

H. B. 2735

(By Delegates Householder, Cadle, Cowles, Gearheart,
Kurcaba, Statler, Butler, Blair and Summers)

[Introduced February 13, 2015; referred to the
Committee on Finance.]

A BILL to amend and reenact §21A-1A-28 of the Code of West Virginia, 1931, as amended, relating
to unemployment tax; altering an operative date in the definition of threshold wage.

Be it enacted by the Legislature of West Virginia:

That §21A-1A-28 of the Code of West Virginia, 1931, as amended, be amended and
reenacted to read as follows:

ARTICLE 1A. DEFINITIONS.

§21A-1A-28. Wages; average annual wage; threshold wage.

(a) "Wages" means all remuneration for personal service, including commissions, gratuities
customarily received by an individual in the course of employment from persons other than the
employing unit, as long as such gratuities equal or exceed an amount of not less than \$20 each month
and which are required to be reported to the employer by the employee, bonuses and the cash value
of all remuneration in any medium other than cash except for agricultural labor and domestic service.
The term "wages" includes remuneration for service rendered to the state as a member of the state
National Guard or Air National Guard only when serving on a temporary basis pursuant to a call

1 made by the Governor under sections one and two, article one-d, chapter fifteen of this code.

2 (b) The term "wages" does not include:

3 (1) That part of the remuneration which, after remuneration equal to \$8,000 or, after the
4 amendment and reenactment of this section during the 2009 legislative session, the threshold wage
5 is paid during a calendar year to an individual by an employer or his or her predecessor with respect
6 to employment during any calendar year, is paid to such individual by such employer during such
7 calendar year unless that part of the remuneration is subject to a tax under a federal law imposing
8 a tax against which credit may be taken for contributions required to be paid into a state
9 unemployment fund. For the purposes of this section, the term "employment" includes service
10 constituting employment under any unemployment compensation law of another state; or which as
11 a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is
12 required to be covered under this chapter; and, except that for the purposes of sections one, ten,
13 eleven and thirteen, article six of this chapter, all remuneration earned by an individual in
14 employment shall be credited to the individual and included in his or her computation of base period
15 wages: *Provided*, That the remuneration paid to an individual by an employer with respect to
16 employment in another state or other states upon which contributions were required of and paid by
17 such employer under an unemployment compensation law of such other state or states shall be
18 included as a part of the remuneration equal to the amounts of \$8,000 or, after the amendment and
19 reenactment of this section during the 2009 legislative session, the threshold wage herein referred
20 to. In applying such limitation on the amount of remuneration that is taxable, an employer shall be
21 accorded the benefit of all or any portion of such amount which may have been paid by its
22 predecessor or predecessors: *Provided, however*, That if the definition of the term "wages" as

1 contained in Section 3306(b) of the Internal Revenue Code of 1954, as amended, is amended to
2 include remuneration in excess of \$8,000 or, after the amendment and reenactment of this section
3 during the 2009 legislative session, the threshold wage paid to an individual by an employer under
4 the federal Unemployment Tax Act during any calendar year, wages for the purposes of this
5 definition shall include remuneration paid in a calendar year to an individual by an employer subject
6 to this chapter or his or her predecessor with respect to employment during any calendar year up to
7 an amount equal to the amount of remuneration taxable under the federal Unemployment Tax Act;

8 (2) The amount of any payment made (including any amount paid by an employer for
9 insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an
10 individual in its employ or any of his or her dependents, under a plan or system established by an
11 employer which makes provision for individuals in its employ generally (or for such individuals and
12 their dependents), or for a class or classes of such individuals (or for a class or classes of such
13 individuals and their dependents) on account of: (A) Retirement; or (B) sickness or accident
14 disability payments made to an employee under an approved state workers' compensation law; or (C)
15 medical or hospitalization expenses in connection with sickness or accident disability; or (D) death;

16 (3) Any payment made by an employer to an individual in its employ (including any amount
17 paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on
18 account of retirement;

19 (4) Any payment made by an employer on account of sickness or accident disability, or
20 medical or hospitalization expenses in connection with sickness or accident disability to, or on behalf
21 of, an individual in its employ after the expiration of six calendar months following the last calendar
22 month in which such individual worked for such employer;

- 1 (5) Any payment made by an employer to, or on behalf of, an individual in its employ or his
2 or her beneficiary: (A) From or to a trust described in Section 401(a) which is exempt from tax
3 under Section 501(a) of the federal Internal Revenue Code at the time of such payments unless such
4 payment is made to such individual as an employee of the trust as remuneration for services rendered
5 by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan which, at
6 the time of such payment, is a plan described in Section 403(a) of the federal Internal Revenue Code;
- 7 (6) The payment by an employer of the tax imposed upon an employer under Section 3101
8 of the federal Internal Revenue Code with respect to remuneration paid to an employee for domestic
9 service in a private home or the employer of agricultural labor;
- 10 (7) Remuneration paid by an employer in any medium other than cash to an individual in its
11 employ for service not in the course of the employer's trade or business;
- 12 (8) Any payment (other than vacation or sick pay) made by an employer to an individual in
13 its employ after the month in which he or she attains the age of sixty-five if he or she did not work
14 for the employer in the period for which such payment is made;
- 15 (9) Payments, not required under any contract of hire, made to an individual with respect to
16 his or her period of training or service in the Armed Forces of the United States by an employer by
17 which such individual was formerly employed; and
- 18 (10) Vacation pay, severance pay or savings plans received by an individual before or after
19 becoming totally or partially unemployed but earned prior to becoming totally or partially
20 unemployed: *Provided*, That the term totally or partially unemployed does not include: (A)
21 Employees who are on vacation by reason of the request of the employees or their duly authorized
22 agent, for a vacation at a specific time, and which request by the employees or their agent is acceded

1 to by their employer; (B) employees who are on vacation by reason of the employer's request
2 provided they are so informed at least ninety days prior to such vacation; or (C) employees who are
3 on vacation by reason of the employer's request where such vacation is in addition to the regular
4 vacation and the employer compensates such employee at a rate equal to or exceeding their regular
5 daily rate of pay during the vacation period.

6 (c) The reasonable cash value of remuneration in any medium other than cash shall be
7 estimated and determined in accordance with rules prescribed by the commissioner, except for
8 remuneration other than cash for services performed in agricultural labor and domestic service.

9 (d) "Average annual wage" means the state's average annual wage which is computed on or
10 before September 30 of the year immediately preceding the rate year and is the total remuneration
11 paid by employers as reported on contribution reports on or before that date with respect to all
12 employment during the four consecutive calendar quarters ending on June 30 of that year divided
13 by the average monthly number of individuals performing services in employment during the same
14 four calendar quarters as reported on the contribution reports.

15 "Threshold wage" means the wage amount the employer pays unemployment taxes on for
16 each person in his or her employ during a calendar year. On and after the effective date of the
17 amendment and reenactment of this chapter by the Legislature in 2009, the threshold wage will be
18 \$12,000: *Provided*, That when the moneys in the unemployment fund reach \$220 million, ~~on~~
19 ~~February 15 of any year~~, the threshold wage thereafter will be reduced to \$9,000: *Provided*,
20 *however*, That each year thereafter the threshold wage shall increase or decrease by the same
21 percentage that the state's average wage increases or decreases.

NOTE: The purpose of this bill is to change to the date the unemployment fund reaches a certain level to reduce the threshold wage

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