

1 **ENROLLED**

2 **H. B. 3137**

3  
4 (By Delegate Kominar)

5 (By Request of the Department of Commerce)

6  
7 [Passed March 11, 2011; in effect from passage.]

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9  
10 AN ACT to amend and reenact §21A-6A-1 of the Code of West Virginia,  
11 1931, as amended, relating to extended unemployment benefits;  
12 adding additional circumstances giving rise to "state 'on'  
13 indicators" for purposes of extended unemployment compensation  
14 benefits; and providing for certain high unemployment periods.

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

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

18 **ARTICLE 6A. EXTENDED BENEFITS PROGRAM.**

19 **§21A-6A-1. Definitions.**

20 As used in this article, unless the context clearly requires  
21 otherwise:

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

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

25 (B) Ends with either of the following weeks, whichever occurs  
26 later:

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

3 (ii) The thirteenth consecutive week of such period. However,  
4 for periods beginning in a "high unemployment period," as  
5 determined in accordance with subdivision (3), section five of this  
6 article, paragraph (B) (ii) of this subdivision shall be applied by  
7 substituting "twentieth" for "thirteenth."

8 Notwithstanding the foregoing provisions of this subdivision,  
9 no extended benefit period may begin by reason of a state "on"  
10 indicator before the fourteenth week following the end of a prior  
11 extended benefit period which was in effect with respect to this  
12 state.

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

19 (A) Equalled or exceeded one hundred twenty percent of the  
20 average of such rates for the corresponding thirteen-week period  
21 ending in each of the preceding two calendar years, and

22 (B) Equalled or exceeded five percent.

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

1           (3) For weeks of unemployment beginning on or after February  
2 1, 2009, and ending on or before December 5, 2009, or, if the  
3 application of section 2005(a) of Title II of Division B of the  
4 American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5,  
5 123 Stat. 115 (2009) ("ARRA") is extended by Act of Congress, ending  
6 on or before a date to be determined by the commissioner not to  
7 exceed the extended application of section 2005(a) of the ARRA,  
8 there is a "state 'on' indicator" for this state for a week if the  
9 commissioner determines, in accordance with regulations of the  
10 United States Secretary of Labor, that:

11           (A) The average rate of total unemployment, seasonally  
12 adjusted, for the period consisting of the most recent three months  
13 for which data for all states are published before the close of  
14 such week equals or exceeds six and one-half percent; and

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

20           (C) For weeks of unemployment beginning after December 17,  
21 2010, through weeks of unemployment ending on or before December  
22 31, 2011, or the date established by section 502 of the Tax Relief,  
23 Unemployment Insurance Reauthorization and Job Creation Act of  
24 2010, P.L. 111-312, as amended, there is a "state 'on' indicator"  
25 for a week if the commissioner determines, in accordance with  
26 regulations of the United States Secretary of Labor, that:

1 (i) The average rate of total unemployment, seasonally  
2 adjusted, as determined by the United States Secretary of Labor,  
3 for the period consisting of the most recent three-months for which  
4 data for all states are published before the close of such week  
5 equals or exceeds six and one-half percent; and

6 (ii) The average rate of total unemployment in the state,  
7 seasonally adjusted, as determined by the United States Secretary  
8 of Labor, for the three-month period referred to in subparagraph  
9 (i) of this paragraph equals or exceeds one hundred ten percent of  
10 such average for any or all of the corresponding three-month  
11 periods ending in the three preceding calendar years.

12 (D) There is a "high unemployment period" as provided in  
13 subsection three, section five, article six-a, chapter twenty-one-a  
14 of this code if paragraph (A) or subparagraph (i), paragraph(C), or  
15 both, were applied by substituting "eight percent" for "six and  
16 one-half percent".

17 (4) There is a "state 'off' indicator" for a week if, for the  
18 period consisting of such week and the immediately preceding twelve  
19 weeks, none of the options specified in either subdivision (2) or  
20 subdivision (3) result in a "state 'on' indicator".

21 (5) "Rate of insured unemployment" means the percentage  
22 derived by dividing:

23 (A) The average weekly number of individuals filing claims for  
24 regular compensation in this state for weeks of unemployment with  
25 respect to the most recent thirteen-consecutive-week period as  
26 determined by the commissioner on the basis of his or her reports

1 to the United States Secretary of Labor; by

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

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

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

14 (8) "Eligibility period" of an individual means the period  
15 consisting of the weeks in his or her benefit year which begin in  
16 an extended benefit period and, if his or her benefit year ends  
17 within such extended benefit period, any weeks thereafter which  
18 begin in such period. Notwithstanding any provision of this code  
19 to the contrary, an individual's eligibility period shall include  
20 any eligibility period provided in section 2005(b) of the ARRA.

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

23 (A) Has received, prior to such week, all of the regular  
24 benefits which were available to him or her under this chapter or  
25 any other state law (including dependents' allowances and benefits  
26 payable to federal civilian employees and ex-servicemen under 5

1 U.S.C., chapter 85) in his or her current benefit year that  
2 includes such week: *Provided*, That for the purposes of this  
3 subdivision, an individual is deemed to have received all of the  
4 regular benefits which were available to him or her although: (i)  
5 As a result of a pending appeal with respect to wages or employment  
6 which were not considered in the original monetary determination in  
7 his or her benefit year, he or she may subsequently be determined  
8 to be entitled to added regular benefits; or (ii) he or she may be  
9 entitled to regular benefits with respect to future weeks of  
10 unemployment but such benefits are not payable with respect to such  
11 week of unemployment by reason of the provisions of section one-a,  
12 article six of this chapter; or

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

17 (C) Has no right to unemployment benefits or allowances, as  
18 the case may be, under the Railroad Unemployment Insurance Act, 45  
19 U.S.C., §361, *et seq.*, the Trade Expansion Act of 1962, 19 U.S.C.,  
20 §1801, *et seq.*, the Automotive Products Trade Act of 1965, 19  
21 U.S.C., §2001, *et seq.*, and such other federal laws as are  
22 specified in regulations issued by the United States Secretary of  
23 Labor and has not received and is not seeking unemployment benefits  
24 under the unemployment compensation law of the Virgin Islands or of  
25 Canada. If he or she is seeking such benefits and the appropriate  
26 agency finally determines that he or she is not entitled to

1 benefits under law, then he or she is considered an exhaustee.

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

5 (11) No individual is entitled to extended benefits during a  
6 period of unemployment if he or she was disqualified under the  
7 provisions of subdivision (1), (2) or (3) of section three, article  
8 six of this chapter, which disqualification is not terminated until  
9 the individual has returned to covered employment and has been  
10 employed in covered employment for at least thirty working days.

11 (12) (A) Notwithstanding any other provisions of this section,  
12 an individual is ineligible for payment of extended benefits for  
13 any week of unemployment in his or her eligibility period if the  
14 commissioner finds that during such period:

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

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

21 (B) An individual who has been found ineligible for extended  
22 benefits by reason of the provisions in subdivision (12) (A) of this  
23 section is also denied benefits beginning with the first day of the  
24 week following the week in which such failure occurred and until he  
25 or she has been employed in each of four subsequent weeks, whether  
26 or not consecutive, and has earned remuneration equal to not less

1 than four times the extended weekly benefit amount;

2 (C) For purposes of this subdivision, the term "suitable work"  
3 means, with respect to any individual, any work which is within  
4 such individual's capabilities so long as the gross average weekly  
5 remuneration payable for the work must exceed the sum of:

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

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

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

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

14 (II) The state or local minimum wage;

15 (iv) *Provided*, That no individual is denied extended benefits  
16 for failure to accept an offer or referral to a job which meets the  
17 definition of suitability as described above if:

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

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

25 (III) The individual furnishes satisfactory evidence to the  
26 commissioner that his or her prospects for obtaining work in his or



1 her customary occupation within a reasonably short period are good.  
2 If such evidence is deemed satisfactory for this purpose, the  
3 determination of whether any work is suitable with respect to such  
4 individual is made in accordance with the definition of suitable  
5 work in section five, article six of this chapter, without regard  
6 to the definition specified in this subdivision.

7 (D) Notwithstanding the provisions of this section to the  
8 contrary, no work is suitable work for an individual which does not  
9 accord with the labor standard provisions required by 26 U.S.C.,  
10 §3304(a)(5) and set forth herein under subdivision (12)(C)(iii)(I)  
11 of this section.

12 (E) For the purposes of subdivision (12)(A)(ii) of this  
13 section, an individual is treated as actively engaged in seeking  
14 work during any week if:

15 (i) The individual has engaged in a systematic and sustained  
16 effort to obtain work during such week; and

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

19 (F) The employment service shall refer any claimant entitled  
20 to extended benefits under this article to any suitable work which  
21 meets the criteria prescribed in subdivision (12)(C) of this  
22 section.

23 (G) An individual is not eligible to receive extended benefits  
24 with respect to any week of unemployment in his or her eligibility  
25 period if the individual has been disqualified for regular benefits  
26 under this chapter because he or she voluntarily left work, was

1 discharged for misconduct or refused an offer of suitable work  
2 unless the disqualification imposed for such reasons has been  
3 terminated in accordance with specific conditions established under  
4 this subdivision requiring the individual to perform service for  
5 remuneration subsequent to the date of such disqualification.

6       (13) Notwithstanding any other provisions of this chapter, if  
7 the benefit year of any individual ends within an extended benefit  
8 period, the remaining balance of extended benefits that such  
9 individual would, but for this section, be entitled to receive in  
10 that extended benefit period with respect to weeks of unemployment  
11 beginning after the end of the benefit year, are reduced, but not  
12 below zero, by the product of the number of weeks for which the  
13 individual received any amounts as trade readjustment allowances  
14 within that benefit year, multiplied by the individual's weekly  
15 benefit amount for extended benefits.

16       (14) An unemployed individual is eligible to receive benefits  
17 with respect to any week only if it has been found that he or she  
18 has been paid wages by an employer who was subject to the  
19 provisions of this chapter during the base period of his or her  
20 current benefit year in an amount at least equal to forty times his  
21 or her benefit rate for total unemployment.

22       (15) The provisions of subdivisions (11) and (12) of this  
23 section shall not apply at any time if temporarily or permanently  
24 suspended by federal law. If these provisions are suspended by  
25 federal law, the provisions of state law which apply to claims for  
26 and the payment of regular benefits apply to claims for and the

1 payment of extended benefits.