

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011



ENROLLED

House Bill No. 3137

(By Delegate Kominar)
[By Request of the Department of Commerce]



Passed March 11, 2011

In Effect From Passage

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H. B. 3137

(BY DELEGATE KOMINAR)
[BY REQUEST OF THE DEPARTMENT OF COMMERCE]

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AN ACT to amend and reenact §21A-6A-1 of the Code of West Virginia, 1931, as amended, relating to extended unemployment benefits; adding additional circumstances giving rise to “state ‘on’ indicators” for purposes of extended unemployment compensation benefits; and providing for certain high unemployment periods.

Be it enacted by the Legislature of West Virginia:

That §21A-6A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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
44 be determined by the commissioner not to exceed the
45 extended application of section 2005(a) of the ARRA, there
46 is a “state ‘on’ indicator” for this state for a week if the
47 commissioner determines, in accordance with regulations of
48 the United 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 (C) For weeks of unemployment beginning after
60 December 17, 2010, through weeks of unemployment ending
61 on or before December 31, 2011, or the date established by
62 section 502 of the Tax Relief, Unemployment Insurance
63 Reauthorization and Job Creation Act of 2010, P.L. 111-312,

64 as amended, there is a “state ‘on’ indicator” for a week if the
65 commissioner determines, in accordance with regulations of
66 the United States Secretary of Labor, that:

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

73 (ii) The average rate of total unemployment in the state,
74 seasonally adjusted, as determined by the United States
75 Secretary of Labor, for the three-month period referred to in
76 subparagraph (i) of this paragraph equals or exceeds one
77 hundred ten percent of such average for any or all of the
78 corresponding three-month periods ending in the three
79 preceding calendar years.

80 (D) There is a “high unemployment period” as provided
81 in subsection three, section five, article six-a, chapter twenty-
82 one-a of this code if paragraph (A) or subparagraph (i),
83 paragraph(C), or both, were applied by substituting “eight
84 percent” for “six and one-half percent”.

85 (4) There is a “state ‘off’ indicator” for a week if, for the
86 period consisting of such week and the immediately
87 preceding twelve weeks, none of the options specified in
88 either subdivision (2) or subdivision (3) result in a “state ‘on’
89 indicator”.

90 (5) “Rate of insured unemployment” means the
91 percentage derived by dividing:

92 (A) The average weekly number of individuals filing
93 claims for regular compensation in this state for weeks of
94 unemployment with respect to the most recent thirteen-

95 consecutive-week period as determined by the commissioner
96 on the basis of his or her reports to the United States
97 Secretary of Labor; by

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

102 (6) “Regular benefits” means benefits payable to an
103 individual under this chapter or under any other state law
104 (including benefits payable to federal civilian employees and
105 to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than
106 extended benefits.

107 (7) “Extended benefits” means benefits (including
108 benefits payable to federal civilian employees and to ex-
109 servicemen pursuant to 5 U.S.C., chapter 85) payable to an
110 individual under the provisions of this article for weeks of
111 unemployment in his or her eligibility period.

112 (8) “Eligibility period” of an individual means the period
113 consisting of the weeks in his or her benefit year which begin
114 in an extended benefit period and, if his or her benefit year
115 ends within such extended benefit period, any weeks
116 thereafter which begin in such period. Notwithstanding any
117 provision of this code to the contrary, an individual’s
118 eligibility period shall include any eligibility period provided
119 in section 2005(b) of the ARRA.

120 (9) “Exhaustee” means an individual who, with respect to
121 any week of unemployment in his or her eligibility period:

122 (A) Has received, prior to such week, all of the regular
123 benefits which were available to him or her under this chapter
124 or any other state law (including dependents' allowances and
125 benefits payable to federal civilian employees and ex-

126 servicemen under 5 U.S.C., chapter 85) in his or her current
127 benefit year that includes such week: *Provided*, That for the
128 purposes of this subdivision, an individual is deemed to have
129 received all of the regular benefits which were available to
130 him or her although: (i) As a result of a pending appeal with
131 respect to wages or employment which were not considered
132 in the original monetary determination in his or her benefit
133 year, he or she may subsequently be determined to be entitled
134 to added regular benefits; or (ii) he or she may be entitled to
135 regular benefits with respect to future weeks of
136 unemployment but such benefits are not payable with respect
137 to such week of unemployment by reason of the provisions
138 of section one-a, article six of this chapter; or

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

143 (C) Has no right to unemployment benefits or
144 allowances, as the case may be, under the Railroad
145 Unemployment Insurance Act, 45 U.S.C., §361, *et seq.*, the
146 Trade Expansion Act of 1962, 19 U.S.C., §1801, *et seq.*, the
147 Automotive Products Trade Act of 1965, 19 U.S.C., §2001,
148 *et seq.*, and such other federal laws as are specified in
149 regulations issued by the United States Secretary of Labor
150 and has not received and is not seeking unemployment
151 benefits under the unemployment compensation law of the
152 Virgin Islands or of Canada. If he or she is seeking such
153 benefits and the appropriate agency finally determines that he
154 or she is not entitled to benefits under law, then he or she is
155 considered an exhaustee.

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

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

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

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

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

177 (B) An individual who has been found ineligible for
178 extended benefits by reason of the provisions in subdivision
179 (12)(A) of this section is also denied benefits beginning with
180 the first day of the week following the week in which such
181 failure occurred and until he or she has been employed in
182 each of four subsequent weeks, whether or not consecutive,
183 and has earned remuneration equal to not less than four times
184 the extended weekly benefit amount;

185 (C) For purposes of this subdivision, the term “suitable
186 work” means, with respect to any individual, any work which
187 is within such individual's capabilities so long as the gross
188 average weekly remuneration payable for the work must
189 exceed the sum of:

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

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

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

196 (I) The minimum wages provided by 29 U.S.C.,
197 §206(a)(1), without regard to any exemption; or

198 (II) The state or local minimum wage;

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

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

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

210 (III) The individual furnishes satisfactory evidence to the
211 commissioner that his or her prospects for obtaining work in
212 his or her customary occupation within a reasonably short
213 period are good. If such evidence is deemed satisfactory for
214 this purpose, the determination of whether any work is
215 suitable with respect to such individual is made in accordance
216 with the definition of suitable work in section five, article six
217 of this chapter, without regard to the definition specified in
218 this subdivision.

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

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

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

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

231 (F) The employment service shall refer any claimant
232 entitled to extended benefits under this article to any suitable
233 work which meets the criteria prescribed in subdivision
234 (12)(C) of this section.

235 (G) An individual is not eligible to receive extended
236 benefits with respect to any week of unemployment in his or
237 her eligibility period if the individual has been disqualified
238 for regular benefits under this chapter because he or she
239 voluntarily left work, was discharged for misconduct or
240 refused an offer of suitable work unless the disqualification
241 imposed for such reasons has been terminated in accordance
242 with specific conditions established under this subdivision
243 requiring the individual to perform service for remuneration
244 subsequent to the date of such disqualification.

245 (13) Notwithstanding any other provisions of this chapter,
246 if the benefit year of any individual ends within an extended
247 benefit period, the remaining balance of extended benefits
248 that such individual would, but for this section, be entitled to
249 receive in that extended benefit period with respect to weeks

250 of unemployment beginning after the end of the benefit year,
251 are reduced, but not below zero, by the product of the number
252 of weeks for which the individual received any amounts as
253 trade readjustment allowances within that benefit year,
254 multiplied by the individual's weekly benefit amount for
255 extended benefits.

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

263 (15) The provisions of subdivisions (11) and (12) of this
264 section shall not apply at any time if temporarily or
265 permanently suspended by federal law. If these provisions
266 are suspended by federal law, the provisions of state law
267 which apply to claims for and the payment of regular benefits
268 apply to claims for and the payment of extended benefits.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor