

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-14-82

WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1982

ENROLLED

SENATE BILL NO. 5

(By Mr. McGraw, Mr. President)

PASSED April 3, 1982
In Effect from Passage



ENROLLED
Senate Bill No. 5

(BY MR. MCGRAW, 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.

§21A-6A-1. Definitions.

- 1 As used in this article, unless the context clearly requires
- 2 otherwise:
- 3 (1) "Extended benefit period" means a period which:
- 4 (A) Begins with the third week after a week for which
- 5 there is a state "on" indicator; and
- 6 (B) Ends with either of the following weeks, whichever
- 7 occurs later:
- 8 (i) The third week after the first week for which there is a
- 9 state "off" indicator; or
- 10 (ii) The thirteenth consecutive week of such period.
- 11 Notwithstanding the foregoing provisions of this section, no
- 12 extended benefit period may begin by reason of a state "on"
- 13 indicator before the fourteenth week following the end of a
- 14 prior extended benefit period which was in effect with

15 respect to this state, and no extended benefit period may
16 become effective in this state prior to the sixty-first day
17 following the date of enactment of the Federal-State
18 Extended Unemployment Compensation Act of 1970, and,
19 within the period beginning on such sixty-first day and
20 ending on December thirty-one, one thousand nine hundred
21 seventy-one, an extended benefit period may become
22 effective and be terminated in this state solely by reason of a
23 state "on" and state "off" indicator, respectively.

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

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

34 (B) Equaled or exceeded four percent.

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

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

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

53 (B) Equaled or exceeded five percent.

54 (C) An extended benefit period shall be made hereunder
55 as if subsection (3) did not contain paragraph (A) thereof, but
56 only if the commissioner determines that the rate of insured
57 unemployment (not seasonally adjusted) equals or exceeds
58 six percent.

59 (4) There is a state "off" indicator for a week if, for the
60 period consisting of such week and the immediately
61 preceding twelve weeks, either subsections (2) or (3) were not
62 satisfied.

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

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

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

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

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

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

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

93 (A) Has received, prior to such week, all of the regular
94 benefits which were available to him under this chapter or
95 any other state law (including dependents' allowances and
96 benefits payable to federal civilian employees and
97 ex-servicemen under 5 U.S.C., chapter 85) in his current
98 benefit year that includes such week: *Provided*, That for the
99 purposes of this subdivision, an individual shall be deemed to
100 have received all of the regular benefits which were available
101 to him although (i) as a result of a pending appeal with respect

102 to wages and/or employment which were not considered in
103 the original monetary determination in his benefit year, he
104 may subsequently be determined to be entitled to added
105 regular benefits, or (ii) he may be entitled to regular benefits
106 with respect to future weeks of unemployment, but such
107 benefits are not payable with respect to such week of
108 unemployment by reason of the provisions of section one-a,
109 article six of this chapter; or

110 (B) His benefit year having expired prior to such week,
111 has no, or insufficient, wages and/or employment on the basis
112 of which he could establish a new benefit year which would
113 include such week; and

114 (C) Has no right to unemployment benefits or allowances,
115 as the case may be, under the Railroad Unemployment
116 Insurance Act, the Trade Expansion Act of 1962, the
117 Automotive Products Trade Act of 1965 and such other
118 federal laws as are specified in regulations issued by the
119 United States secretary of labor; and has not received and is
120 not seeking unemployment benefits under the
121 unemployment compensation law of the Virgin Islands or of
122 Canada; but if he is seeking such benefits and the appropriate
123 agency finally determines that he is not entitled to benefits
124 under such law he is considered an exhaustee.

125 (10) "State law" means the unemployment insurance law
126 of any state, approved by the United States secretary of labor
127 under section 3304 of the Internal Revenue Code of 1954.

128 (11) No individual shall be entitled to extended benefits
129 during a period of unemployment if he was disqualified
130 under the provisions of subdivision (1), (2) or (3) of section
131 three, article six of this chapter, which disqualification shall
132 not be terminated until such individual has returned to
133 covered employment and has been employed in covered
134 employment for at least thirty working days.

135 (12) (A) Notwithstanding any other provisions of this
136 section, an individual shall be ineligible for payment of
137 extended benefits for any week of unemployment in his
138 eligibility period if the commissioner finds that during such
139 period:

140 (i) He failed to accept any offer of suitable work or failed to
141 apply for any suitable work (as defined under subdivision (12)
142 (C) of this section), to which he was referred by the
143 commissioner; or

144 (ii) He failed to actively engage in seeking work as

145 prescribed under subdivision (12) (E) of this section.

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

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

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

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

166 (iii) Pays wages equal to the higher of:

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

170 (II) The state or local minimum wage;

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

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

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

183 (III) The individual furnishes satisfactory evidence to the
184 commissioner that his or her prospects for obtaining work in
185 his or her customary occupation within a reasonably short
186 period are good. If such evidence is deemed satisfactory for
187 this purpose, the determination of whether any work is

188 suitable with respect to such individual shall be made in
189 accordance with the definition of suitable work in section
190 five, article six of this chapter, without regard to the
191 definition specified by subdivision (12) (C) of this section.

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

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

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

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

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

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

219 (13) Notwithstanding any other provisions of this chapter,
220 if the benefit year of any individual ends within an extended
221 benefit period, the remaining balance of extended benefits
222 that such individual would, but for this section, be entitled to
223 receive in that extended benefit period, with respect to weeks
224 of unemployment beginning after the end of the benefit year,
225 shall be reduced (but not below zero) by the product of the
226 number of weeks for which the individual received any
227 amounts as trade readjustment allowances within that benefit
228 year, multiplied by the individual's weekly benefit amount
229 for extended benefits.

230 (14) An unemployed individual shall be eligible to receive
231 benefits with respect to any week only if it has been found
232 that he has been paid wages by an employer who was subject
233 to the provisions of this chapter during the base period of his
234 current benefit year in an amount at least equal to forty times
235 his benefit rate for total unemployment.

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

R. P. Baylor

Chairman Senate Committee

Tony E. Whitlow

Chairman House Committee

Originated in the Senate.

To take effect from passage.

Todd A. With

Clerk of the Senate

Ch Blankenship

Clerk of the House of Delegates

Warren R. McEraw

President of the Senate

Chas. M. Seay, Jr.

Speaker House of Delegates

The within *inaphoned* this the *14*

day of *April*, 1982.

John R. Sawyer

Governor

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SECY. OF STATE