

FILED

2009 MAY 11 PM 5: 25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2009

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 246

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
BY REQUEST OF THE EXECUTIVE)

[Passed April 11, 2009; in effect from passage.]

SB 246

FILED

2009 MAY 11 PM 5: 25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 246

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
BY REQUEST OF THE EXECUTIVE)

[Passed April 11, 2009; in effect from passage.]

AN ACT to amend and reenact §21A-1-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §21A-1A-5, §21A-1A-6, §21A-1A-7 and §21A-1A-28 of said code; to amend and reenact §21A-6-1, §21A-6-3 and §21A-6-10 of said code; and to amend and reenact §23-2C-3 of said code, all relating generally to unemployment compensation; requiring establishment of employer violator system; providing for notice and due process; defining certain terms; providing that the maximum weekly benefit rate shall not increase or decrease under certain circumstances; providing for an alternative base wage and authorizing benefits thereunder; requiring notice to employer when employee quits for health reasons; requiring written certification from physician within thirty days; classifying certain conduct as gross misconduct; providing that an

employee who voluntarily retires is not eligible for unemployment; requiring the Insurance Commissioner transfer certain funds for the benefit of the Unemployment Trust Fund; and authorizing the transfer of certain funds by the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

That §21A-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §21A-1A-5, §21A-1A-6, §21A-1A-7 and §21A-1A-28 of said code be amended and reenacted; that §21A-6-1, §21A-6-3 and §21A-6-10 of said code be amended and reenacted; and that §23-2C-3 of said code be amended and reenacted, all to read as follows:

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1. UNEMPLOYMENT COMPENSATION.

§21A-1-4. Workforce West Virginia created; divisions within Workforce West Virginia created; certain terms defined; employer violator system.

1 (a) There is continued an agency designated Workforce
2 West Virginia, composed of:

3 (1) Division of Unemployment Compensation;

4 (2) Division of Employment Service;

5 (3) Division of Workforce Development;

6 (4) Division of Research, Information and Analysis; and

7 (5) Any other divisions or units that the executive
8 director determines are necessary.

9 (b) Wherever within this chapter the term "depart-
10 ment", "bureau" or "fund" is used, it shall be taken to
11 mean Workforce West Virginia unless otherwise indicated.
12 Any reference in this code to the Bureau of Employment
13 Programs means Workforce West Virginia. Any reference

14 in this code to the Commissioner of the Bureau of Employ-
15 ment Programs or Employment Security means the
16 Executive Director of Workforce West Virginia.

17 (c) Workforce West Virginia shall be administered
18 pursuant to subsection (b), section one, article two,
19 chapter five-f of this code.

20 (d) The Executive Director of Workforce West Virginia
21 shall establish an employer violator system to identify
22 individuals and employers who are in default on any
23 assessment, surcharge, tax or penalty owed to the fund.
24 The employer violator system shall prohibit violators who
25 own, control or have a ten percent or more ownership
26 interest, or other ownership interest as may be defined by
27 the executive director, in any company from obtaining or
28 maintaining any license, certificate or permit issued by the
29 state until the violator has paid all moneys owed to the
30 fund or has entered into and remains in compliance with
31 a repayment agreement. The employer violator system
32 shall work cooperatively with all state agencies to main-
33 tain an accurate, up-to-date list of violators which shall be
34 available in electronic format and online for agencies and
35 the public. Before an employer is added to the violator
36 list, he or she shall be given notice and an opportunity for
37 an expedited administrative hearing. The executive
38 director shall propose for promulgation emergency and
39 legislative rules to effectuate this subsection.

ARTICLE 1A. DEFINITIONS.

§21A-1A-5. Base period; alternative base period.

1 (a) "Base period" means the first four out of the last
2 five completed calendar quarters immediately preceding
3 the first day of the individual's benefit year.

4 (b) "Alternative base period" means the last four
5 completed calendar quarters immediately preceding the
6 first day of the individual's benefit year.

§21A-1A-6. Base period employer; alternative base period employer.

1 "Base period employer" and "alternative base period
2 employer" mean any employer who in the base period or
3 alternative base period for any benefit year paid wages to
4 an individual who filed claim for unemployment compen-
5 sation within such benefit year.

§21A-1A-7. Base period wages; alternative base period wages.

1 "Base period wages" and "alternative base period
2 wages" mean wages paid to an individual during the base
3 period or alternative base period by all the individual's
4 base period or alternative base period employers.

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

1 (a) "Wages" means all remuneration for personal
2 service, including commissions, gratuities customarily
3 received by an individual in the course of employment
4 from persons other than the employing unit, as long as
5 such gratuities equal or exceed an amount of not less than
6 \$20 each month and which are required to be reported to
7 the employer by the employee, bonuses and the cash value
8 of all remuneration in any medium other than cash except
9 for agricultural labor and domestic service. The term
10 "wages" includes remuneration for servicerendered to the
11 state as a member of the state National Guard or Air
12 National Guard only when serving on a temporary basis
13 pursuant to a call made by the Governor under sections
14 one and two, article one-d, chapter fifteen of this code.

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

16 (1) That part of the remuneration which, after remuner-
17 ation equal to \$8,000 or, after the amendment and
18 reenactment of this section during the 2009 legislative
19 session, the threshold wage is paid during a calendar year
20 to an individual by an employer or his or her predecessor
21 with respect to employment during any calendar year, is
22 paid to such individual by such employer during such
23 calendar year unless that part of the remuneration is
24 subject to a tax under a federal law imposing a tax against
25 which credit may be taken for contributions required to be
26 paid into a state unemployment fund. For the purposes of
27 this section, the term "employment" includes service
28 constituting employment under any unemployment
29 compensation law of another state; or which as a condition
30 for full tax credit against the tax imposed by the federal
31 Unemployment Tax Act is required to be covered under
32 this chapter; and, except that for the purposes of sections
33 one, ten, eleven and thirteen, article six of this chapter, all
34 remuneration earned by an individual in employment shall
35 be credited to the individual and included in his or her
36 computation of base period wages: *Provided*, That the
37 remuneration paid to an individual by an employer with
38 respect to employment in another state or other states
39 upon which contributions were required of and paid by
40 such employer under an unemployment compensation law
41 of such other state or states shall be included as a part of
42 the remuneration equal to the amounts of \$8,000 or, after
43 the amendment and reenactment of this section during the
44 2009 legislative session, the threshold wage herein referred
45 to. In applying such limitation on the amount of remuner-
46 ation that is taxable, an employer shall be accorded the
47 benefit of all or any portion of such amount which may
48 have been paid by its predecessor or predecessors: *Pro-*
49 *vided, however*, That if the definition of the term "wages"
50 as contained in Section 3306(b) of the Internal Revenue
51 Code of 1954, as amended, is amended to include remuner-
52 ation in excess of \$8,000 or, after the amendment and

53 reenactment of this section during the 2009 legislative
54 session, the threshold wage paid to an individual by an
55 employer under the federal Unemployment Tax Act during
56 any calendar year, wages for the purposes of this defini-
57 tion shall include remuneration paid in a calendar year to
58 an individual by an employer subject to this chapter or his
59 or her predecessor with respect to employment during any
60 calendar year up to an amount equal to the amount of
61 remuneration taxable under the federal Unemployment
62 Tax Act;

63 (2) The amount of any payment made (including any
64 amount paid by an employer for insurance or annuities, or
65 into a fund, to provide for any such payment) to, or on
66 behalf of, an individual in its employ or any of his or her
67 dependents, under a plan or system established by an
68 employer which makes provision for individuals in its
69 employ generally (or for such individuals and their
70 dependents), or for a class or classes of such individuals (or
71 for a class or classes of such individuals and their depend-
72 ents) on account of: (A) Retirement; or (B) sickness or
73 accident disability payments made to an employee under
74 an approved state workers' compensation law; or (C)
75 medical or hospitalization expenses in connection with
76 sickness or accident disability; or (D) death;

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

81 (4) Any payment made by an employer on account of
82 sickness or accident disability, or medical or hospitaliza-
83 tion expenses in connection with sickness or accident
84 disability to, or on behalf of, an individual in its employ
85 after the expiration of six calendar months following the
86 last calendar month in which such individual worked for
87 such employer;

88 (5) Any payment made by an employer to, or on behalf
89 of, an individual in its employ or his or her beneficiary: (A)
90 From or to a trust described in Section 401(a) which is
91 exempt from tax under Section 501(a) of the federal
92 Internal Revenue Code at the time of such payments unless
93 such payment is made to such individual as an employee
94 of the trust as remuneration for services rendered by such
95 individual and not as a beneficiary of the trust; or (B)
96 under or to an annuity plan which, at the time of such
97 payment, is a plan described in Section 403(a) of the
98 federal Internal Revenue Code;

99 (6) The payment by an employer of the tax imposed
100 upon an employer under Section 3101 of the federal
101 Internal Revenue Code with respect to remuneration paid
102 to an employee for domestic service in a private home or
103 the employer of agricultural labor;

104 (7) Remuneration paid by an employer in any medium
105 other than cash to an individual in its employ for service
106 not in the course of the employer's trade or business;

107 (8) Any payment (other than vacation or sick pay) made
108 by an employer to an individual in its employ after the
109 month in which he or she attains the age of sixty-five if he
110 or she did not work for the employer in the period for
111 which such payment is made;

112 (9) Payments, not required under any contract of hire,
113 made to an individual with respect to his or her period of
114 training or service in the armed forces of the United States
115 by an employer by which such individual was formerly
116 employed; and

117 (10) Vacation pay, severance pay or savings plans
118 received by an individual before or after becoming totally
119 or partially unemployed but earned prior to becoming
120 totally or partially unemployed: *Provided*, That the term
121 totally or partially unemployed does not include: (A)

122 Employees who are on vacation by reason of the request of
123 the employees or their duly authorized agent, for a vaca-
124 tion at a specific time, and which request by the employees
125 or their agent is acceded to by their employer; (B) employ-
126 ees who are on vacation by reason of the employer's
127 request provided they are so informed at least ninety days
128 prior to such vacation; or (C) employees who are on
129 vacation by reason of the employer's request where such
130 vacation is in addition to the regular vacation and the
131 employer compensates such employee at a rate equal to or
132 exceeding their regular daily rate of pay during the
133 vacation period.

134 (c) The reasonable cash value of remuneration in any
135 medium other than cash shall be estimated and deter-
136 mined in accordance with rules prescribed by the commis-
137 sioner, except for remuneration other than cash for
138 services performed in agricultural labor and domestic
139 service.

140 (d) "Average annual wage" means the state's average
141 annual wage which is computed on or before September 30
142 of the year immediately preceding the rate year and is the
143 total remuneration paid by employers as reported on
144 contribution reports on or before that date with respect to
145 all employment during the four consecutive calendar
146 quarters ending on June 30 of that year divided by the
147 average monthly number of individuals performing
148 services in employment during the same four calendar
149 quarters as reported on the contribution reports.

150 "Threshold wage" means the wage amount the em-
151 ployer pays unemployment taxes on for each person in his
152 or her employ during a calendar year. On and after the
153 effective date of the amendment and reenactment of this
154 chapter by the Legislature in 2009, the threshold wage will
155 be \$12,000: *Provided*, That when the moneys in the
156 unemployment fund reach \$220 million on February 15 of

157 any year, the threshold wage thereafter will be reduced to
158 \$9,000: *Provided, however,* That each year thereafter the
159 threshold wage shall increase or decrease by the same
160 percentage that the state's average wage increases or
161 decreases.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive
2 benefits only if the commissioner finds that:

3 (1) He or she has registered for work at and thereafter
4 continues to report at an employment office in accordance
5 with the regulations of the commissioner;

6 (2) He or she has made a claim for benefits in accor-
7 dance with the provisions of article seven of this chapter
8 and has furnished his or her Social Security number, or
9 numbers if he or she has more than one such number;

10 (3) He or she is able to work and is available for full-
11 time work for which he or she is fitted by prior training or
12 experience and is doing that which a reasonably prudent
13 person in his or her circumstances would do in seeking
14 work;

15 (4) He or she has been totally or partially unemployed
16 during his or her benefit year for a waiting period of one
17 week prior to the week for which he or she claims benefits
18 for total or partial unemployment;

19 (5) He or she has within his or her base period been paid
20 wages for employment equal to not less than \$2,200 and
21 must have earned wages in more than one quarter of his or
22 her base period or, if he or she is not eligible under his or
23 her base period, has within his or her alternative base
24 period been paid wages for employment equal to not less

25 than \$2,200 and must have earned wages in more than one
26 quarter of his or her alternative base period; and

27 (6) He or she participates in reemployment services,
28 such as job search assistance services, if the individual has
29 been determined to be likely to exhaust regular benefits
30 and needs reemployment services pursuant to a profiling
31 system established by the commissioner, unless the
32 commissioner determines that:

33 (a) The individual has completed such services; or

34 (b) There is justifiable cause for the claimant's failure
35 to participate in such services.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commis-
2 sioner, an individual shall be disqualified for benefits:

3 (1) For the week in which he or she left his or her most
4 recent work voluntarily without good cause involving
5 fault on the part of the employer and until the individual
6 returns to covered employment and has been employed in
7 covered employment at least thirty working days.

8 For the purpose of this subdivision, an individual shall
9 not be deemed to have left his or her most recent work
10 voluntarily without good cause involving fault on the part
11 of the employer, if such individual leaves his or her most
12 recent work with an employer and if he or she in fact,
13 within a fourteen-day calendar period, does return to
14 employment with the last preceding employer with whom
15 he or she was previously employed within the past year
16 prior to his or her return to workday, and which last
17 preceding employer, after having previously employed
18 such individual for thirty working days or more, laid off
19 such individual because of lack of work, which layoff
20 occasioned the payment of benefits under this chapter or
21 could have occasioned the payment of benefits under this

22 chapter had such individual applied for such benefits. It
23 is the intent of this paragraph to cause no disqualification
24 for benefits for such an individual who complies with the
25 foregoing set of requirements and conditions. Further, for
26 the purpose of this subdivision, an individual shall not be
27 deemed to have left his or her most recent work volun-
28 tarily without good cause involving fault on the part of the
29 employer, if such individual was compelled to leave his or
30 her work for his or her own health-related reasons and
31 notifies the employer prior to leaving the job or within two
32 business days after leaving the job or as soon as practica-
33 ble and presents written certification from a licensed
34 physician within thirty days of leaving the job that his or
35 her work aggravated, worsened or will worsen the individ-
36 ual's health problem.

37 (2) For the week in which he or she was discharged
38 from his or her most recent work for misconduct and the
39 six weeks immediately following such week; or for the
40 week in which he or she was discharged from his or her
41 last thirty-day employing unit for misconduct and the six
42 weeks immediately following such week. Such disqualifi-
43 cation shall carry a reduction in the maximum benefit
44 amount equal to six times the individual's weekly benefit.
45 However, if the claimant returns to work in covered
46 employment for thirty days during his or her benefit year,
47 whether or not such days are consecutive, the maximum
48 benefit amount shall be increased by the amount of the
49 decrease imposed under the disqualification; except that:

50 If he or she were discharged from his or her most recent
51 work for one of the following reasons, or if he or she were
52 discharged from his or her last thirty days employing unit
53 for one of the following reasons: Gross misconduct consist-
54 ing of willful destruction of his or her employer's property;
55 assault upon the person of his or her employer or any
56 employee of his or her employer; if such assault is commit-
57 ted at such individual's place of employment or in the

58 course of employment; reporting to work in an intoxicated
59 condition, or being intoxicated while at work; reporting to
60 work under the influence of any controlled substance, as
61 defined in chapter sixty-a of this code without a valid
62 prescription, or being under the influence of any con-
63 trolled substance, as defined in said chapter without a
64 valid prescription, while at work; adulterating or other-
65 wise manipulating a sample or specimen in order to thwart
66 a drug or alcohol test lawfully required of an employee;
67 refusal to submit to random testing for alcohol or illegal
68 controlled substances for employees in safety sensitive
69 positions as defined in section two, article one-d, chapter
70 twenty-one of this code; arson, theft, larceny, fraud or
71 embezzlement in connection with his or her work; or any
72 other gross misconduct, he or she shall be and remain
73 disqualified for benefits until he or she has thereafter
74 worked for at least thirty days in covered employment:
75 *Provided*, That for the purpose of this subdivision, the
76 words "any other gross misconduct" shall include, but not
77 be limited to, any act or acts of misconduct where the
78 individual has received prior written warning that termi-
79 nation of employment may result from such act or acts.

80 (3) For the week in which he or she failed without good
81 cause to apply for available, suitable work, accept suitable
82 work when offered, or return to his or her customary
83 self-employment when directed to do so by the commis-
84 sioner, and for the four weeks which immediately follow
85 for such additional period as any offer of suitable work
86 shall continue open for his or her acceptance. Such
87 disqualification shall carry a reduction in the maximum
88 benefit amount equal to four times the individual's weekly
89 benefit amount.

90 (4) For a week in which his or her total or partial
91 unemployment is due to a stoppage of work which exists
92 because of a labor dispute at the factory, establishment or
93 other premises at which he or she was last employed,

94 unless the commissioner is satisfied that he or she: (1) Was
95 not participating, financing or directly interested in such
96 dispute; and (2) did not belong to a grade or class of
97 workers who were participating, financing or directly
98 interested in the labor dispute which resulted in the
99 stoppage of work. No disqualification under this subdivi-
100 sion shall be imposed if the employees are required to
101 accept wages, hours or conditions of employment substan-
102 tially less favorable than those prevailing for similar work
103 in the locality, or if employees are denied the right of
104 collective bargaining under generally prevailing condi-
105 tions, or if an employer shuts down his or her plant or
106 operation or dismisses his or her employees in order to
107 force wage reduction, changes in hours or working condi-
108 tions. For the purpose of this subdivision if any stoppage
109 of work continues longer than four weeks after the termi-
110 nation of the labor dispute which caused stoppage of
111 work, there shall be a rebuttable presumption that part of
112 the stoppage of work which exists after a period of four
113 weeks after the termination of the labor dispute did not
114 exist because of the labor dispute; and in that event the
115 burden shall be upon the employer or other interested
116 party to show otherwise.

117 (5) For a week with respect to which he or she is
118 receiving or has received:

119 (a) Wages in lieu of notice;

120 (b) Compensation for temporary total disability under
121 the workers' compensation law of any state or under a
122 similar law of the United States; or

123 (c) Unemployment compensation benefits under the
124 laws of the United States or any other state.

125 (6) For the week in which an individual has voluntarily
126 quit employment to marry or to perform any marital,
127 parental or family duty, or to attend to his or her personal

128 business or affairs and until the individual returns to
129 covered employment and has been employed in covered
130 employment at least thirty working days.

131 (7) Benefits shall not be paid to any individual on the
132 basis of any services, substantially all of which consist of
133 participating in sports or athletic events or training or
134 preparing to so participate, for any week which com-
135 mences during the period between two successive sport
136 seasons (or similar periods) if such individual performed
137 such services in the first of such seasons (or similar
138 periods) and there is a reasonable assurance that such
139 individual will perform such services in the later of such
140 seasons (or similar periods).

141 (8)(a) Benefits shall not be paid on the basis of services
142 performed by an alien unless such alien is an individual
143 who was lawfully admitted for permanent residence at the
144 time such services were performed, was lawfully present
145 for purposes of performing such services or was perma-
146 nently residing in the United States under color of law at
147 the time such services were performed (including an alien
148 who is lawfully present in the United States as a result of
149 the application of the provisions of Section 203(a)(7) or
150 Section 212(d)(5) of the Immigration and Nationality Act):
151 *Provided*, That any modifications to the provisions of
152 Section 3304(a)(14) of the federal Unemployment Tax Act
153 as provided by Public Law 94-566 which specify other
154 conditions or other effective date than stated herein for
155 the denial of benefits based on services performed by
156 aliens and which modifications are required to be imple-
157 mented under state law as a condition for full tax credit
158 against the tax imposed by the federal Unemployment Tax
159 Act shall be deemed applicable under the provisions of
160 this section;

161 (b) Any data or information required of individuals
162 applying for benefits to determine whether benefits are

163 not payable to them because of their alien status shall be
164 uniformly required from all applicants for benefits;

165 (c) In the case of an individual whose application for
166 benefits would otherwise be approved, no determination
167 that benefits to such individual are not payable because of
168 his or her alien status shall be made except upon a prepon-
169 derance of the evidence.

170 (9) For each week in which an individual is unemployed
171 because, having voluntarily left employment to attend a
172 school, college, university or other educational institution,
173 he or she is attending such school, college, university or
174 other educational institution, or is awaiting entrance
175 thereto or is awaiting the starting of a new term or session
176 thereof, and until the individual returns to covered
177 employment.

178 (10) For each week in which he or she is unemployed
179 because of his or her request, or that of his or her duly
180 authorized agent, for a vacation period at a specified time
181 that would leave the employer no other alternative but to
182 suspend operations.

183 (11) In the case of an individual who accepts an early
184 retirement incentive package, unless he or she: (i) Estab-
185 lishes a well-grounded fear of imminent layoff supported
186 by definitive objective facts involving fault on the part of
187 the employer; and (ii) establishes that he or she would
188 suffer a substantial loss by not accepting the early retire-
189 ment incentive package.

190 (12) For each week with respect to which he or she is
191 receiving or has received benefits under Title II of the
192 Social Security Act or similar payments under any act of
193 Congress, or remuneration in the form of an annuity,
194 pension or other retirement pay from a base period
195 employer or chargeable employer or from any trust or fund
196 contributed to by a base period employer or chargeable

197 employer or any combination of the above, the weekly
198 benefit amount payable to such individual for such week
199 shall be reduced (but not below zero) by the prorated
200 weekly amount of said benefits, payments or remunera-
201 tion: *Provided*, That if such amount of benefits is not a
202 multiple of \$1, it shall be computed to the next lowest
203 multiple of \$1: *Provided, however*, That there shall be no
204 disqualification if in the individual's base period there are
205 no wages which were paid by the base period employer or
206 chargeable employer paying such remuneration, or by a
207 fund into which the employer has paid during said base
208 period: *Provided further*, That notwithstanding any other
209 provision of this subdivision to the contrary, the weekly
210 benefit amount payable to such individual for such week
211 shall not be reduced by any retirement benefits he or she
212 is receiving or has received under Title II of the Social
213 Security Act or similar payments under any act of Con-
214 gress. Claimant may be required to certify as to whether
215 or not he or she is receiving or has been receiving remuner-
216 ation in the form of an annuity, pension or other retire-
217 ment pay from a base period employer or chargeable
218 employer or from a trust fund contributed to by a base
219 period employer or chargeable employer.

220 (13) For each week in which and for fifty-two weeks
221 thereafter, beginning with the date of the decision, if the
222 commissioner finds such individual who within
223 twenty-four calendar months immediately preceding such
224 decision, has made a false statement or representation
225 knowing it to be false or knowingly fails to disclose a
226 material fact, to obtain or increase any benefit or payment
227 under this article: *Provided*, That disqualification under
228 this subdivision shall not preclude prosecution under
229 section seven, article ten of this chapter.

**§21A-6-10. Benefit rate – Total unemployment; annual compu-
tation and publication of rates.**

1 (a) Each eligible individual who is totally unemployed
2 in any week shall be paid benefits with respect to that
3 week at the weekly rate appearing in Column (C) in the
4 benefit table in this section, on the line on which in
5 Column (A) there is indicated the employee's wage class,
6 except as otherwise provided under the term "total and
7 partial unemployment" in section twenty-seven, article
8 one-a of this chapter. The employee's wage class shall be
9 determined by his or her base period wages as shown in
10 Column (B) in the benefit table. The right of an employee
11 to receive benefits shall not be prejudiced nor the amount
12 thereof be diminished by reason of failure by an employer
13 to pay either the wages earned by the employee or the
14 contribution due on such wages. An individual who is
15 totally unemployed but earns in excess of \$60 as a result
16 of odd job or subsidiary work, or is paid a bonus in any
17 benefit week shall be paid benefits for such week in
18 accordance with the provisions of this chapter pertaining
19 to benefits for partial unemployment.

20 (b) (1) The maximum benefit for each wage class shall
21 be equal to twenty-six times the weekly benefit rate.

22 (2) The maximum benefit rate shall be sixty-six and
23 two-thirds percent of the average weekly wage in West
24 Virginia.

25 (c) On July 1 of each year, the commissioner shall
26 determine the maximum weekly benefit rate upon the
27 basis of the formula set forth above and shall establish
28 wage classes as are required, increasing or decreasing the
29 amount of the base period wages required for each wage
30 class by \$150, establishing the weekly benefit rate for each
31 wage class by rounded dollar amount to be fifty-five
32 percent of one fifty-second of the median dollar amount of
33 wages in the base period for such wage class and estab-
34 lishing the maximum benefit for each wage class as an

35 amount equal to twenty-six times the weekly benefit rate:
36 *Provided*, That the commissioner shall not increase or
37 decrease the maximum weekly benefit rate for the period
38 beginning on the effective date of the amendment and
39 reenactment of this section in the regular session of the
40 legislature in 2009 until the threshold wage is reduced to
41 \$9,000, as required by subsection (d), section twenty-eight,
42 article one-a of this chapter. The maximum weekly
43 benefit rate, when computed by the commissioner, in
44 accordance with the foregoing provisions, shall be rounded
45 to the next lowest multiple of \$1.

46 (d) After he or she has established such wage classes,
47 the commissioner shall prepare and publish a table setting
48 forth such information.

49 (e) Average weekly wage shall be computed by dividing
50 the number of employees in West Virginia earning wages
51 in covered employment into the total wages paid to
52 employees in West Virginia in covered employment, and by
53 further dividing said result by fifty-two, and shall be
54 determined from employer wage and contribution reports
55 for the previous calendar year which are furnished to the
56 department on or before June 1 following such calendar
57 year. The average weekly wage, as determined by the
58 commissioner, shall be rounded to the next higher dollar.

59 (f) The computation and determination of rates as
60 aforesaid shall be completed annually before July 1 and
61 any such new wage class, with its corresponding wages in
62 base period, weekly benefit rate and maximum benefit in
63 a benefit year established by the commissioner in the
64 foregoing manner effective on July 1 shall apply only to a
65 new claim established by a claimant on and after July 1
66 and does not apply to continued claims of a claimant
67 based on his or her new claim established before said July
68 1.

69

BENEFIT TABLE

70	A	B	C		
71	WAGE	WAGES IN	WEEKLY	MAXIMUM	
72	CLASS	BASE PERIOD	BENEFIT	BENEFIT	
			RATE	RATE	
		Under \$ 2,200.00	Ineligible		
73	1	\$ 2,200.00 - 2,359.99	24.00	624.00	
74	2	2,350.00 - 2,499.99	25.00	650.00	
75	3	2,500.00 - 2,649.99	27.00	702.00	
76	4	2,650.00 - 2,799.99	28.00	728.00	
77	5	2,800.00 - 2,949.99	30.00	780.00	
78	6	2,950.00 - 3,099.99	31.00	806.00	
79	7	3,100.00 - 3,249.99	33.00	858.00	
80	8	3,250.00 - 3,399.99	35.00	910.00	
81	9	3,400.00 - 3,549.99	36.00	936.00	
82	10	3,550.00 - 3,699.99	38.00	988.00	
83	11	3,700.00 - 3,849.99	39.00	1,014.00	
84	12	3,850.00 - 3,999.99	41.00	1,066.00	
85	13	4,000.00 - 4,149.99	43.00	1,118.00	
86	14	4,150.00 - 4,299.99	44.00	1,144.00	
87	15	4,300.00 - 4,449.99	46.00	1,196.00	
88	16	4,450.00 - 4,599.99	47.00	1,222.00	
89	17	4,600.00 - 4,749.99	49.00	1,274.00	
90	18	4,750.00 - 4,899.99	51.00	1,326.00	
91	19	4,900.00 - 5,049.99	52.00	1,352.00	
92	20	5,050.00 - 5,199.99	54.00	1,404.00	
93	21	5,200.00 - 5,349.99	55.00	1,430.00	
94	22	5,350.00 - 5,499.99	57.00	1,482.00	
95	23	5,500.00 - 5,649.99	58.00	1,508.00	
96	24	5,650.00 - 5,799.99	60.00	1,560.00	
97	25	5,800.00 - 5,949.99	62.00	1,612.00	
98	26	5,950.00 - 6,099.99	63.00	1,638.00	
99	27	6,100.00 - 6,249.99	65.00	1,690.00	
100	28	6,250.00 - 6,399.99	66.00	1,716.00	
101	29	6,400.00 - 6,549.99	68.00	1,768.00	
102	30	6,550.00 - 6,699.99	70.00	1,820.00	
103	31	6,700.00 - 6,849.99	71.00	1,846.00	
104	32	6,850.00 - 6,999.99	73.00	1,898.00	
105	33	7,000.00 - 7,149.99	74.00	1,924.00	

Enr. Com. Sub. for S. B. No. 246] 20

106	34	7,150.00	-	7,299.99	76.00	1,976.00
107	35	7,300.00	-	7,449.99	78.00	2,028.00
108	36	7,450.00	-	7,599.99	79.00	2,054.00
109	37	7,600.00	-	7,749.99	81.00	2,106.00
110	38	7,750.00	-	7,899.99	82.00	2,132.00
111	39	7,900.00	-	8,049.99	84.00	2,184.00
112	40	8,050.00	-	8,199.99	85.00	2,210.00
113	41	8,200.00	-	8,349.99	87.00	2,262.00
114	42	8,350.00	-	8,499.99	89.00	2,314.00
115	43	8,500.00	-	8,649.99	90.00	2,340.00
116	44	8,650.00	-	8,799.99	92.00	2,392.00
117	45	8,800.00	-	8,949.99	93.00	2,418.00
118	46	8,950.00	-	9,099.99	95.00	2,470.00
119	47	9,100.00	-	9,249.99	97.00	2,522.00
120	48	9,250.00	-	9,399.99	98.00	2,548.00
121	49	9,400.00	-	9,549.99	100.00	2,600.00
122	50	9,550.00	-	9,699.99	101.00	2,626.00
123	51	9,700.00	-	9,849.99	103.00	2,678.00
124	52	9,850.00	-	9,999.99	104.00	2,704.00
125	53	10,000.00	-	10,149.99	106.00	2,756.00
126	54	10,150.00	-	10,299.99	108.00	2,808.00
127	55	10,300.00	-	10,449.99	109.00	2,834.00
128	56	10,450.00	-	10,599.99	111.00	2,886.00
129	57	10,600.00	-	10,749.99	112.00	2,912.00
130	58	10,750.00	-	10,899.99	114.00	2,964.00
131	59	10,900.00	-	11,049.99	116.00	3,016.00
132	60	11,050.00	-	11,199.99	117.00	3,042.00
133	61	11,200.00	-	11,349.99	119.00	3,094.00
134	62	11,350.00	-	11,499.99	120.00	3,120.00
135	63	11,500.00	-	11,649.99	122.00	3,172.00
136	64	11,650.00	-	11,799.99	124.00	3,224.00
137	65	11,800.00	-	11,949.99	125.00	3,250.00
138	66	11,950.00	-	12,099.99	127.00	3,302.00
139	67	12,100.00	-	12,249.99	128.00	3,328.00
140	68	12,250.00	-	12,399.99	130.00	3,380.00
141	69	12,400.00	-	12,549.99	131.00	3,406.00
142	70	12,550.00	-	12,699.99	133.00	3,458.00
143	71	12,700.00	-	12,849.99	135.00	3,510.00
144	72	12,850.00	-	12,999.99	136.00	3,536.00
145	73	13,000.00	-	13,149.99	138.00	3,588.00

21 [Enr. Com. Sub. for S. B. No. 246

146	74	13,150.00	-	13,299.99	139.00	3,614.00
147	75	13,300.00	-	13,449.99	141.00	3,666.00
148	76	13,450.00	-	13,599.99	143.00	3,718.00
149	77	13,600.00	-	13,749.99	144.00	3,744.00
150	78	13,750.00	-	13,899.99	146.00	3,796.00
151	79	13,900.00	-	14,049.99	147.00	3,822.00
152	80	14,050.00	-	14,199.99	149.00	3,874.00
153	81	14,200.00	-	14,349.99	150.00	3,900.00
154	82	14,350.00	-	14,499.99	152.00	3,952.00
155	83	14,500.00	-	14,649.99	154.00	4,004.00
156	84	14,650.00	-	14,799.99	155.00	4,030.00
157	85	14,800.00	-	14,949.99	157.00	4,082.00
158	86	14,950.00	-	15,099.99	158.00	4,108.00
159	87	15,100.00	-	15,249.99	160.00	4,160.00
160	88	15,250.00	-	15,399.99	162.00	4,212.00
161	89	15,400.00	-	15,549.99	163.00	4,238.00
162	90	15,550.00	-	15,699.99	165.00	4,290.00
163	91	15,700.00	-	15,849.99	166.00	4,316.00
164	92	15,850.00	-	15,999.99	168.00	4,368.00
165	93	16,000.00	-	16,149.99	170.00	4,420.00
166	94	16,150.00	-	16,299.99	171.00	4,446.00
167	95	16,300.00	-	16,449.99	173.00	4,498.00
168	96	16,450.00	-	16,599.99	174.00	4,524.00
169	97	16,600.00	-	16,749.99	176.00	4,576.00
170	98	16,750.00	-	16,899.99	177.00	4,602.00
171	99	16,900.00	-	17,049.99	179.00	4,654.00
172	100	17,050.00	-	17,199.99	181.00	4,706.00
173	101	17,200.00	-	17,349.99	182.00	4,732.00
174	102	17,350.00	-	17,499.99	184.00	4,784.00
175	103	17,500.00	-	17,649.99	185.00	4,810.00
176	104	17,650.00	-	17,799.99	187.00	4,862.00
177	105	17,800.00	-	17,949.99	189.00	4,914.00
178	106	17,950.00	-	18,099.99	190.00	4,940.00
179	107	18,100.00	-	18,249.99	192.00	4,992.00
180	108	18,250.00	-	18,399.99	193.00	5,018.00
181	109	18,400.00	-	18,549.99	195.00	5,070.00
182	110	18,550.00	-	18,699.99	196.00	5,096.00
183	111	18,700.00	-	18,849.99	198.00	5,148.00
184	112	18,850.00	-	18,999.99	200.00	5,200.00
185	113	19,000.00	-	19,149.99	201.00	5,226.00

Enr. Com. Sub. for S. B. No. 246] 22

186	114	19,150.00	-	19,299.99	203.00	5,278.00
187	115	19,300.00	-	19,449.99	204.00	5,304.00
188	116	19,450.00	-	19,599.99	206.00	5,356.00
189	117	19,600.00	-	19,749.99	208.00	5,408.00
190	118	19,750.00	-	19,899.99	209.00	5,434.00
191	119	19,900.00	-	20,049.99	211.00	5,486.00
192	120	20,050.00	-	20,199.99	212.00	5,512.00
193	121	20,200.00	-	20,349.99	214.00	5,564.00
194	122	20,350.00	-	20,499.99	216.00	5,616.00
195	123	20,500.00	-	20,649.99	217.00	5,642.00
196	124	20,650.00	-	20,799.99	219.00	5,694.00
197	125	20,800.00	-	20,949.99	220.00	5,720.00
198	126	20,950.00	-	21,099.99	222.00	5,772.00
199	127	21,100.00	-	21,249.99	223.00	5,798.00
200	128	21,250.00	-	21,399.99	225.00	5,850.00
201	129	21,400.00	-	21,549.99	227.00	5,902.00
202	130	21,550.00	-	21,699.99	228.00	5,928.00
203	131	21,700.00	-	21,849.99	230.00	5,980.00
204	132	21,850.00	-	21,999.99	231.00	6,006.00
205	133	22,000.00	-	22,149.99	233.00	6,058.00
206	134	22,150.00	-	22,299.99	235.00	6,110.00
207	135	22,300.00	-	22,449.99	236.00	6,136.00
208	136	22,450.00	-	22,599.99	238.00	6,188.00
209	137	22,600.00	-	22,749.99	239.00	6,214.00
210	138	22,750.00	-	22,899.99	241.00	6,266.00
211	139	22,900.00	-	23,049.99	243.00	6,318.00
212	140	23,050.00	-	23,199.99	244.00	6,344.00
213	141	23,200.00	-	23,349.99	246.00	6,396.00
214	142	23,350.00	-	23,499.99	247.00	6,422.00
215	143	23,500.00	-	23,649.99	249.00	6,474.00
216	144	23,650.00	-	23,799.99	250.00	6,500.00
217	145	23,800.00	-	23,949.99	252.00	6,552.00
218	146	23,950.00	-	24,099.99	254.00	6,604.00
219	147	24,100.00	-	24,249.99	255.00	6,630.00
220	148	24,250.00	-	24,399.99	257.00	6,682.00
221	149	24,400.00	-	24,549.99	258.00	6,708.00
222	150	24,550.00	-	24,699.99	260.00	6,760.00
223	151	24,700.00	-	24,849.99	262.00	6,812.00
224	152	24,850.00	-	24,999.99	263.00	6,838.00
225	153	25,000.00	-	25,149.99	265.00	6,890.00

23 [Enr. Com. Sub. for S. B. No. 246

226	154	25,150.00	-	25,299.99	266.00	6,916.00
227	155	25,300.00	-	25,449.99	268.00	6,968.00
228	156	25,450.00	-	25,599.99	269.00	6,994.00
229	157	25,600.00	-	25,749.99	271.00	7,046.00
230	158	25,750.00	-	25,899.99	273.00	7,098.00
231	159	25,900.00	-	26,049.99	274.00	7,124.00
232	160	26,050.00	-	26,199.99	276.00	7,176.00
233	161	26,200.00	-	26,349.99	277.00	7,202.00
234	162	26,350.00	-	26,499.99	279.00	7,254.00
235	163	26,500.00	-	26,649.99	281.00	7,306.00
236	164	26,650.00	-	26,799.99	282.00	7,332.00
237	165	26,800.00	-	26,949.99	284.00	7,384.00
238	166	26,950.00	-	27,099.99	285.00	7,410.00
239	167	27,100.00	-	27,249.99	287.00	7,462.00
240	168	27,250.00	-	27,399.99	289.00	7,514.00
241	169	27,400.00	-	27,549.99	290.00	7,540.00
242	170	27,550.00	-	27,699.99	292.00	7,592.00
243	171	27,700.00	-	27,849.99	293.00	7,618.00
244	172	27,850.00	-	27,999.99	295.00	7,670.00
245	173	28,000.00	-	28,149.99	296.00	7,696.00
246	174	28,150.00	-	28,299.99	298.00	7,748.00
247	175	28,300.00	-	28,449.99	300.00	7,800.00
248	176	28,450.00	-	28,599.99	301.00	7,826.00
249	177	28,600.00	-	28,749.99	303.00	7,878.00
250	178	28,750.00	-	28,899.99	304.00	7,904.00
251	179	28,900.00	-	29,049.99	306.00	7,956.00
252	180	29,050.00	-	29,199.99	308.00	8,008.00
253	181	29,200.00	-	29,349.99	309.00	8,034.00
254	182	29,350.00	-	29,499.99	311.00	8,086.00
255	183	29,500.00	-	29,649.99	312.00	8,112.00
256	184	29,650.00	-	29,799.99	314.00	8,164.00
257	185	29,800.00	-	29,949.99	315.00	8,190.00
258	186	29,950.00	-	30,099.99	317.00	8,242.00
259	187	30,100.00	-	30,249.99	319.00	8,294.00
260	188	30,250.00	-	30,399.99	320.00	8,320.00
261	189	30,400.00	-	30,549.99	322.00	8,372.00
262	190	30,550.00	-	30,699.99	323.00	8,398.00
263	191	30,700.00	-	30,849.99	325.00	8,450.00
264	192	30,850.00	-	30,999.99	327.00	8,502.00
265	193	31,000.00	-	31,149.99	328.00	8,528.00

Enr. Com. Sub. for S. B. No. 246] 24

266	194	31,150.00	-	31,299.99	330.00	8,580.00
267	195	31,300.00	-	31,449.99	331.00	8,606.00
268	196	31,450.00	-	31,599.99	333.00	8,658.00
269	197	31,600.00	-	31,749.99	335.00	8,710.00
270	198	31,750.00	-	31,899.99	336.00	8,736.00
271	199	31,900.00	-	32,049.99	338.00	8,788.00
272	200	32,050.00	-	32,199.99	339.00	8,814.00
273	201	32,200.00	-	32,349.99	341.00	8,866.00
274	202	32,350.00	-	32,499.99	342.00	8,892.00
275	203	32,500.00	-	32,649.99	344.00	8,944.00
276	204	32,650.00	-	32,799.99	346.00	8,996.00
277	205	32,800.00	-	32,949.99	347.00	9,022.00
278	206	32,950.00	-	33,099.99	349.00	9,074.00
279	207	33,100.00	-	33,249.99	350.00	9,100.00
280	208	33,250.00	-	33,399.99	352.00	9,152.00
281	209	33,400.00	-	33,549.99	354.00	9,204.00
282	210	33,550.00	-	33,699.99	355.00	9,230.00
283	211	33,700.00	-	33,849.99	357.00	9,282.00
284	212	33,850.00	-	33,999.99	358.00	9,308.00
285	213	34,000.00	-	34,149.99	360.00	9,360.00
286	214	34,150.00	-	34,299.99	361.00	9,386.00
287	215	34,300.00	-	34,449.99	363.00	9,438.00
288	216	34,450.00	-	34,599.99	365.00	9,490.00
289	217	34,600.00	-	34,749.99	366.00	9,516.00
290	218	34,750.00	-	34,899.99	368.00	9,568.00
291	219	34,900.00	-	35,049.99	369.00	9,594.00
292	220	35,050.00	-	35,199.99	371.00	9,646.00
293	221	35,200.00	-	35,349.99	373.00	9,698.00
294	222	35,350.00	-	35,499.99	374.00	9,724.00
295	223	35,500.00	-	35,649.99	376.00	9,776.00
296	224	35,650.00	-	35,799.99	377.00	9,802.00
297	225	35,800.00	-	35,949.99	379.00	9,854.00
298	226	35,950.00	-	36,099.99	381.00	9,906.00
299	227	36,100.00	-	36,249.99	382.00	9,932.00
300	228	36,250.00	-	36,399.99	384.00	9,984.00
301	229	36,400.00	-	36,549.99	385.00	10,010.00
302	230	36,550.00	-	36,699.99	387.00	10,062.00
303	231	36,700.00	-	36,849.99	388.00	10,088.00
304	232	36,850.00	-	36,999.99	390.00	10,140.00
305	233	37,000.00	-	37,149.99	392.00	10,192.00

25 [Enr. Com. Sub. for S. B. No. 246

306	234	37,150.00	-	37,299.99	393.00	10,218.00
307	235	37,300.00	-	37,449.99	395.00	10,270.00
308	236	37,450.00	-	37,599.99	396.00	10,296.00
309	237	37,600.00	-	37,749.99	398.00	10,348.00
310	238	37,750.00	-	37,899.99	400.00	10,400.00
311	239	37,900.00	-	38,049.99	401.00	10,426.00
312	240	38,050.00	-	38,199.99	403.00	10,478.00
313	241	38,200.00	-	38,349.99	404.00	10,504.00
314	242	38,350.00	-	38,499.99	406.00	10,556.00
315	243	38,500.00	-	38,649.99	408.00	10,608.00
316	244	38,650.00	-	38,799.99	409.00	10,634.00
317	245	38,800.00	-	38,949.99	411.00	10,686.00
318	246	38,950.00	-	39,099.99	412.00	10,712.00
319	247	39,100.00	-	39,249.99	414.00	10,764.00
320	248	39,250.00	-	39,399.99	415.00	10,790.00
321	249	39,400.00	-	39,549.99	417.00	10,842.00
322	250	39,550.00	-	39,699.99	419.00	10,894.00
323	251	39,700.00	-	39,849.99	420.00	10,920.00
324	252	39,850.00	-	39,999.99	422.00	10,972.00
325	253	40,000.00	-	40,149.99	423.00	10,998.00
326	254	40,150.00	-	and above	424.00	11,024.00

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.

1 (a) (1) On or before June 1, 2005, the executive director
 2 may take such actions as are necessary to establish an
 3 employers' mutual insurance company as a domestic,
 4 private, nonstock, corporation to:

5 (A) Insure employers against liability for injuries and
 6 occupational diseases for which their employees may be
 7 entitled to receive compensation pursuant to this chapter
 8 and federal Longshore and Harbor Workers' Compensa-
 9 tion Act, 33 U. S. C. §901, *et seq.*;

10 (B) Provide employer's liability insurance incidental to
11 and provided in connection with the insurance specified in
12 paragraph (A) of this subdivision, including coal workers'
13 pneumoconiosis coverage and employer excess liability
14 coverage as provided in this chapter; and

15 (C) Transact other kinds of property and casualty
16 insurance for which the company is otherwise qualified
17 under the provisions of this code.

18 (2) The company may not sell, assign or transfer
19 substantial assets or ownership of the company.

20 (b) If the executive director establishes a domestic
21 mutual insurance company pursuant to subsection (a) of
22 this section:

23 (1) As soon as practical, the company established
24 pursuant to the provisions of this article shall, through a
25 vote of a majority of its provisional board, file its corpo-
26 rate charter and bylaws with the Insurance Commissioner
27 and apply for a license with the Insurance Commissioner
28 to transact insurance in this state. Notwithstanding any
29 other provision of this code, the Insurance Commissioner
30 shall act on the documents within fifteen days of the filing
31 by the company.

32 (2) In recognition of the workers' compensation
33 insurance liability insurance crisis in this state at the time
34 of enactment of this article and the critical need to
35 expedite the initial operation of the company, the Legisla-
36 ture authorizes the Insurance Commissioner to review the
37 documentation submitted by the company and to deter-
38 mine the initial capital and surplus requirements of the
39 company, notwithstanding the provisions of section five-b,
40 article three, chapter thirty-three of this code. The
41 company shall furnish the Insurance Commissioner with
42 all information and cooperate in all respects necessary for
43 the Insurance Commissioner to perform the duties set

44 forth in this section and in other provisions of this chapter
45 and chapter thirty-three of this code. The Insurance
46 Commissioner shall monitor the economic viability of the
47 company during its initial operation on not less than a
48 monthly basis, until the commissioner, in his or her
49 discretion, determines that monthly reporting is not
50 necessary. In all other respects the company shall comply
51 with the applicable provisions of chapter thirty-three of
52 this code.

53 (3) Subject to the provisions of subdivision (4) of this
54 subsection, the Insurance Commissioner may waive other
55 requirements imposed on mutual insurance companies by
56 the provisions of chapter thirty-three of this code the
57 Insurance Commissioner determines are necessary to
58 enable the company to begin insuring employers in this
59 state at the earliest possible date.

60 (4) Within forty months of the date of the issuance of
61 its license to transact insurance, the company shall comply
62 with the capital and surplus requirements set forth in
63 subsection (a), section five-b, article three, chapter
64 thirty-three of this code in effect on the effective date of
65 this enactment, unless the deadline is extended by the
66 Insurance Commissioner.

67 (c) For the duration of its existence, the company is not
68 a department, unit, agency or instrumentality of the state
69 for any purpose. All debts, claims, obligations and
70 liabilities of the company, whenever incurred, are the
71 debts, claims, obligations and liabilities of the company
72 only and not of the state or of any department, unit,
73 agency, instrumentality, officer or employee of the state.

74 (d) The moneys of the company are not part of the
75 General Revenue Fund of the state. The debts, claims,
76 obligations and liabilities of the company are not a debt of
77 the state or a pledge of the credit of the state.

78 (e) The company is not subject to provisions of article
79 nine-a, chapter six of this code; the provisions of article
80 two, chapter six-c of this code; the provisions of chapter
81 twenty-nine-b of this code; the provisions of article three,
82 chapter five-a of this code; the provisions of article six,
83 chapter twenty-nine of this code; or the provisions of
84 chapter twelve of this code.

85 (f) If the commission has been terminated, effective
86 upon the termination, private carriers, including the
87 company, are not subject to payment of premium taxes,
88 surcharges and credits contained in article three, chapter
89 thirty-three of this code on premiums received for cover-
90 age under this chapter. In lieu thereof, the workers'
91 compensation insurance market is subject to the following:

92 (1) (A) Each fiscal year, the Insurance Commissioner
93 shall calculate a percentage surcharge to be collected by
94 each private carrier from its policyholders. The surcharge
95 percentage shall be calculated by dividing the previous
96 fiscal year's total premiums collected plus deductible
97 payments by all employers into the portion of the Insur-
98 ance Commissioner's budget amount attributable to
99 regulation of the private carrier market. This resulting
100 percentage shall be applied to each policyholder's pre-
101 mium payment and deductible payments as a surcharge
102 and remitted to the Insurance Commissioner. Said
103 surcharge shall be remitted within ninety days of receipt
104 of premium payments;

105 (B) With respect to fiscal years beginning on and after
106 July 1, 2008, in lieu of the surcharge set forth in the
107 preceding paragraph, each private carrier shall collect a
108 surcharge in the amount of five and five-tenths percent of
109 the premium collected plus the total of all premium
110 discounts based on deductible provisions that were
111 applied: *Provided*, That prior to June 30, 2013 and every
112 five years thereafter, the commissioner shall review the

113 percentage surcharge and determine a new percentage as
114 he or she deems necessary.

115 (C) The amounts required to be collected under
116 paragraph (B) of this subdivision shall be remitted to the
117 Insurance Commissioner on or before the twenty-fifth day
118 of the month succeeding the end of the quarter in which
119 they are collected, except for the fourth quarter for which
120 the surcharge shall be remitted on or before March 1 of the
121 succeeding year.

122 (2) Each fiscal year, the Insurance Commissioner shall
123 calculate a percentage surcharge to be remitted on a
124 quarterly basis by self-insured employers and said per-
125 centage shall be calculated by dividing previous year's
126 self-insured payroll in the state into the portion of the
127 Insurance Commissioner's budget amount attributable to
128 regulation of the self-insured employer market. This
129 resulting percentage shall be applied to each self-insured
130 employer's payroll and the resulting amount shall be
131 remitted as a regulatory surcharge by each self-insured
132 employer. The Industrial Council may promulgate a rule
133 for implementation of this section. The company, all other
134 private carriers and all self-insured employers shall
135 furnish the Insurance Commissioner with all required
136 information and cooperate in all respects necessary for the
137 Insurance Commissioner to perform the duties set forth in
138 this section and in other provisions of this chapter and
139 chapter thirty-three of this code. The surcharge shall be
140 calculated so as to only defray the costs associated with
141 the administration of this chapter and the funds raised
142 shall not be used for any other purpose except as set forth
143 in subdivision (4) of this subsection;

144 (3) (A) Each private carrier shall collect a premiums
145 surcharge from its policyholders as annually determined,
146 by May 1 of each year, by the Insurance Commissioner to
147 produce forty-five million dollars annually, of each

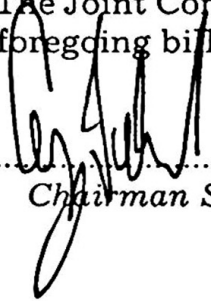
148 policyholder's periodic premium amount for workers'
149 compensation insurance: *Provided*, That the surcharge
150 rate on policies issued or renewed on or after July 1, 2008,
151 shall be nine percent of the premium collected plus the
152 total of all premium discounts based on deductible provi-
153 sions that were applied.

154 (B) By May 1 each year, the self-insured employer
155 community shall be assessed a cumulative total of nine
156 million dollars. The methodology for the assessment shall
157 be fair and equitable and determined by exempt legislative
158 rule issued by the Industrial Council. The amount col-
159 lected pursuant to this subdivision shall be remitted to the
160 Insurance Commissioner for deposit in the Workers'
161 Compensation Debt Reduction Fund created in section
162 five, article two-d of this chapter.

163 (4) On or before July 1, 2009, the Insurance Commis-
164 sioner shall make a one-time lump sum transfer of \$40
165 million generated from the surcharges assessed pursuant
166 to paragraph (B), subdivision (1) of this subsection and
167 subdivision (2) of this subsection to the Bureau of Employ-
168 ment Programs' Commissioner for deposit with the
169 Secretary of the Treasury of the United States as a credit
170 of this state in the Unemployment Trust Fund Account
171 maintained pursuant to section four, article eight, chapter
172 twenty-one-a of this code.

173 (g) The new premiums surcharge imposed by para-
174 graphs (A) and (B), subdivision (3), subsection (f) of this
175 section sunset and are not collectible with respect to
176 workers' compensation insurance premiums paid when the
177 policy is renewed on or after the first day of the month
178 following the month in which the Governor certifies to the
179 Legislature that the revenue bonds issued pursuant to
180 article two-d of this chapter have been retired and that the
181 unfunded liability of the Old Fund has been paid or has
182 been provided for in its entirety, whichever occurs last.

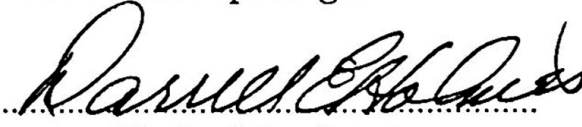
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *is appended* this the *17th*
Day of *May*, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 6 2009

Time 11:05a