

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-14-82

# WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1982

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**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. Welch*  
Clerk of the Senate

*Ch Blankenship*  
Clerk of the House of Delegates

*Warren R. McGraw*  
President of the Senate

*Alfred M. Seelye*  
Speaker House of Delegates

The within *in passed* this the *14*

day of *April*, 1982.

*John R. Rupp*  
Governor

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