

H. B. 4542

(By Delegates White, T. Campbell, Varner and Williams)
[Requested by the Department of Commerce]
[Introduced February 15, 2012; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §21A-5-7 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation benefits; and prevent contributory and reimbursable employers from being relieved of benefit charges to their accounts if an overpayment of benefits is the result of the employer's failure to provide requested information timely or to adequately allow the state to accurately determine a claimant's eligibility for benefits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

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

(1) ~~The commissioner shall maintain a separate account for~~

1 ~~each employer, and shall credit his account with all contributions~~
2 ~~paid by him prior to July 1, 1961. On and after July 1, 1961, the~~
3 ~~commissioner shall maintain a separate account for each employer,~~
4 ~~and shall credit said employer's account with all contributions of~~
5 ~~such employer in excess of seven tenths of one percent of taxable~~
6 ~~wages; and on and after July 1, 1971, The commissioner shall~~
7 maintain a separate account for each employer, and shall credit
8 ~~said~~ the employer's account with all contributions of ~~such~~ the
9 employer in excess of four tenths of one percent of taxable wages:
10 *Provided*, That any adjustment made in any employer's account after
11 the computation date ~~shall~~ may not be used in the computation of
12 the balance of an employer until the next following computation
13 date: *Provided, however*, That nothing in this chapter ~~shall be~~
14 ~~construed to grant~~ grants an employer or individual in his, her or
15 its service prior claims or rights to the amounts paid by him, her
16 or its into the fund, either on his, her or its behalf or on behalf
17 of ~~such~~ the individuals. The account of any employer which ~~had~~
18 has been inactive for a period of four consecutive calendar years
19 shall be terminated for all purposes.

20 (2) Benefits paid to an eligible individual for regular and
21 extended total or partial unemployment beginning after the
22 effective date of this article shall be charged to the account of
23 the last employer with whom he or she has been employed as much as
24 thirty working days, whether or not ~~such~~ the days are consecutive:

1 *Provided*, That no employer's account ~~shall~~ may be charged with
2 benefits paid to any individual who has been separated from a
3 noncovered employing unit in which he or she was employed as much
4 as thirty days, whether or not ~~such~~ the days are consecutive:
5 *Provided, however*, That no employer's account ~~shall~~ may be charged
6 with more than fifty percent of the benefits paid to an eligible
7 individual as extended benefits under the provisions of article
8 six-a of this chapter: *Provided further*, That state and local
9 government employers shall be charged with one hundred percent of
10 the benefits paid to an eligible individual as extended benefits.
11 ~~Beginning on July 1, 1984~~, Benefits paid to an individual are to be
12 charged to the accounts of his or her employers in the base period,
13 the amount of ~~such~~ the charges, chargeable to the account of each
14 ~~such~~ employer, to be that portion of the total benefits paid ~~such~~
15 the individual as the wages paid him or her by ~~such~~ the employer in
16 the base period are to the total wages paid him or her during his
17 or her base period for insured work by all his or her employers in
18 the base period. For the purposes of this section, no base period
19 employer's account ~~shall~~ may be charged for benefits paid under
20 this chapter to a former employee, ~~provided such~~ if the base period
21 employer furnishes separation information within fourteen days from
22 the date the notice was mailed or delivered, which results in a
23 disqualification under the provision set forth in subsection one,
24 section three, article six, or subsection two, section three,

1 article six of this chapter or would have resulted in a
2 disqualification under ~~such~~ that subsection except for a subsequent
3 period of covered employment by another employing unit. Further,
4 no contributory base period employer's experience rating account
5 ~~shall~~ may be charged for benefits paid under this chapter to an
6 individual who has been continuously employed by that employer on
7 a part-time basis, if the part-time employment continues while the
8 individual is separated from other employment and is otherwise
9 eligible for benefits. One half of extended benefits paid to an
10 individual ~~after July 1, 1984, and subsequent years~~ are to be
11 charged to the accounts of his or her employers, except state and
12 local government employers, in the base period in the same manner
13 provided for the charging of regular benefits. ~~Effective January~~
14 ~~1, 1988,~~ The entire state share of extended benefits paid to an
15 individual shall be charged to the accounts of his or her base
16 period employers. The provisions of this section permitting the
17 noncharging of contributory employers' accounts have no application
18 to benefit charges imposed upon reimbursable employers.

19 Effective July 1, 2012, contributory and reimbursable
20 employers may not be relieved of benefit charges to their accounts
21 if an overpayment of benefits established after that date is the
22 result of the employer's failure, or the failure of third party
23 agents acting on the employer's behalf, to provide requested

1 information timely or to adequately allow the agency to accurately
2 determine a claimant's eligibility for benefits when his or her
3 claim is initially filed.

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

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

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

23 (5) State and local government employers ~~are hereby authorized~~

1 ~~to~~ may enter into joint accounts and to maintain ~~such~~ the joint
2 account or accounts as if it or they ~~constituted~~ are a single
3 employer's account or accounts.

4 (6) ~~Effective on and after July 1, 1981,~~ If an employer has
5 failed to furnish to the commissioner on or before August 31 ~~1980,~~
6 ~~and each year thereafter, with the exception of 1981, which due~~
7 ~~date shall be September 30, 1981, of each year~~ the wage information
8 for all past periods necessary for the computation of the
9 contribution rate, ~~such~~ the employer's rate shall be, if it is
10 immediately prior to July 1, ~~1981~~ less than seven and five-tenths
11 percent, increased to seven and five-tenths percent.

NOTE: The purpose of this bill is to prevent contributory and reimbursable employers, under the unemployment compensation laws, from being relieved of benefit charges to their accounts if an overpayment of benefits is the result of the employer's failure to provide requested information timely or to adequately allow the state to accurately determine a claimant's eligibility for benefits.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.