(E) of this section.

151 (B) An individual who has been found ineligible for
152 extended benefits by reason of the provisions in subdivision
153 (12)(A) of this section shall also be denied benefits beginning
154 with the first day of the week following the week in which
155 such failure occurred and until he or she has been employed
156 in each of four subsequent weeks (whether or not

157 consecutive) and has earned remuneration equal to not less
158 than four times the extended weekly benefit amount;

159 (C) For purposes of this subdivision the term “suitable
160 work” means, with respect to any individual, any work which
161 is within such individual's capabilities: *Provided*, That the
162 gross average weekly remuneration payable for the work
163 must exceed the sum of:

164 (i) The individual's average weekly benefit amount (as
165 determined under subdivision (12)(D) of this section) plus;

166 (ii) The amount, if any, of supplemental unemployment
167 benefits (as defined in 26 U.S.C., §501(c)(17)(D)) payable to
168 such individual for such week; and further,

169 (iii) Pays wages equal to the higher of:

170 (I) The minimum wages provided by 29 U.S.C.,
171 §206(a)(1), without regard to any exemption; or

172 (II) The state or local minimum wage;

173 (iv) Provided that no individual shall be denied extended
174 benefits for failure to accept an offer or referral to any job
175 which meets the definition of suitability as described above
176 if:

177 (I) The position was not offered to such individual in
178 writing and was not listed with the employment service; or

179 (II) Such failure could not result in a denial of benefits
180 under the definition of suitable work for regular benefit
181 claimants in section five, article six of this chapter, to the
182 extent that the criteria of suitability in that section are not
183 inconsistent with the provisions of this subdivision; or

184 (III) The individual furnishes satisfactory evidence to the
185 commissioner that his or her prospects for obtaining work in
186 his or her customary occupation within a reasonably short
187 period are good. If such evidence is deemed satisfactory for
188 this purpose, the determination of whether any work is
189 suitable with respect to such individual shall be made in
190 accordance with the definition of suitable work in section
191 five, article six of this chapter, without regard to the
192 definition specified in this subdivision.

193 (D) Notwithstanding the provisions of this section to the
194 contrary, no work shall be deemed to be suitable work for an
195 individual which does not accord with the labor standard
196 provisions required by 26 U.S.C., §3304(a)(5) and set forth
197 herein under subdivision (12)(C)(iii)(I) of this section.

198 (E) For the purposes of subdivision (12)(A)(ii) of this
199 section an individual shall be treated as actively engaged in
200 seeking work during any week if:

201 (i) The individual has engaged in a systematic and
202 sustained effort to obtain work during such week, and

203 (ii) The individual furnishes tangible evidence that he or
204 she has engaged in such effort during such week.

205 (F) The employment service shall refer any claimant
206 entitled to extended benefits under this article to any suitable
207 work which meets the criteria prescribed in subdivision
208 (12)(C) of this section.

209 (G) An individual shall not be eligible to receive
210 extended benefits with respect to any week of unemployment
211 in his or her eligibility period if such individual has been
212 disqualified for regular benefits under this chapter because he

213 or she voluntarily left work, was discharged for misconduct
214 or refused an offer of suitable work unless the
215 disqualification imposed for such reasons has been
216 terminated in accordance with specific conditions established
217 under this subdivision requiring the individual to perform
218 service for remuneration subsequent to the date of such
219 disqualification.

220 (13) Notwithstanding any other provisions of this chapter,
221 if the benefit year of any individual ends within an extended
222 benefit period, the remaining balance of extended benefits
223 that such individual would, but for this section, be entitled to
224 receive in that extended benefit period, with respect to weeks
225 of unemployment beginning after the end of the benefit year,
226 shall be reduced (but not below zero) by the product of the
227 number of weeks for which the individual received any
228 amounts as trade readjustment allowances within that benefit
229 year, multiplied by the individual's weekly benefit amount for
230 extended benefits.

231 (14) An unemployed individual shall be eligible to
232 receive benefits with respect to any week only if it has been
233 found that he or she has been paid wages by an employer
234 who was subject to the provisions of this chapter during the
235 base period of his or her current benefit year in an amount at
236 least equal to forty times his or her benefit rate for total
237 unemployment.

238 (15) The provisions of subdivisions (11) and (12) of this
239 section shall not apply at any time should such provisions be
240 temporarily or permanently suspended by federal law. If
241 these provisions are suspended by federal law, the provisions
242 of state law which apply to claims for and the payment of
243 regular benefits shall apply to claims for and the payment of
244 extended benefits.

§21A-6A-5. Total extended benefit amount.

1 The total extended benefit amount payable to an eligible
2 individual with respect to his or her applicable benefit year
3 shall be the least of the following amounts:

4 (1) Fifty percent of the total amount of regular benefits
5 which were payable to him or her under this chapter in his or
6 her applicable benefit year;

7 (2) Thirteen times his or her weekly benefit amount
8 which was payable to him or her under this chapter for a
9 week of total unemployment in the applicable benefit year:
10 *Provided*, That an individual filing for extended benefits
11 through the interstate benefit payment plan and residing in a
12 state where an extended benefit period is not in effect shall be
13 limited to payment for only the first two weeks of such
14 extended benefits: *Provided, however*, That during any fiscal
15 year in which federal payments to states under section 204 of
16 the Federal-State Extended Unemployment Compensation
17 Act of 1970 are reduced under an order issued under section
18 252 of the Balanced Budget and Emergency Deficit Control
19 Act of 1985, the total extended benefit amount payable to an
20 individual with respect to his or her applicable benefit year
21 shall be reduced by an amount equal to the aggregate of the
22 reductions under section four, article six-a of this chapter in
23 the weekly amounts paid to the individual.

24 (3)(A) For weeks beginning in a high unemployment
25 period, subdivision (1) of this section shall be applied by
26 substituting “eighty percent” for “fifty percent” and
27 subdivision (2) of this section shall be applied by substituting
28 “twenty” for “thirteen.”

29 (B) For the purposes of this article, the term “high
30 unemployment period” means any period during which the

31 provisions of subdivision (3), section one of this article
32 would result in a “state ‘on’ indicator” if subdivision (3),
33 section one of this article were applied by substituting “eight
34 percent” for “six and one-half percent.”

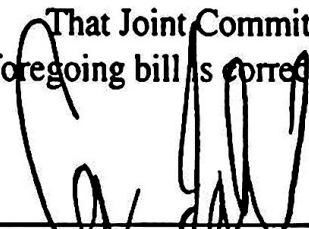
§21A-6A-6. Beginning and termination of extended benefit period.

1 (1) Whenever an extended benefit period is to become
2 effective in this state, or in all states, as a result of a state or
3 a national “on” indicator, or an extended benefit period is to
4 be terminated in this state as a result of a state “off” indicator
5 or state and national “off” indicators, the commissioner shall
6 make an appropriate public announcement.

7 (2) Computations required by the provisions of
8 subdivision (5), section one of this article shall be made by
9 the commissioner, in accordance with regulations prescribed
10 by the United States Secretary of Labor.

11 (3) Whenever, during a period when emergency
12 unemployment compensation benefits are being paid under
13 the provisions of the Emergency Unemployment
14 Compensation Act of 1991, as amended, or under any
15 subsequent extension or reenactment thereof, the state “on”
16 indicator as defined in subdivisions (2) or (3) of section one
17 of this article triggers on a period of extended benefits, the
18 Governor of this state may elect to not implement the state
19 statutory provision and continue the payment of benefits
20 under the Emergency Unemployment Compensation Act of
21 1991, as amended, to those individuals who have exhausted
22 their entitlement to regular unemployment compensation
23 under state law.

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



Chairman Senate Committee



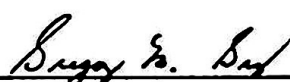
Chairman House Committee

Originating in the House.

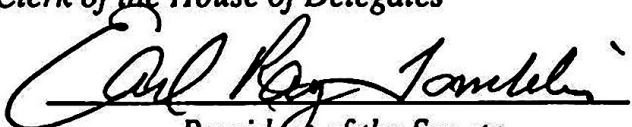
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates




President of the Senate



Speaker of the House of Delegates

The within is approved this the 19th
day of August, 2009.



Governor

PRESENTED TO THE
GOVERNOR

AUG 18 2009

Time 2:25pm