WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1982

ENROLLED
SENATE BILL NO. 5

(By Mr. McGrad, Mr. President)

PASSED April 3, 1982
In Effect from Passage
AN ACT to amend and reenact section one, article six-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment security benefit program; and changing the formula by which such benefits are triggered.

Be it enacted by the Legislature of West Virginia:

That section one, article six-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

  1 As used in this article, unless the context clearly requires otherwise:
  2 (1) “Extended benefit period” means a period which:
  3 (A) Begins with the third week after a week for which there is a state “on” indicator; and
  4 (B) Ends with either of the following weeks, whichever occurs later:
  5 (i) The third week after the first week for which there is a state “off” indicator; or
  6 (ii) The thirteenth consecutive week of such period.
  7 Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state “on” indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with
respect to this state, and no extended benefit period may
become effective in this state prior to the sixty-first day
following the date of enactment of the Federal-State
Extended Unemployment Compensation Act of 1970, and,
within the period beginning on such sixty-first day and
ending on December thirty-one, one thousand nine hundred
seventy-one, an extended benefit period may become
effective and be terminated in this state solely by reason of a
state "on" and state "off" indicator, respectively.

(2) There is a "state 'on' indicator" for this state for a week
if the commissioner determines, in accordance with the
regulations of the United States secretary of labor, that for the
period consisting of such week and the immediately
preceding twelve weeks, the rate of insured unemployment
(not seasonally adjusted) under this article:

(A) Equaled or exceeded one hundred twenty percent of
the average of such rates for the corresponding thirteen-week
period ending in each of the preceding two calendar years,
and

(B) Equaled or exceeded four percent.

(C) The determination of whether there has been a state
"on" indicator beginning any extended benefit period shall
be made hereunder as if subsection (2) did not contain
paragraph (A) thereof, but only if the commissioner
determines that the rate of insured unemployment (not
seasonally adjusted) equals or exceeds five percent.

(3) After the twenty-fifth day of September, one thousand
nine hundred eighty-two, there is a "state 'on' indicator" for
this state for a week if the commissioner determines, in
accordance with the regulations of the United States
secretary of labor, that for the period consisting of such week
and the immediately preceding twelve weeks, the rate of
insured unemployment (not seasonally adjusted) under this
article:

(A) Equaled or exceeded one hundred twenty percent of
the average of such rates for the corresponding thirteen-week
period ending in each of the preceding two calendar years,
and

(B) Equaled or exceeded five percent.

(C) An extended benefit period shall be made hereunder
as if subsection (3) did not contain paragraph (A) thereof, but
only if the commissioner determines that the rate of insured
unemployment (not seasonally adjusted) equals or exceeds
six percent.
(4) There is a state "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subsections (2) or (3) were not satisfied.

(5) "Rate of insured unemployment," for purposes of subdivisions (2) and (3) of this section, means the percentage derived by dividing

(A) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor by

(B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(7) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his eligibility period.

(8) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(9) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) Has received, prior to such week, all of the regular benefits which were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits which were available to him although (i) as a result of a pending appeal with respect
to wages and/or employment which were not considered in
the original monetary determination in his benefit year, he
may subsequently be determined to be entitled to added
regular benefits, or (ii) he may be entitled to regular benefits
with respect to future weeks of unemployment, but such
benefits are not payable with respect to such week of
unemployment by reason of the provisions of section one-a,
article six of this chapter; or
(B) His benefit year having expired prior to such week,
has no, or insufficient, wages and/or employment on the basis
of which he could establish a new benefit year which would
include such week; and
(C) Has no right to unemployment benefits or allowances,
as the case may be, under the Railroad Unemployment
Insurance Act, the Trade Expansion Act of 1962, the
Automotive Products Trade Act of 1965 and such other
federal laws as are specified in regulations issued by the
United States secretary of labor; and has not received and is
not seeking unemployment benefits under the
unemployment compensation law of the Virgin Islands or of
Canada; but if he is seeking such benefits and the appropriate
agency finally determines that he is not entitled to benefits
under such law he is considered an exhaustee.
(10) “State law” means the unemployment insurance law
of any state, approved by the United States secretary of labor
under section 3304 of the Internal Revenue Code of 1954.
(11) No individual shall be entitled to extended benefits
during a period of unemployment if he was disqualified
under the provisions of subdivision (1), (2) or (3) of section
three, article six of this chapter, which disqualification shall
not be terminated until such individual has returned to
covered employment and has been employed in covered
employment for at least thirty working days.
(12) (A) Notwithstanding any other provisions of this
section, an individual shall be ineligible for payment of
extended benefits for any week of unemployment in his
eligibility period if the commissioner finds that during such
period:
(i) He failed to accept any offer of suitable work or failed to
apply for any suitable work (as defined under subdivision (12)
(C) of this section), to which he was referred by the
commissioner; or
(ii) He failed to actively engage in seeking work as
prescribed under subdivision (12) (E) of this section.

(B) Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision (12) (A) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount;

(C) For purposes of this subdivision (12) (A) (i) of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities: Provided, however, That the gross average weekly remuneration payable for the work must exceed the sum of:

(i) The individual's average weekly benefit amount (as determined under subdivision (12) (D) of this section) plus;

(ii) The amount, if any, of supplemental unemployment benefits (as defined in section 501 (c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,

(iii) Pays wages equal to the higher of:

(I) The minimum wages provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(II) The state or local minimum wage;

(iv) Provided that no individual shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitability as described above if:

(I) The position was not offered to such individual in writing and was not listed with the employment service; or

(II) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section five, article six of this chapter, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision (12) (C) of this section; or

(III) The individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is
suitable with respect to such individual shall be made in accordance with the definition of suitable work in section five, article six of this chapter, without regard to the definition specified by subdivision (12) (C) of this section.

(D) Notwithstanding the provisions of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a)(5) of the Internal Revenue Code of 1954 and set forth herein under subdivision (12) (C) (iii) (I) of this section.

(E) For the purposes of subdivision (12) (A) (ii) of this section an individual shall be treated as actively engaged in seeking work during any week if:

(i) The individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(F) The employment service shall refer any claimant entitled to extended benefits under this article to any suitable work which meets the criteria prescribed in subdivision (12) (C) of this section.

(G) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or refused an offer of suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this subdivision requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

(13) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.
(14) An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found that he has been paid wages by an employer who was subject to the provisions of this chapter during the base period of his current benefit year in an amount at least equal to forty times his benefit rate for total unemployment.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 14 day of April, 1982.

Governor