WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

ENROLLED

Com. Sub.for
HOUSE BILL No. 1849

(By Mr. Speaker, Mr. Lee)

Passed March 13, 1982

In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1849

(By Mr. Speaker, Mr. See)

[Passed March 13, 1982; in effect from passage.]

AN ACT to amend and reenact sections five and seven, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article six of said chapter; to further amend said article six by adding thereto a new section, designated section sixteen; to amend and reenact section one, article six-a of said chapter; to amend and reenact sections two and eleven, article ten of said chapter; and to further amend said article ten by adding thereto three new sections, designated sections nineteen, twenty and twenty-one, all relating to employment security generally; establishing a minimum contribution for certain employers; extending to the last day of September, one thousand nine hundred eighty-one, as the time during which certain delinquent contributions from certain employers may be made without additional penalty; employee eligibility and benefits; employees receiving federal employment supplement; deduction of child support; extended benefit program; when benefits begin; assignment of benefits prohibited; exemption from process; disclosure of information to child support agencies; disclosure to food stamp agencies; and recovery of benefits paid in error.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-5. Rate of contribution.

1 On or after January first, one thousand nine hundred forty-two, an employer shall make payments to the unemployment compensation fund equal to two and seven-tenths percent of wages paid by him with respect to employment during each calendar year beginning with the calendar year one thousand nine hundred forty-one, subject, however, to other provisions of this article; except that on and after January first, one thousand nine hundred seventy-two, each employer subject to this chapter shall pay contributions at the rate of one and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

2 On and after July one, one thousand nine hundred eighty-one, each employer subject to this chapter shall pay contributions at the rate of two and seven-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

Notwithstanding any other provision of this chapter to the contrary, on or after the first day of July, one thousand nine hundred seventy-eight, any foreign corporation or business
entity engaged in the construction trades shall pay contributions at the rate of two and seven-tenths percent of wages paid by him with respect to employment during each calendar year.

Notwithstanding any other provision of this chapter to the contrary, on or after the first day of July, one thousand nine hundred eighty-one, any foreign corporation or business entity engaged in the construction trades shall pay contribution at the rate of seven and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article: Provided, That any corporation or business entity engaged in the construction trades shall make payments to the fund at the rates applicable to such employer as of January first, one thousand nine hundred eighty-one, for wages paid with respect to employment on construction contracts entered into for which bids are submitted in this state prior to April fifteenth, one thousand nine hundred eighty-one: Provided, however, That beginning the first day of January one, one thousand nine hundred eighty-two, and any calendar year thereafter, the rate which applies to such corporation or business entity, shall not be less than two and seven-tenths percent of such wages, unless such corporation or business entity elects to have its rate of contribution determined in accordance with the provisions of section ten of this article: Provided, further, That the burden shall be on such corporation or business entity to prove that any such contract was executed or that any such bid was submitted therefor prior to April fifteenth, one thousand nine hundred eighty-one.


(1) The commissioner shall maintain a separate account for each employer, and shall credit his account with all contributions paid by him prior to July first, one thousand nine hundred sixty-one. On and after July first, one thousand nine hundred sixty-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer
in excess of seven tenths of one percent of taxable wages;
and on and after July first, one thousand nine hundred seventy-
one, the commissioner shall maintain a separate account for
each employer, and shall credit said employer's account with all
contributions of such employer in excess of four tenths of one
percent of taxable wages: Provided, That any adjustment
made in an employer's account after the computation date
shall not be used in the computation of the balance of an
employer until the next following computation date: Pro-
vided, however, That nothing in this chapter shall be con-
structed to grant an employer or individual in his service prior
claims or rights to the amounts paid by him into the fund,
either on his behalf or on behalf of such individuals. The
account of any employer which has been inactive for a
period of four consecutive calendar years shall be terminated
for all purposes.

(2) Benefits paid to an eligible individual for regular and
extended total or partial unemployment beginning after the
effective date of this article shall be charged to the account
of the last employer with whom he has been employed as
much as thirty working days, whether or not such days are con-
secutive: Provided, That no employer's account shall be
charged with benefits paid to any individual who has been
separated from a noncovered employing unit in which he
was employed as much as thirty days, whether or not such
days are consecutive: Provided, however, That no employer's
account shall be charged with more than fifty percent of the
benefits paid to an eligible individual as extended benefits
under the provisions of article six-a of this chapter: Pro-
vided further, That state and local government employers shall
be charged with one hundred percent of the benefits paid
to an eligible individual as extended benefits.

(3) The commissioner shall, for each calendar year here-
after, classify employers in accordance with their actual ex-
erience in the payment of contributions on their own be-
half and with respect to benefits charged against their ac-
counts, with a view of fixing such contribution rates as will
reflect such experiences. For the purpose of fixing such con-
tribution rates for each calendar year, the books of the de-
department shall be closed on July thirty-one of the pre-
ceding calendar year, and any contributions thereafter paid,
as well as benefits thereafter paid with respect to compensable
weeks ending on or before June thirty of the preceding calendar
year, shall not be taken into account until the next annual
date for fixing contribution rates: Provided, That if an em-
ployer has failed to furnish to the commissioner on or be-
fore July thirty-one of such preceding calendar year the wage
information for all past periods necessary for the computation
of the contribution rate, such employer's rate shall be, if it is
immediately prior to such July thirty-one, less than three and
three-tenths percent, increased to three and three-tenths
percent: Provided, however, That any payment made or any
information necessary for the computation of a reduced rate
furnished on or before the termination of an extension of time
for such payment or reporting of such information granted
pursuant to a regulation of the commissioner authorizing such
extension, shall be taken into account for the purposes of fixing
contribution rates: Provided further, That when the time for
filing any report or making any payment required hereunder
falls on Saturday, Sunday, or a legal holiday, the due date
shall be deemed to be the next succeeding business day: And
provided further, That whenever, through mistake or in-
advertence, erroneous credits or charges are found to have
been made to or against the reserved account of any employer,
the rate shall be adjusted as of January one of the calendar year
in which such mistake or inadvertence is discovered, but
payments made under any rate assigned prior to January
one of such year shall not be deemed to be erroneously col-
lected.

(4) The commissioner may prescribe regulations for the
establishment, maintenance and dissolution of joint accounts
by two or more employers, and shall, in accordance with
such regulations and upon application by two or more em-
ployers to establish such an account, or to merge their
several individual accounts in a joint account, maintain such
joint account as if it constituted a single employer's account.

(5) State and local government employers are hereby
authorized to enter into joint accounts and to maintain such
joint account or accounts as if it or they constituted a single employer's account or accounts.

(6) Effective on and after July one, one thousand nine hundred eighty-one, if an employer has failed to furnish to the commissioner on or before August thirty-one of one thousand nine hundred eighty, and each year thereafter, with the exception of one thousand nine hundred eighty-one, which due date shall be September thirty, one thousand nine hundred eighty-one, the wage information for all past periods necessary for the computation of the contribution rate, such employer's rate shall be, if it is immediately prior to July one, one thousand nine hundred eighty-one, less than seven and five-tenths percent, increased to seven and five-tenths percent.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-4. Individual not denied benefits by receiving vocational training.

Notwithstanding any other provision in this article, no individual shall be denied unemployment compensation benefits because of his receiving training as part of an area vocational program, or similar program, which has as its object the training of unemployed individuals in new occupational skills: Provided, That such individual's training and training institution are approved by the commissioner, and such individual produces evidence of his continued attendance and satisfactory progress at such training institution when requested to do so by the commissioner.

Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the Federal Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, if the work left is not suitable employment, or because of the application of the provisions of this chapter or any applicable federal unemployment compensation law relating to availability for work, active search for work or refusal to work to any such week in training.
For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment as defined for purposes of the Federal Trade Act of 1974 and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Federal Trade Act of 1974.


(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as hereafter defined under subsection (g). If any such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the department of welfare that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual that owes such child support obligations as defined under subsection (g):

(1) The amount specified by the individual to the commissioner to be deducted and withheld under this subsection, if neither subdivision (2) nor subdivision (3) is applicable; or

(2) The amount, if any, determined pursuant to an agreement submitted to the commissioner under section 454(20)(B)(i) of the Social Security Act by the department of welfare, unless subdivision (3) is applicable; or

(3) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the commissioner.

(c) Any amount deducted and withheld under subsection
(b) shall be paid by the commissioner to the department of welfare.

(d) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the department of welfare in satisfaction of the individual's child support obligations.

(e) For purposes of subsections (a) through (d), the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(f) This section applies only if appropriate arrangements have been made for reimbursement by the department of welfare for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(g) The term "child support obligations" means, for purposes of these provisions, only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


As used in this article, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(A) Begins with the third week after a week for which there is a state "on" indicator; and

(B) Ends with either of the following weeks, whichever occurs later:
The third week after the first week for which there is a state "off" indicator; or

The thirteenth consecutive week of such period. 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.

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.

There is a "state 'off' 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) Was less than 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, or
Was less than five percent.

"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.

"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.

"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.

"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.

"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.

(9) “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.

(10) 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.

(11) (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 (11) (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 (11) (E).

(B) Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision (11) (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 (11) (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 (11) (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 (11) (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 (11) (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 (11) (C) (iii) (I) of this section.

(E) For the purposes of subdivision (11) (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 (11) (C).
(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.

(12) 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.

(13) 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.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-2. Assignment of benefits invalid; exemption from process; exception.

An assignment, pledge or encumbrance of any benefit due or payable under this chapter shall be invalid. Right to benefits shall be exempt from levy, execution, attachment, or other processes for the collection of debt. Benefits received by an individual so long as they are not mingled with other funds of the recipient, shall be exempt from process for the collection of a debt. The waiver of any exemption provided in this section shall be void: Provided, That the provisions of this
section shall not apply to the assignment or collection of child support payments under the provisions of section sixteen, article six of this chapter.

Collection of debts incurred for necessaries furnished to an individual, his spouse, or dependents, during a period of unemployment shall be exempt from the operation of the above provision.

§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.

The commissioner may require an employing unit to provide sworn or unsworn reports concerning:

1. The number of individuals in its employ.
2. Individually their hours of labor.
3. Individually the rate and amount of wages.
4. Such other information as is reasonably connected with the administration of this chapter.

Information thus obtained shall not be published or be open to public inspection so as to reveal the identity of the employing unit of the individual, with the exception of information furnished to the department of welfare as required under the provisions of section sixteen, article six of this chapter, and information furnished to the United States department of agriculture. However, a claimant of benefit or any other interested party shall, upon request, be supplied with information from such records to the extent necessary for the proper presentation or defense of a claim. Such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

A person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned not longer than ninety days, or both.

No action for slander or libel, either criminal or civil, shall

(1) The department of employment security shall disclose, upon request, to officers or employees of any state or local child support enforcement agency, any wage information with respect to an identified individual which is contained in its records.

The term "state or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan described in section 454 of the Social Security Act, which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act.

(2) The requesting agency shall agree that such information is to be used only for the purpose of establishing and collecting child support obligations from, and locating, individuals owing such obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act.

(3) The information shall not be released unless the requesting agency agrees to reimburse the costs involved for furnishing such information.

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed on improper disclosure shall apply to the use of such information by officers and employees of child support agencies.


(1) The department of employment security shall disclose, upon request, to officers and employees of the United States department of agriculture and any state food stamp agency, with respect to an identified individual, any of the following information which is contained in its records:
(a) Wage information;

(b) Whether the individual is receiving, has received, or has made application for unemployment compensation and the amount of any compensation being received or to be received by such individual;

c) The current or most recent home address of the individual; and

d) Whether the individual has refused an offer of employment and if so, a description of the employment offered and the terms, conditions and rate of pay therefor.

(2) The term "state food stamp agency" means any agency described in section (3) (n) (1) of the Food Stamp Act of 1977 which administers the food stamp program established under such act.

(3) The requesting agency shall agree that such information shall be used only for purposes of determining the applicant's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977.

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed for improper disclosure of information obtained in the administration of this act shall apply to the use of such information by the officers and employees of any food stamp agency or the United States department of agriculture.


A person who, by reason of departmental error, irrespective of the nature of said error, has received a sum as a benefit under this chapter, shall either have such sum deducted from a future benefit payable to him or shall repay to the commissioner the amount which he has received. Collection shall be made in the same manner as collection of past due payment: Provided, That such collection or deduction of benefits shall be barred after the expiration of two years.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 20th day of March, 1982.

Governor