

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972



ENROLLED

*Committee Substitute
for*
HOUSE BILL No. 1076

(By Mr. Seibert)



PASSED March 11 1972

In Effect 90 days from Passage



FILED IN THE OFFICE
JOHN D. ROMBEFELL, IV
SECRETARY OF STATE

THIS DATE 3-29-72

1076

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 1076
(By MR. SEIBERT)

(Originating in the House Committee on the Judiciary)

[Passed March 11, 1972; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, four, seven, nine, ten and eleven, article seven, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article seven by adding thereto a new section, designated section seven-a, all relating to unemployment compensation generally; claims procedure thereunder; the appointment of deputies to hear certain claims; the investigation and hearing procedures for such claims; the initial determination by such deputies; the establishment of appeal tribunals and the hearings and determinations of such appeal tribunals; appeal from the decisions of such tribunals; providing for review by the board of review; and payment of benefits pending such appeal.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-3. Deputies.

1 The commissioner shall appoint deputies to investigate
2 all claims, and to hear and initially determine all claims
3 for benefits excepting claims relating to labor disputes
4 or disqualification under subdivision four of section three,
5 article six of this chapter.

**§21A-7-4. Investigation by deputy; notice and hearing before
deputy; referral of labor dispute claims for hearing
and determination by appeal tribunal; initial deter-
mination of other claims by deputy.**

1 (a) A deputy shall promptly investigate all claims.

2 (b) Upon the filing of any claim for benefits, notice
3 thereof shall promptly be given by the commissioner or
4 his designee to the employer concerned, in writing.
5 The employer shall have a period of four calendar days
6 from the receipt of such notice within which to fur-
7 nish to the deputy or his local office initial information
8 respecting the claim and the facts and circumstances
9 pertaining to the claimant's unemployment. If, within
10 said four-day period, any party shall request a hear-
11 ing before the deputy, such hearing shall be held, upon
12 notice to all parties by the commissioner or his de-
13 signee, either by delivery in person or by registered
14 or certified mail, return receipt requested, within five
15 calendar days of receipt of such request. Such hear-
16 ing shall be informal in nature, but shall afford the
17 parties reasonable opportunity to present, in person, in-
18 formation relevant to the eligibility and disqualification
19 of the claimant.

20 (c) If it appears from the deputy's investigation and
21 from all of the information before him, that a claim re-
22 lates to a labor dispute or to a disqualification under subdi-
23 vision four of this section three, article six of this chapter,
24 the claim shall be transferred to the board for full hear-
25 ing and initial determination by an appeal tribunal.

26 (d) If it appears from the deputy's investigation, and
27 from all of the information before him, that a claim does
28 not relate to a labor dispute or to a disqualification under

29 subdivision four of section three, article six of this chap-
30 ter, the deputy shall determine whether or not such claim
31 is valid, and, if valid, shall determine:

32 (a) The week with respect to which benefits will
33 commence;

34 (b) The amount of benefit;

35 (c) The maximum duration of benefits.

36 (e) After any finding or determination by a deputy,
37 the deputy shall promptly notify the claimant and the
38 employer of his findings and decision.

§21A-7-7. Appeal tribunals.

1 The board shall determine the manner of hearing
2 cases transferred or appealed from a decision of a deputy.
3 All cases relating to labor disputes or to disqualification
4 under subdivision (4), section three, article six of this
5 chapter, and transferred to an appeal tribunal for initial
6 determination, shall be heard by an appeal tribunal com-
7 posed either of three examiners assigned by the board,
8 or the board itself, as the board may direct in particular
9 cases or in particular areas. All other appeals from the
10 decision of a deputy shall be heard by an appeal tribunal
11 composed, as the board may direct in particular cases or
12 in particular areas, of a single examiner; a tribunal of
13 three examiners assigned by the board; a member of the
14 board; or the board itself.

**§21A-7-7a. Hearings and determinations by appeal tribunal in
labor dispute cases.**

1 Upon transfer to the board of a case relating to a labor
2 dispute or to a disqualification under subdivision four,
3 section three, article six of this chapter, for hearing and
4 initial determination by an appeal tribunal, the parties
5 shall be entitled to a full and complete hearing and op-
6 portunity to present evidence before an appeal tribunal
7 as provided in section seven of this article. Within eight
8 days after the transfer or referral of such a case to the
9 board, the board shall fix the time and place for hearing
10 such case, and notify the claimant, last employer, and the
11 commissioner, ten days in advance of the date set for
12 hearing. All such cases shall be heard and determined as

13 expeditiously as possible and shall be given priority over
14 all other cases. Upon consideration of all evidence the
15 appeal tribunal shall make a decision with respect to all
16 questions fairly raised by the record, within fourteen
17 days after the date of the hearing, and shall notify the
18 claimant, last employer, and the commissioner of its find-
19 ings and decisions.

§21A-7-9. Appeal from appeal tribunal's decision.

1 A claimant, last employer, or other interested party
2 may file an appeal to the board from the decision of an
3 appeal tribunal within eight calendar days after notice
4 of the decision has been delivered or mailed to the
5 claimant and last employer. The commissioner shall be
6 deemed an interested party. The decision of the appeal
7 tribunal shall be final unless an appeal is filed within
8 such time.

§21A-7-10. Review by board.

1 The board may, on its own motion, after notice to the
2 claimant, last employer, and the commissioner, eight days
3 in advance of the date set for hearing affirm, modify,
4 or reverse and set aside a decision of an appeal tribunal.
5 Any appeal from a decision of an appeal tribunal allow-
6 ing benefits in a case relating to a labor dispute or to a
7 disqualification under subdivision four, section three,
8 article six of this chapter, shall be heard as expeditiously
9 as possible and given priority over all other cases and
10 shall be decided by the board within ten days after the
11 hearing before the board.

§21A-7-11. Benefits pending appeal.

1 Benefits found payable by decision of a deputy, appeal
2 tribunal, the board or court shall be immediately paid in
3 accordance therewith up to the week in which a subse-
4 quent appellate body renders a decision, by order, finding
5 that benefits were not or are not payable. If, at any
6 appeal stage, benefits are found to be payable which
7 were found before such appeal stage to be not payable,
8 the commissioner shall immediately reinstate the pay-
9 ment benefits. If the final decision in any case deter-
10 mines that a claimant was not lawfully entitled to bene-

11 fits paid to him pursuant to a prior decision, such amount
12 of benefits so paid shall be deemed overpaid. The com-
13 missioner shall recover such amount by civil action or
14 in any manner provided in this code for the collection
15 of past due payment and shall withhold, in whole or in
16 part, as determined by the commissioner, any future bene-
17 fits payable to the individual and credit such amount
18 against the overpayment until it is repaid in full. If
19 the final decision in any case determines that the claimant
20 was not lawfully entitled to the benefits paid to him
21 pursuant to a prior order, any benefits so paid pursuant
22 to such prior order, shall not be chargeable to the em-
23 ployer's account.

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

Russell G. Beall

Chairman Senate Committee

Phyllis J. Rutledge

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard W. Carson

Clerk of the Senate

Ch. Blun Renship

Clerk of the House of Delegates

E. H. McCourt

President of the Senate

Lewis A. M. Manna

Speaker House of Delegates

The within approved this the 27th
March
day of _____, 1972.

Archie A. P. P. P.

Governor



FILED IN THE
CLERK'S OFFICE

3/20/72
10:17 a.m.

MAR 29 9 23 AM '72

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA