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**ENROLLED**

**H. B. 4542**

(By Delegates White, T. Campbell, Varner and Williams)

[Requested by the Department of Commerce]

[Passed March 10, 2012; in effect July 1, 2012.]

10 AN ACT to amend and reenact §21A-5-7 of the Code of West Virginia,  
11 1931, as amended, all relating to unemployment compensation  
12 benefits; preventing contributory employers from being  
13 relieved of benefit charges to their accounts if an  
14 overpayment of benefits is the result of the employer's or an  
15 employer's agent's failure to provide requested information to  
16 the agency timely or to adequately; and providing definitions.

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

18 That §21A-5-7 of the Code of West Virginia, 1931, as amended,  
19 be amended and reenacted to read as follows:

20 **ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.**

21 **§21A-5-7. Joint and separate accounts.**

22 (1) The commissioner shall maintain a separate account for  
23 each employer, and shall credit the employer's account with all

1 contributions of the employer in excess of four tenths of one  
2 percent of taxable wages: *Provided*, That any adjustment made in any  
3 employer's account after the computation date may not be used in  
4 the computation of the balance of an employer until the next  
5 following computation date: *Provided, however*, That nothing in this  
6 chapter grants an employer or individual in his, her or its service  
7 prior claims or rights to the amounts paid by him, her or its into  
8 the fund, either on his, her or its behalf or on behalf of the  
9 individuals. The account of any employer which has been inactive  
10 for a period of four consecutive calendar years shall be terminated  
11 for all purposes.

12 (2) Benefits paid to an eligible individual for regular and  
13 extended total or partial unemployment beginning after the  
14 effective date of this article shall be charged to the account of  
15 the last employer with whom he or she has been employed as much as  
16 thirty working days, whether or not the days are consecutive:  
17 *Provided*, That no employer's account may be charged with benefits  
18 paid to any individual who has been separated from a noncovered  
19 employing unit in which he or she was employed as much as thirty  
20 days, whether or not the days are consecutive: *Provided, however*,  
21 That no employer's account may be charged with more than fifty  
22 percent of the benefits paid to an eligible individual as extended  
23 benefits under the provisions of article six-a of this chapter:  
24 *Provided further*, That state and local government employers shall

1 be charged with one hundred percent of the benefits paid to an  
2 eligible individual as extended benefits. Benefits paid to an  
3 individual are to be charged to the accounts of his or her  
4 employers in the base period, the amount of the charges, chargeable  
5 to the account of each employer, to be that portion of the total  
6 benefits paid the individual as the wages paid him or her by the  
7 employer in the base period are to the total wages paid him or her  
8 during his or her base period for insured work by all his or her  
9 employers in the base period. For the purposes of this section, no  
10 base period employer's account may be charged for benefits paid  
11 under this chapter to a former employee, if the base period  
12 employer furnishes separation information within fourteen days from  
13 the date the notice was mailed or delivered, which results in a  
14 disqualification under the provision set forth in subsection one,  
15 section three, article six, or subsection two, section three,  
16 article six of this chapter or would have resulted in a  
17 disqualification under that subsection except for a subsequent  
18 period of covered employment by another employing unit. Further,  
19 no contributory base period employer's experience rating account  
20 may be charged for benefits paid under this chapter to an  
21 individual who has been continuously employed by that employer on  
22 a part-time basis, if the part-time employment continues while the  
23 individual is separated from other employment and is otherwise  
24 eligible for benefits. One half of extended benefits paid to an

1 individual are to be charged to the accounts of his or her  
2 employers, except state and local government employers, in the base  
3 period in the same manner provided for the charging of regular  
4 benefits. The entire state share of extended benefits paid to an  
5 individual shall be charged to the accounts of his or her base  
6 period employers. The provisions of this section permitting the  
7 noncharging of contributory employers' accounts have no application  
8 to benefit charges imposed upon reimbursable employers.

9       (3) The commissioner shall classify employers in accordance  
10 with their actual experience in the payment of contributions on  
11 their own behalf and with respect to benefits charged against their  
12 accounts, with a view of fixing the contribution rates as will  
13 reflect such experiences. For the purpose of fixing the  
14 contribution rates for each calendar year, the books of the  
15 department shall be closed on July 31 of the preceding calendar  
16 year, and any contributions paid after that, as well as benefits  
17 paid after that with respect to compensable weeks ending on or  
18 before June 30 of the preceding calendar year, may not be taken  
19 into account until the next annual date for fixing contribution  
20 rates: *Provided*, That if an employer has failed to furnish to the  
21 commissioner on or before July 31 of the preceding calendar year  
22 the wage information for all past periods necessary for the  
23 computation of the contribution rate, the employer's rate shall be,

1 if it is immediately prior to that July 31, less than three and  
2 three-tenths percent, increased to three and three-tenths percent:  
3 *Provided, however,* That any payment made or any information  
4 necessary for the computation of a reduced rate furnished on or  
5 before the termination of an extension of time for the payment or  
6 reporting of information granted pursuant to a rule of the  
7 commissioner authorizing an extension, shall be taken into account  
8 for the purposes of fixing contribution rates: *Provided further,*  
9 That when the time for filing any report or making any payment  
10 required hereunder falls on Saturday, Sunday, or a legal holiday,  
11 the due date is the next succeeding business day: *And provided*  
12 *further,* That whenever, through mistake or inadvertence, erroneous  
13 credits or charges are found to have been made to or against the  
14 reserved account of any employer, the rate shall be adjusted as of  
15 January 1 of the calendar year in which the mistake or inadvertence  
16 is discovered, but payments, made under any rate assigned prior to  
17 January 1 of that year, are not erroneously collected.

18 (4) The commissioner may prescribe rules for the  
19 establishment, maintenance and dissolution of joint accounts by two  
20 or more employers, and shall, in accordance with the rules and upon  
21 application by two or more employers to establish a joint account,  
22 or to merge their several individual accounts in a joint account,  
23 maintain a joint account as if it is a single employer's account.

1           (5) State and local government employers may enter into joint  
2 accounts and to maintain the joint account or accounts as if it or  
3 they are a single employer's account or accounts.

4           (6) Effective on and after July 1, 2012 if an employer has  
5 failed to furnish to the commissioner on or before August 31 of  
6 each year the wage information for all past periods necessary for  
7 the computation of the contribution rate, the employer's rate shall  
8 be, if it is immediately prior to July 1, less than seven and five-  
9 tenths percent, increased to seven and five-tenths percent.

10          (7) Effective July 1, 2012, a contributory employer's account  
11 shall not be relieved of charges relating to a payment from the  
12 Fund if the department determines that:

13          (A) The erroneous payment was made because the employer, or an  
14 agent of the employer, was at fault for failing to respond timely  
15 or adequately to the request of the agency for information relating  
16 to the claim for compensation; and

17          (B) the employer or agent has established a pattern of failing  
18 to respond timely or adequately to such requests.

19          (8) For purposes of this section:

20          (A) "Erroneous payment" means a payment that but for the  
21 failure by the employer or the employer's agent with respect to the  
22 claim for unemployment compensation would not have been made.

23          (B) "Pattern of failing" means repeated documented failure on

1 the part of the employer or the agent of the employer to respond as  
2 requested in this section, taking into consideration the number of  
3 instances of failure in relation to the total volume of requests by  
4 the agency to the employer or the employer's agent as described in  
5 this section.