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STATE OF WEST VIRGINIA

**WEST VIRGINIA LEGISLATURE**  
REGULAR SESSION, 1970



**ENROLLED**

*Committee Substitute for*  
HOUSE BILL No. 612

(By Mr. Leibert)



PASSED February 12, 1970

In Effect from Passage



FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE  
THIS DATE 2-18-70

612

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 612**

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[Passed February 12, 1970; in effect from passage.]

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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  
2 seven, chapter six of the code of West Virginia, one thou-  
3 sand nine hundred thirty-one, as amended, the com-  
4 missioner of employment security shall receive a yearly  
5 salary of twenty thousand dollars and the necessary  
6 traveling expenses incident to the performance of his  
7 duties. Requisition for traveling expenses shall be ac-

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

16 of a calendar year equal or exceed one hundred million  
17 dollars, an employer's rate shall be the amount appearing  
18 in Column D of Table II on line with the percentage  
19 in Column B.

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

25 If the commissioner, in accordance with the provi-  
26 sions of section ten-a, article five, of this chapter, de-  
27 termines the fund to be below the sum of seventy-  
28 five million dollars, then, by the express provisions  
29 of this paragraph, the employer's rate shall immediately  
30 be the amount appearing in Column C of Table II on  
31 line with the percentage in Column B; and the pro-  
32 visions of section ten-a, article five, of this chapter shall  
33 be fully applied by the commissioner. It is the express  
34 intent of this paragraph that the increases of the afore-  
35 said section ten-a be applied to and added to the em-  
36 ployer's rates set forth in the aforesaid Column C of

37 Table II.

38 The commissioner shall determine an employer's com-  
39 pliance with these requirements.

40

TABLE II

41	Col. A	Col. B	Col. C	Col. D	Col. E
42		Percent of			
43		Average			
44		Annual Payroll			
45	Rate	by Which Credits	Employer's		
46	Class	Exceed Charges	Rate		
47	(1)	0.0 to 6.0	2.7	2.2	1.7
48	(2)	6.0	2.5	2.0	1.5
49	(3)	7.0	2.3	1.8	1.3
50	(4)	8.0	2.1	1.6	1.1
51	(5)	9.0	1.9	1.4	0.9
52	(6)	10.0	1.7	1.2	0.7
53	(7)	10.5	1.5	1.0	0.5
54	(8)	11.0	1.3	0.8	0.3
55	(9)	11.5	1.1	0.6	0.1
56	(10)	12.0	0.9	0.4	0.0
57	(11)	12.5	0.7	0.2	0.0
58	(12)	13.0	0.5	0.0	0.0

59	(13)	14.0	0.3	0.0	0.0
60	(14)	16.0	0.1	0.0	0.0
61	(15)	18.0 and over	0.0	0.0	0.0

62 (b) All employer accounts in which charges for all  
63 past years exceed credits for such past year shall be  
64 adjusted effective June thirty, one thousand nine hun-  
65 dred sixty-seven, so that as of said date, for the purpose  
66 of determining such employer's rate of contribution,  
67 the credits for all past years shall be deemed to equal  
68 the charges to such accounts.

69 Effective on and after the computation date of June  
70 thirty, one thousand nine hundred sixty-eight, and  
71 notwithstanding the provisions of subsection one of  
72 section seven of article five relating to the noncrediting of  
73 employers' accounts with the first seven tenths of one  
74 percent of contributions paid; for the purpose of de-  
75 termining whether or not an employer shall pay con-  
76 tributions at a rate in excess of two and seven-tenths  
77 percent as hereinafter set forth, but not for the purpose  
78 of determining such rate, the department shall, only  
79 for the purpose set forth herein and not as a credit

80 to such account, add to the accounts of all employers  
81 having a debit balance, contribution payments made  
82 by such employers on and after July one, one thousand  
83 nine hundred sixty-seven, which payments are not  
84 credited to employers' accounts by reason of the pro-  
85 visions contained in subsection one of section seven of  
86 article five. If, after such contribution payments have  
87 been added to such employers' accounts, such accounts  
88 continue to show a debit balance, such employers shall  
89 make payments at a rate in excess of two and seven-  
90 tenths percent. If, after such contribution payments have  
91 been added to such employer accounts, such accounts  
92 show a credit balance, such employers shall make pay-  
93 ments at the rate of two and seven-tenths percent. If,  
94 under the conditions set forth in this paragraph, it is  
95 determined that an employer shall pay contributions at  
96 a rate in excess of two and seven-tenths percent, the  
97 rate in excess of two and seven-tenths percent at which  
98 an employer shall pay contributions shall then be de-  
99 termined solely under the conditions set forth in the  
100 following paragraphs of this subsection. The provisions

101 contained in this paragraph shall in no way be con-  
102 sidered as providing for the crediting to an employer's  
103 account, of amounts of employer contribution payments  
104 which are expressly not credited to employers' accounts  
105 in subsection one of section seven of article five.

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

116 Effective on and after the computation date of June  
117 thirty, one thousand nine hundred sixty-seven, all em-  
118 ployers with a debit balance account in which the bene-  
119 fits charged to their account for all past years exceed  
120 the payments credited to their account for such past  
121 years by an amount in excess of ten percent of their

122 average annual payroll, shall make payments to the  
123 unemployment compensation fund at the rate of three  
124 and three-tenths percent of wages paid by them with  
125 respect to employment.

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

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

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

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

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

3 "Due date" means the last day of the month next fol-

4 lowing a calendar quarter. In determining the amount  
5 in the fund on any due date, contributions received, but  
6 not benefits paid, for such month next following the  
7 end of a calendar quarter shall be included.

8 (2) The commissioner shall as of the due date for  
9 the payment of contributions for each calendar quarter  
10 determine the amount in the unemployment compensa-  
11 tion fund, including the trust fund, the clearing account,  
12 and the benefit account; and if, at any such time or  
13 times the fund is below the sum of seventy-five million  
14 dollars, the commissioner shall, effective at the commence-  
15 ment of the next calendar quarter, increase each em-  
16 ployer's rate one step, and if, at any time or times the  
17 fund is below the sum of seventy million dollars, the  
18 commissioner shall further increase each employer's  
19 rate one additional step; and if, at any such time or times  
20 the fund is below the sum of sixty-five million dollars,  
21 the commissioner shall further increase each employer's  
22 rate one additional step.

23 Where the employer rates have been increased by  
24 virtue of the provisions of this section, they shall be

25 correspondingly decreased in the same manner when  
26 the balance in the fund returns to the successive levels  
27 hereinabove set forth.

28 For purposes of this subsection the term "one step"  
29 or "one additional step" shall mean four tenths of  
30 one percent, except that, for an employer whose rate  
31 is zero the term "one step" shall mean three tenths of  
32 one percent: *Provided, however,* That under no circum-  
33 stances shall an employer's rate be increased above two  
34 and seven-tenths percent if such employer's contribution  
35 rate, as computed by the commissioner in compliance  
36 with subsection three, section seven, article five of this  
37 chapter is two and seven-tenths percent or less: *Pro-*  
38 *vided further,* That if the contribution rate of such em-  
39 ployer as computed by the commissioner in compliance  
40 with subsection three, section seven, article five of this  
41 chapter is three percent or higher, then such employer's  
42 rate shall not be increased above three and three-tenths  
43 percent.

44 (3) If, as of the due date of the payment of contribu-  
45 tions for any calendar quarter the unemployment com-

46 pension fund, including the trust fund, clearing account  
47 and benefit account, is below the sum of sixty million  
48 dollars, the commissioner shall, effective at the com-  
49 mencement of the next calendar quarter, suspend the  
50 decreased rates as provided in this chapter, and all con-  
51 tributions of employers due thereafter whose contribution  
52 rate as computed by the commissioner in compliance  
53 with subsection three, section seven of this article, is two  
54 and seven-tenths percent or less, shall be paid at the  
55 rate of two and seven-tenths percent; and all contribu-  
56 tions of employers due thereafter whose contribution  
57 rate as computed by the commissioner in compliance  
58 with subsection (b), section ten of this article, is over  
59 two and seven-tenths percent, shall remain and be paid  
60 at said rate over two and seven-tenths percent.

61 (4) As of January first of the year next following  
62 the date on which the unemployment compensation fund,  
63 including the trust fund, clearing account and benefit  
64 account, reaches and remains above the sum of sixty-five  
65 million dollars, the commissioner shall supersede the

66 suspension of the decreased rates as provided for in sub-  
67 section three.

**§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

19 of two dollars, with said auditor, or in his office, and  
20 said service shall be sufficient upon said nonresident. In  
21 the event any such summons and complaint is so served  
22 on said auditor he shall immediately cause one of the  
23 copies of the summons and complaint to be sent by  
24 registered or certified mail, return receipt requested, to  
25 the employer at the latter's last known or reasonably  
26 ascertainable address. The employer's return receipt  
27 or, if such registered or certified mail is returned to said  
28 auditor refused by the addressee or for any other reason  
29 is undelivered, such mail showing thereon the stamp  
30 of the post office department that delivery has been  
31 refused, or other reason for non delivery, shall be ap-  
32 pended to the original summons and complaint, and filed  
33 by the state auditor in the clerk's office of the court from  
34 which said process issued.

**ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

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

1 Each eligible individual who is totally unemployed in  
2 any week shall be paid benefits with respect to that week

3 at the weekly rate appearing in Column (C) in Table A  
4 in this paragraph, on the line on which in column (A)  
5 there is indicated the employee's wage class, except as  
6 otherwise provided under the term "total and partial un-  
7 employment" in section three, article one of this chapter.  
8 The employee's wage class shall be determined by his base  
9 period wages as shown in Column (B) in Table A. The  
10 right of an employee to receive benefits shall not be prej-  
11 udiced nor the amount thereof be diminished by reason  
12 of failure by an employer to pay either the wages earned  
13 by the employee or the contribution due on such wages.  
14 An individual who is totally unemployed but earns in ex-  
15 cess of fifteen dollars as a result of odd-job or subsidiary  
16 work in any benefit week shall be paid benefits for  
17 such week in accordance with the provisions of this  
18 chapter pertaining to benefits for partial unemploy-  
19 ment.

20	TABLE A			Maximum Benefit
21				in Benefit Year for
22	Wage	Wages in	Weekly	Total and/or Partial
23	Class	Base Period	Benefit Rate	Unemployment
24	(Column A)	(Column B)	(Column C)	(Column D)
25		Under \$700.00	Ineligible	
26	1	700.00— 799.99	\$12.00	\$312.00
27	2	800.00— 899.99	13.00	338.00
28	3	900.00— 999.99	14.00	364.00
29	4	1000.00—1149.99	15.00	390.00
30	5	1150.00—1299.99	16.00	416.00
31	6	1300.00—1449.99	17.00	442.00
32	7	1450.00—1599. <sup>99</sup> <del>00</del>	18.00	468.00
33	8	1600.00—1749.99	19.00	494.00
34	9	1750.00—1899.99	20.00	520.00
35	10	1900.00—2049.99	21.00	546.00
36	11	2050.00—2199.99	22.00	572.00
37	12	2200.00—2349.99	23.00	598.00
38	13	2350.00—2499.99	24.00	624.00
39	14	2500.00—2599.99	25.00	650.00
40	15	2600.00—2699.99	26.00	676.00

*OK  
C. Blakely  
by J. L.*

41	16	2700.00—2799.99	27.00	702.00
42	17	2800.00—2899.99	28.00	728.00
43	18	2900.00—2999.99	29.00	754.00
44	19	3000.00—3099.99	30.00	780.00
45	20	3100.00—3199.99	31.00	806.00
46	21	3200.00—3349.99	32.00	832.00
47	22	3350.00—3499.99	33.00	858.00
48	23	3500.00—3649.99	34.00	884.00
49	24	3650.00—3799.99	35.00	910.00

50 Notwithstanding any of the foregoing provisions of this  
51 section, on and after July one, one thousand nine hundred  
52 sixty-seven, the maximum weekly benefit rate shall be  
53 forty percent of the average weekly wage in West Vir-  
54 ginia.

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

59 The commissioner, after he has determined the maxi-  
60 mum weekly benefit rate upon the basis of the above  
61 formula, shall establish as many additional wage classes

62 as are required, increasing the amount of base period  
63 wages required for each class by one hundred fifty dollars,  
64 the weekly benefit rate for each class by one dollar, and  
65 the maximum benefit by twenty-six dollars.

66 After he has established such additional wage classes,  
67 the commissioner shall prepare and publish a table set-  
68 ting forth such information.

69 Average weekly wage shall be computed by dividing  
70 the number of employees in West Virginia earning wages  
71 in covered employment into the total wages paid to em-  
72 ployees in West Virginia in covered employment, and by  
73 further dividing said result by fifty-two, and shall be de-  
74 termined from employer wage and contribution reports  
75 for the previous calendar year which are furnished to the  
76 department on or before June one following such calen-  
77 dar year. The average weekly wage, as determined by  
78 the commissioner, shall be rounded to the next higher  
79 dollar.

80 The computation and determination of rates as afore-  
81 said shall be completed annually before July one, and any  
82 such new wage class, with its corresponding wages in

83 base period, weekly benefit rate, and maximum benefit in  
84 a benefit year established by the commissioner in the fore-  
85 going manner effective on a July one, shall apply only to  
86 a new claim established by a claimant on and after said  
87 July one, and shall not apply to continued claims of a  
88 claimant based on his new claim established before said  
89 July one.

**§21A-6-11. Same—Partial unemployment.**

1 An eligible individual who is partially unemployed in  
2 any week shall, upon claim therefor file within such time  
3 and in such manner as the commissioner may by regula-  
4 tion prescribe, be paid benefits for such partical unem-  
5 ployment in an amount equal to his weekly benefit rate,  
6 as determined in accordance with section ten of this  
7 article, less that part of wages from any source payable  
8 to him with respect to such week which is in excess of  
9 fifteen dollars: *Provided*, That such amount of benefits  
10 if not a multiple of one dollar shall be computed to the  
11 next higher multiple of one dollar. Such partial benefits  
12 shall be paid to such individual for the week for which  
13 he is claiming benefits without regard to the provisions

14 of subsections one and four of section one of this article.

**ARTICLE 7. CLAIM PROCEDURE.**

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

1 The appeal from the decision of the circuit court of  
2 Kanawha county may be taken to the supreme court of  
3 appeals if a proper petition for certiorari is filed within  
4 sixty days of the date of the final decision of circuit  
5 court of Kanawha county. The cases shall go from the  
6 circuit court of Kanawha county only on writ of certiorari  
7 and need be heard only at the session of the supreme  
8 court.

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

William Tempus  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the House.

Takes effect from passage.

Thomas Myers  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

Clayton Jackson  
President of the Senate

Sam F. Basaly  
Speaker House of Delegates

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

Arch A. Shave, Jr.  
Governor

PRESENTED TO THE  
GOVERNOR

Date 2/16/70

Time 2:40 p.m.