WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970

ENROLLED

Committee Substitute for
HOUSE BILL No. 612

(By Mr. Leibert)

PASSED February 12, 1970

In Effect

FILED IN THE OFFICE
JOHN D. ROCKERFELLER, IV
SECRETARY OF STATE
THIS DATE 2-18-70
AN ACT to amend and reenact section five, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections ten and ten-a, article five of said chapter; to amend and reenact sections ten and eleven, article six of said chapter; to amend and reenact section twenty-seven, article seven of said chapter; and to amend article five of said chapter by adding thereto a new section, designated section seventeen-c, all relating to unemployment compensation, the department of employment security and the commissioner of said department.
Be it enacted by the Legislature of West Virginia:

That section five, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections ten and ten-a, article five of said chapter be amended and reenacted; that sections ten and eleven, article six of said chapter be amended and reenacted; that section twenty-seven, article seven of said chapter be amended and reenacted; and that article five of said chapter be amended by adding thereto a new section, designated section seventeen-c, all to read as follows:

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.

§21A-2-5. Compensation; traveling expenses.

1 Notwithstanding the provisions of section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the commissioner of employment security shall receive a yearly salary of twenty thousand dollars and the necessary traveling expenses incident to the performance of his duties. Requisition for traveling expenses shall be ac-
3  [Enr. Com. Sub. for H. B. No. 612

8 accompanied by a sworn itemized statement which shall
9 be filed with the auditor and preserved as a public
10 record.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10. Experience ratings—Decreased rates; adjustment
of accounts and rates; debit balance account
rates.

1  (a) On and after January one, one thousand nine
2 hundred fifty-four, after the requirements of section
3 nine have been complied with, an employer's payment
4 shall remain two and seven-tenths percent until:
5  (1) There have elapsed thirty-six consecutive months
6 immediately preceding the computation date through-
7 out which an employer's account was chargeable with
8 benefits.
9  (2) His payments credited to his account for all past
10 years exceed the benefits charged to his account by
11 an amount equal to at least the percent of his average
12 annual payroll as shown in Column B of Table II. His
13 rate shall be the amount appearing in Column C of Table
14 II on line with the percentage in Column B.
15 When the total assets of the fund as of January one
of a calendar year equal or exceed one hundred million dollars, an employer's rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred ten million dollars, an employer's rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

If the commissioner, in accordance with the provisions of section ten-a, article five, of this chapter, determines the fund to be below the sum of seventy-five million dollars, then, by the express provisions of this paragraph, the employer's rate shall immediately be the amount appearing in Column C of Table II on line with the percentage in Column B; and the provisions of section ten-a, article five, of this chapter shall be fully applied by the commissioner. It is the express intent of this paragraph that the increases of the aforesaid section ten-a be applied to and added to the employer's rates set forth in the aforesaid Column C of
Table II.

The commissioner shall determine an employer's compliance with these requirements.

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Percent of Average Annual Payroll Rate by Which Credits Employer's Rate</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) 0.0 to 6.0</td>
<td>2.7</td>
<td>2.2</td>
<td>1.7</td>
<td></td>
</tr>
<tr>
<td>(2) 6.0</td>
<td>2.5</td>
<td>2.0</td>
<td>1.5</td>
<td></td>
</tr>
<tr>
<td>(3) 7.0</td>
<td>2.3</td>
<td>1.8</td>
<td>1.3</td>
<td></td>
</tr>
<tr>
<td>(4) 8.0</td>
<td>2.1</td>
<td>1.6</td>
<td>1.1</td>
<td></td>
</tr>
<tr>
<td>(5) 9.0</td>
<td>1.9</td>
<td>1.4</td>
<td>0.9</td>
<td></td>
</tr>
<tr>
<td>(6) 10.0</td>
<td>1.7</td>
<td>1.2</td>
<td>0.7</td>
<td></td>
</tr>
<tr>
<td>(7) 10.5</td>
<td>1.5</td>
<td>1.0</td>
<td>0.5</td>
<td></td>
</tr>
<tr>
<td>(8) 11.0</td>
<td>1.3</td>
<td>0.8</td>
<td>0.3</td>
<td></td>
</tr>
<tr>
<td>(9) 11.5</td>
<td>1.1</td>
<td>0.6</td>
<td>0.1</td>
<td></td>
</tr>
<tr>
<td>(10) 12.0</td>
<td>0.9</td>
<td>0.4</td>
<td>0.0</td>
<td></td>
</tr>
<tr>
<td>(11) 12.5</td>
<td>0.7</td>
<td>0.2</td>
<td>0.0</td>
<td></td>
</tr>
<tr>
<td>(12) 13.0</td>
<td>0.5</td>
<td>0.0</td>
<td>0.0</td>
<td></td>
</tr>
</tbody>
</table>
(b) All employer accounts in which charges for all past years exceed credits for such past year shall be adjusted effective June thirty, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-eight, and notwithstanding the provisions of subsection one of section seven of article five relating to the noncrediting of employers' accounts with the first seven tenths of one percent of contributions paid; for the purpose of determining whether or not an employer shall pay contributions at a rate in excess of two and seven-tenths percent as hereinafter set forth, but not for the purpose of determining such rate, the department shall, only for the purpose set forth herein and not as a credit
to such account, add to the accounts of all employers having a debit balance, contribution payments made by such employers on and after July one, one thousand nine hundred sixty-seven, which payments are not credited to employers' accounts by reason of the provisions contained in subsection one of section seven of article five. If, after such contribution payments have been added to such employers' accounts, such accounts continue to show a debit balance, such employers shall make payments at a rate in excess of two and seven-tenths percent. If, after such contribution payments have been added to such employer accounts, such accounts show a credit balance, such employers shall make payments at the rate of two and seven-tenths percent. If, under the conditions set forth in this paragraph, it is determined that an employer shall pay contributions at a rate in excess of two and seven-tenths percent, the rate in excess of two and seven-tenths percent at which an employer shall pay contributions shall then be determined solely under the conditions set forth in the following paragraphs of this subsection. The provisions
contained in this paragraph shall in no way be con-
sidered as providing for the crediting to an employer's
account, of amounts of employer contribution payments
which are expressly not credited to employers' accounts
in subsection one of section seven of article five.

Effective on and after the computation date of June
thirty, one thousand nine hundred sixty-seven, all em-
ployers with a debit balance account in which the bene-
fits charged to their account for all past years exceed
the payments credited to their account for such past
years by an amount up to and including ten percent
of their average annual payroll, shall make payments
to the unemployment compensation fund at the rate of
three percent of wages paid by them with respect to
employment.

Effective on and after the computation date of June
thirty, one thousand nine hundred sixty-seven, all em-
ployers with a debit balance account in which the bene-
fits charged to their account for all past years exceed
the payments credited to their account for such past
years by an amount in excess of ten percent of their
average annual payroll, shall make payments to the
unemployment compensation fund at the rate of three
and three-tenths percent of wages paid by them with
respect to employment.

"Debit balance account" for the purposes of this sub-
section means an account in which the benefits charged
for all past years exceed the payments credited for such
past years.

"Credit balance account" for the purposes of this sub-
section means an account in which the payments
credited for all past years exceed the benefits charged
for such past years.

Once a debit balance account rate is established for
an employer's account for a year, it shall apply for the
entire year notwithstanding the provisions of section
ten-a of this article.

§21A-5-10a. Same—Modification or suspension of decreased
rates.

(1) As used in this section, unless the context clearly
requires otherwise:

"Due date" means the last day of the month next fol-
lowing a calendar quarter. In determining the amount in the fund on any due date, contributions received, but not benefits paid, for such month next following the end of a calendar quarter shall be included.

(2) The commissioner shall as of the due date for the payment of contributions for each calendar quarter determine the amount in the unemployment compensation fund, including the trust fund, the clearing account, and the benefit account; and if, at any such time or times the fund is below the sum of seventy-five million dollars, the commissioner shall, effective at the commencement of the next calendar quarter, increase each employer's rate one step, and if, at any time or times the fund is below the sum of seventy million dollars, the commissioner shall further increase each employer's rate one additional step; and if, at any such time or times the fund is below the sum of sixty-five million dollars, the commissioner shall further increase each employer's rate one additional step.

Where the employer rates have been increased by virtue of the provisions of this section, they shall be
correspondingly decreased in the same manner when
the balance in the fund returns to the successive levels
hereinafore set forth.

For purposes of this subsection the term “one step”
or “one additional step” shall mean four tenths of
one percent, except that, for an employer whose rate
is zero the term “one step” shall mean three tenths of
one percent: Provided, however, That under no circum-
stances shall an employer’s rate be increased above two
and seven-tenths percent if such employer’s contribution
rate, as computed by the commissioner in compliance
with subsection three, section seven, article five of this
chapter is two and seven-tenths percent or less: Provided further, That if the contribution rate of such em-
ployer as computed by the commissioner in compliance
with subsection three, section seven, article five of this
chapter is three percent or higher, then such employer’s
rate shall not be increased above three and three-tenths
percent.

(3) If, as of the due date of the payment of contribu-
tions for any calendar quarter the unemployment com-
pensation fund, including the trust fund, clearing account
and benefit account, is below the sum of sixty million
dollars, the commissioner shall, effective at the com-
cencement of the next calendar quarter, suspend the
decreased rates as provided in this chapter, and all con-
tributions of employers due thereafter whose contribution
rate as computed by the commissioner in compliance
with subsection three, section seven of this article, is two
and seven-tenths percent or less, shall be paid at the
rate of two and seven-tenths percent; and all contribu-
tions of employers due thereafter whose contribution
rate as computed by the commissioner in compliance
with subsection (b), section ten of this article, is over
two and seven-tenths percent, shall remain and be paid
at said rate over two and seven-tenths percent.

(4) As of January first of the year next following
the date on which the unemployment compensation fund,
including the trust fund, clearing account and benefit
account, reaches and remains above the sum of sixty-five
million dollars, the commissioner shall supersede the
§21A-5-17c. Service of process on nonresident employer.

1 If an employer is not a resident of West Virginia or
2 is a corporation not authorized to do business in this
3 state and for which employer services are performed in
4 insured work within the state of West Virginia and
5 liability for payment of unemployment compensation
6 contributions is due and payable to this state under
7 the provisions of the West Virginia unemployment com-
8 pensation law, such employer shall be deemed to appoint
9 the auditor of the state of West Virginia, or his successor
10 in office, to be the employer's true and lawful attorney
11 upon whom may be served all lawful process in any
12 action or any proceeding for all purposes under this chap-
13 ter and when served as hereinafter provided such service
14 shall have the same force, effect and validity as if said
15 nonresident employer were personally served with sum-
16 mons and complaint in this state.

17 Service shall be made by leaving the original and two
18 copies of both the summons and complaint, and a fee
of two dollars, with said auditor, or in his office, and
said service shall be sufficient upon said nonresident. In
the event any such summons and complaint is so served
on said auditor he shall immediately cause one of the
copies of the summons and complaint to be sent by
registered or certified mail, return receipt requested, to
the employer at the latter's last known or reasonably
ascertainable address. The employer's return receipt
or, if such registered or certified mail is returned to said
auditor refused by the addressee or for any other reason
is undelivered, such mail showing thereon the stamp
of the post office department that delivery has been
refused, or other reason for non delivery, shall be ap-
pended to the original summons and complaint, and filed
by the state auditor in the clerk's office of the court from
which said process issued.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-10. Benefit rate—Total unemployment; annual computa-
tation and publication of rates.

Each eligible individual who is totally unemployed in
any week shall be paid benefits with respect to that week
at the weekly rate appearing in Column (C) in Table A in this paragraph, on the line on which in column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in Column (B) in Table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of fifteen dollars as a result of odd-job or subsidiary work in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.
TABLE A: Maximum Benefit in Benefit Year for Wage

<table>
<thead>
<tr>
<th>Wage</th>
<th>Wages in Total and/or Partial</th>
<th>Weekly Benefit Rate</th>
<th>Unemployment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class</td>
<td>Base Period</td>
<td>(Column A)</td>
<td>(Column B)</td>
</tr>
<tr>
<td>Under $700.00</td>
<td>Ineligible</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>700.00—799.99</td>
<td>$12.00</td>
<td>$312.00</td>
</tr>
<tr>
<td>2</td>
<td>800.00—899.99</td>
<td>13.00</td>
<td>338.00</td>
</tr>
<tr>
<td>3</td>
<td>900.00—999.99</td>
<td>14.00</td>
<td>364.00</td>
</tr>
<tr>
<td>4</td>
<td>1000.00—1149.99</td>
<td>15.00</td>
<td>390.00</td>
</tr>
<tr>
<td>5</td>
<td>1150.00—1299.99</td>
<td>16.00</td>
<td>416.00</td>
</tr>
<tr>
<td>6</td>
<td>1300.00—1449.99</td>
<td>17.00</td>
<td>442.00</td>
</tr>
<tr>
<td>7</td>
<td>1450.00—1599.99</td>
<td>18.00</td>
<td>468.00</td>
</tr>
<tr>
<td>8</td>
<td>1600.00—1749.99</td>
<td>19.00</td>
<td>494.00</td>
</tr>
<tr>
<td>9</td>
<td>1750.00—1899.99</td>
<td>20.00</td>
<td>520.00</td>
</tr>
<tr>
<td>10</td>
<td>1900.00—2049.99</td>
<td>21.00</td>
<td>546.00</td>
</tr>
<tr>
<td>11</td>
<td>2050.00—2199.99</td>
<td>22.00</td>
<td>572.00</td>
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<tr>
<td>12</td>
<td>2200.00—2349.99</td>
<td>23.00</td>
<td>598.00</td>
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<tr>
<td>13</td>
<td>2350.00—2499.99</td>
<td>24.00</td>
<td>624.00</td>
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<tr>
<td>14</td>
<td>2500.00—2599.99</td>
<td>25.00</td>
<td>650.00</td>
</tr>
<tr>
<td>15</td>
<td>2600.00—2699.99</td>
<td>26.00</td>
<td>676.00</td>
</tr>
</tbody>
</table>
Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred sixty-seven, the maximum weekly benefit rate shall be forty percent of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy, the maximum weekly benefit rate shall be forty-five percent of the average weekly wage in West Virginia.

The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the above formula, shall establish as many additional wage classes
as are required, increasing the amount of base period wages required for each class by one hundred fifty dollars, the weekly benefit rate for each class by one dollar, and the maximum benefit by twenty-six dollars.

After he has established such additional wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before June one following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.

The computation and determination of rates as afore-said shall be completed annually before July one, and any such new wage class, with its corresponding wages in
§21A-6-11. Same—Partial unemployment.

1 An eligible individual who is partially unemployed in any week shall, upon claim therefor file within such time and in such manner as the commissioner may by regulation prescribe, be paid benefits for such partial unemployment in an amount equal to his weekly benefit rate, as determined in accordance with section ten of this article, less that part of wages from any source payable to him with respect to such week which is in excess of fifteen dollars: Provided, That such amount of benefits if not a multiple of one dollar shall be computed to the next higher multiple of one dollar. Such partial benefits shall be paid to such individual for the week for which he is claiming benefits without regard to the provisions
ARTICLE 7. CLAIM PROCEDURE.

§21A-7-27. Appeal to supreme court of appeals.

1 The appeal from the decision of the circuit court of Kanawha county may be taken to the supreme court of appeals if a proper petition for certiorari is filed within sixty days of the date of the final decision of circuit court of Kanawha county. The cases shall go from the circuit court of Kanawha county only on writ of certiorari and need be heard only at the session of the supreme court.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tempt
Chairman Senate Committee

Clayton L. Davidson
Chairman House Committee

Originated in the House.
Takes effect from passage.

G. H. Rogers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Lloyd Jackson
President of the Senate

Jim F. Bassing
Speaker House of Delegates

The within Approved this the 17th day of February, 1970.

Richard L. Snell
Governor
PRESENTED TO THE GOVERNOR

Date  2/16/70
Time  2:40 p.m.