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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

— ● —

ENROLLED

HOUSE BILL No. 2604..

(By Mr. Speaker, Mr. Chambers)

— ● —

Passed March 30, 1989

In Effect Ninety Days From Passage



C-641

ENROLLED
H. B. 2604

(By MR. SPEAKER, MR. CHAMBERS)

[Passed March 30, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact sections seven, ten and seventeen-b, 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 eleven, article seven, chapter twenty-one-a of said code; to amend and reenact sections nineteen and twenty-one, article ten, chapter twenty-one-a of said code; and to amend article ten of said chapter twenty-one-a by adding thereto a new section, designated section twenty-two, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That sections seven, ten and seventeen-b, 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 eleven, article seven, chapter twenty-one-a of said code be amended and reenacted; that sections nineteen and twenty-one, article ten of said chapter be amended and reenacted; and that said article ten be further amended by adding thereto a new section, designated section twenty-two, all to read as follows:

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-7. Joint and separate accounts.

- 1 (1) The commissioner shall maintain a separate
- 2 account for each employer, and shall credit his account
- 3 with all contributions paid by him prior to July first,

4 one thousand nine hundred sixty-one. On and after July
5 first, one thousand nine hundred sixty-one, the commis-
6 sioner shall maintain a separate account for each
7 employer, and shall credit said employer's account with
8 all contributions of such employer in excess of seven
9 tenths of one percent of taxable wages; and on and after
10 July first, one thousand nine hundred seventy-one, the
11 commissioner shall maintain a separate account for each
12 employer, and shall credit said employer's account with
13 all contributions of such employer in excess of four
14 tenths of one percent of taxable wages: *Provided*, That
15 any adjustment made in any employer's account after
16 the computation date shall not be used in the computa-
17 tion of the balance of an employer until the next
18 following computation date: *Provided, however*, That
19 nothing in this chapter shall be construed to grant an
20 employer or individual in his service prior claims or
21 rights to the amounts paid by him into the fund, either
22 on his behalf or on behalf of such individuals. The
23 account of any employer which had been inactive for a
24 period of four consecutive calendar years shall be
25 terminated for all purposes.

26 (2) Benefits paid to an eligible individual for regular
27 and extended total or partial unemployment beginning
28 after the effective date of this article shall be charged
29 to the account of the last employer with whom he has
30 been employed as much as thirty working days, whether
31 or not such days are consecutive: *Provided*, That no
32 employer's account shall be charged with benefits paid
33 to any individual who has been separated from a
34 noncovered employing unit in which he was employed
35 as much as thirty days, whether or not such days are
36 consecutive: *Provided, however*, That no employer's
37 account shall be charged with more than fifty percent
38 of the benefits paid to an eligible individual as extended
39 benefits under the provisions of article six-a of this
40 chapter: *Provided further*, That state and local govern-
41 ment employers shall be charged with one hundred
42 percent of the benefits paid to an eligible individual as
43 extended benefits. Beginning on July one, one thousand
44 nine hundred eighty-four, benefits paid to an individual
45 are to be charged to the accounts of his employers in

46 the base period, the amount of such charges, chargeable
47 to the account of each such employer, to be that portion
48 of the total benefits paid such individual as the wages
49 paid him by such employer in the base period are to the
50 total wages paid him during his base period for insured
51 work by all his employers in the base period. For the
52 purposes of this section, no base period employer's
53 account shall be charged for benefits paid under this
54 chapter to a former employee, provided such base period
55 employer furnishes separation information within
56 fourteen days from the date the notice was mailed or
57 delivered, which results in a disqualification under the
58 provision set forth in subsection one, section three,
59 article six, or subsection two, section three, article six
60 of this chapter or would have resulted in a disqualifi-
61 cation under such subsection except for a subsequent
62 period of covered employment by another employing
63 unit. Further, no contributory base period employer's
64 experience rating account shall be charged for benefits
65 paid under this chapter to an individual who has been
66 continuously employed by that employer on a part-time
67 basis, if the part-time employment continues while the
68 individual is separated from other employment and is
69 otherwise eligible for benefits. One half of extended
70 benefits paid to an individual after July one, one
71 thousand nine hundred eighty-four, and subsequent
72 years are to be charged to the accounts of his employers,
73 except state and local government employers, in the
74 base period in the same manner provided for the
75 charging of regular benefits. Effective the first day of
76 January, one thousand nine hundred eighty-eight, the
77 entire state share of extended benefits paid to an
78 individual shall be charged to the accounts of his base
79 period employers. The provisions of this section permit-
80 ting the noncharging of contributory employers' ac-
81 counts have no application to benefit charges imposed
82 upon reimbursable employers.

83 (3) The commissioner shall, for each calendar year
84 hereafter, classify employers in accordance with their
85 actual experience in the payment of contributions on
86 their own behalf and with respect to benefits charged
87 against their accounts, with a view of fixing such

88 contribution rates as will reflect such experiences. For
89 the purpose of fixing such contribution rates for each
90 calendar year, the books of the department shall be
91 closed on July thirty-one of the preceding calendar year,
92 and any contributions thereafter paid, as well as
93 benefits thereafter paid with respect to compensable
94 weeks ending on or before June thirty of the preceding
95 calendar year, shall not be taken into account until the
96 next annual date for fixing contribution rates: *Provided*,
97 That if an employer has failed to furnish to the
98 commissioner on or before July thirty-one of such
99 preceding calendar year the wage information for all
100 past periods necessary for the computation of the
101 contribution rate, such employer's rate shall be, if it is
102 immediately prior to such July thirty-one, less than
103 three and three-tenths percent, increased to three and
104 three-tenths percent: *Provided, however*, That any
105 payment made or any information necessary for the
106 computation of a reduced rate furnished on or before the
107 termination of an extension of time for such payment or
108 reporting of such information granted pursuant to a
109 regulation of the commissioner authorizing such extension,
110 shall be taken into account for the purposes of
111 fixing contribution rates: *Provided further*, That when
112 the time for filing any report or making any payment
113 required hereunder falls on Saturday, Sunday, or a legal
114 holiday, the due date shall be deemed to be the next
115 succeeding business day: *And provided further*, That
116 whenever, through mistake or inadvertence, erroneous
117 credits or charges are found to have been made to or
118 against the reserved account of any employer, the rate
119 shall be adjusted as of January one of the calendar year
120 in which such mistake or inadvertence is discovered, but
121 payments, made under any rate assigned prior to
122 January one of such year, shall not be deemed to be
123 erroneously collected.

124 (4) The commissioner may prescribe regulations for
125 the establishment, maintenance and dissolution of joint
126 accounts by two or more employers, and shall, in
127 accordance with such regulations and upon application
128 by two or more employers to establish such an account,
129 or to merge their several individual accounts in a joint

130 account, maintain such joint account as if it constituted
131 a single employer's account.

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

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

**§21A-5-10. Experience ratings; decreased rates; adjust-
ment of accounts and rates; debit balance
account rates.**

1 On and after July one, one thousand nine hundred
2 eighty-one, an employer's payment shall remain two and
3 seven-tenths percent, until:

4 (1) There have elapsed thirty-six consecutive months
5 immediately preceding the computation date throughout
6 which an employer's account was chargeable with
7 benefits.

8 (2) His payments credited to his account for all past
9 years exceed the benefits charged to his account by an
10 amount equal to at least the percent of his average
11 annual payroll as shown in Column B of Table II. His
12 rate shall be the amount appearing in Column C of
13 Table II on line with the percentage in Column B.

14 When the total assets of the fund as of January one
15 of a calendar year equal or exceed one hundred percent
16 but are less than one hundred twenty-five percent of the
17 average benefit payments from the trust fund for the

18 three preceding calendar years, an employer's rate shall
 19 be the amount appearing in Column D of Table II on
 20 line with the percentage in Column B.

21 When the total assets of the fund as of January one
 22 of a calendar year equal or exceed one hundred twenty-
 23 five percent but are less than one hundred fifty percent,
 24 an employer's rate shall be the amount appearing in
 25 Column E of Table II on line with the percentage in
 26 Column B.

27 When the total assets of the fund as of January one
 28 of a calendar year equal or exceed one hundred fifty
 29 percent, an employer's rate shall be the amount
 30 appearing in Column F of Table II on line with the
 31 percentage in Column B.

TABLE II

33	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
34		Percentage of				
35		Average				
36		Annual Payroll				
37		By which				
38	Rate	Credits Exceed	Employer's			
39	Class	Charges	Rate			
40	(1)	0.0 to 6.0	4.5	3.5	2.5	1.5
41	(2)	6.0	4.1	3.1	2.1	1.1
42	(3)	7.0	3.9	2.9	1.9	0.9
43	(4)	8.0	3.7	2.7	1.7	0.7
44	(5)	9.0	3.5	2.5	1.5	0.5
45	(6)	10.0	3.3	2.3	1.3	0.3
46	(7)	10.5	3.1	2.1	1.1	0.1
47	(8)	11.0	2.9	1.9	0.9	0.0
48	(9)	11.5	2.7	1.7	0.7	0.0
49	(10)	12.0	2.5	1.5	0.5	0.0
50	(11)	12.5	2.3	1.3	0.3	0.0
51	(12)	13.0	2.1	1.1	0.1	0.0
52	(13)	14.0	1.9	0.9	0.0	0.0
53	(14)	16.0	1.7	0.7	0.0	0.0
54	(15)	18.0 and over	1.5	0.5	0.0	0.0

55 All employer accounts in which charges for all past
 56 years exceed credits for such past years shall be
 57 adjusted effective June thirty, one thousand nine
 58 hundred sixty-seven, so that as of said date, for the

59 purpose of determining such employer's rate of contri-
60 bution, the credits for all past years shall be deemed to
61 equal the charges to such accounts.

62 Effective on and after the computation date of June
63 thirty, one thousand nine hundred eighty-four, the
64 noncredited contribution identified in section seven of
65 this article shall not be added to the employer's debit
66 balance to determine the employer contribution rate.

67 Effective on and after the computation date of June
68 thirty, one thousand nine hundred sixty-seven, all
69 employers with a debit balance account in which the
70 benefits charged to their account for all past years
71 exceed the payments credited to their account for such
72 past years by an amount up to and including ten percent
73 of their average annual payroll, shall make payments to
74 the unemployment compensation fund at the rate of
75 three percent of wages paid by them with respect to
76 employment; except that effective on and after July one,
77 one thousand nine hundred eighty-one, all employers
78 with a debit balance account in which the benefits
79 charged to their account for all past years exceed the
80 payments credited to their account for such past years
81 by an amount up to and including five percent of their
82 average annual payroll, shall make payments to the
83 unemployment compensation fund at the rate of five and
84 five-tenths percent of wages paid by them with respect
85 to employment.

86 Effective on or after July one, one thousand nine
87 hundred eighty-one, all employers with a debit balance
88 account in which the benefits charged to their account
89 for all past years exceed the payments credited to their
90 account for such past years by an amount in excess of
91 five percent but less than ten percent of their average
92 annual payroll, shall make payments to the unemploy-
93 ment compensation fund at the rate of six and five-
94 tenths percent of wages paid by them with respect to
95 employment.

96 Effective on and after the computation date of June
97 thirty, one thousand nine hundred sixty-seven, all
98 employers with a debit balance account in which the

99 benefits charged to their account for all past years
100 exceed the payments credited to their account for such
101 past years by an amount of ten percent or above of their
102 average annual payroll, shall make payments to the
103 unemployment compensation fund at the rate of three
104 and three-tenths percent of wages paid by them with
105 respect to employment; except that effective on and
106 after July one, one thousand nine hundred eighty-one,
107 such payments to the unemployment compensation fund
108 shall be at the rate of seven and five-tenths percent of
109 wages paid by them with respect to employment or at
110 such other rate authorized by this article.

111 "Debit balance account" for the purpose of this section
112 means an account in which the benefits charged for all
113 past years exceed the payments credited for such past
114 years.

115 "Credit balance account" for the purposes of this
116 section means an account in which the payments
117 credited for all past years exceed the benefits charged
118 for such past years.

119 Once a debit balance account rate is established for
120 an employer's account for a year, it shall apply for the
121 entire year.

122 "Due date" means the last day of the month next
123 following a calendar quarter. In determining the
124 amount in the fund on any due date, contributions
125 received, but not benefits paid, for such month next
126 following the end of a calendar quarter shall be
127 included.

128 (a) Notwithstanding any other provision of this
129 section, every employer subject to the provisions of this
130 chapter shall, in addition to any other tax provided for
131 in this section, pay contributions at the rate of one
132 percent surtax on wages paid by him with respect to
133 employment, beginning January first, one thousand nine
134 hundred eighty-one, until such time that the commis-
135 sioner determines that the fund assets equal or exceed
136 the average benefits payments from the fund for the
137 preceding three calendar years at which time such
138 surtax shall be discontinued, and the commissioner shall

139 so notify the employers subject to the provisions of this
140 chapter.

141 (b) Notwithstanding any other provision of this
142 section, every debit balance employer subject to the
143 provisions of this chapter, and any foreign corporation
144 or business entity engaged in the construction trades
145 which has not been an employer in the state of West
146 Virginia for thirty-six consecutive months ending on the
147 computation date, shall, in addition to any other tax
148 provided for in this section, pay contributions at the rate
149 of one percent surtax on wages paid by him with respect
150 to employment for a period of eight years, beginning
151 January first, one thousand nine hundred eighty-six.

152 (c) Effective June thirty, one thousand nine hundred
153 eighty-five, and each computation date thereafter, the
154 reserve balance of a debit balance employer shall be
155 reduced to fifteen percent if such balance exceeds fifteen
156 percent. The amount of noncredited tax shall be reduced
157 by an amount equal to the eliminated charges. If the
158 eliminated charges exceed the amount of noncredited
159 tax, the noncredited tax shall be reduced to zero.

**§21A-5-17b. Comity in collection of past-due payments
and overpayments.**

1 The courts of this state shall recognize and enforce
2 liabilities for unemployment contributions imposed by
3 other states which extend a like comity to this state. The
4 commissioner in the name of this state is hereby
5 empowered to sue in the courts of any other jurisdiction
6 which extends such comity, to collect unemployment
7 contributions and interest due this state. The officials of
8 other states which by statute or otherwise extend a like
9 comity to this state may sue in the courts of this state,
10 to collect for such contributions and interest and
11 penalties if any, due such state; in any such case the
12 commissioner of employment security of this state may
13 through his legal assistant or assistants institute and
14 conduct such suit for such other state.

15 Notwithstanding any other provisions of this chapter,
16 the commissioner may recover an overpayment of
17 benefits paid to any individual under this state or

18 another state law or under an unemployment benefit
19 program of the United States.

ARTICLE 7. CLAIM PROCEDURE.

§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
3 in accordance therewith up to the week in which a
4 subsequent appellate body renders a decision, by order,
5 finding that benefits were not or are not payable. If, at
6 any 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
9 payment benefits. If the final decision in any case
10 determines that a claimant was not lawfully entitled to
11 benefits paid to him pursuant to a prior decision, such
12 amount of benefits so paid shall be deemed overpaid.
13 The commissioner shall recover such amount by civil
14 action or in any manner provided in this code for the
15 collection of past-due payment and shall withhold, in
16 whole or in part, as determined by the commissioner,
17 any future benefits payable to the individual and credit
18 such amount against the overpayment until it is repaid
19 in full. If the final decision in any case determines that
20 the claimant was not lawfully entitled to the benefits
21 paid to him pursuant to a prior order, any benefits so
22 paid pursuant to such prior order, shall not be charge-
23 able to the employer's account.

24 (a) Whenever the commissioner finds that a claimant
25 has received back pay at his customary wage rate from
26 his employer such employee shall be liable to repay the
27 benefits, if any, paid to such individual for the time he
28 was unemployed. In any case in which, under this
29 section, an employee is liable to repay benefits to the
30 commissioner, such sum shall be collectible by civil
31 action in the name of the commissioner.

32 (b) Whenever an employer subject to this chapter is
33 required to make a payment of back pay to an individual
34 who has received unemployment compensation benefits
35 during the same period covered by the back pay award,
36 the employer shall withhold an amount equal to the

37 unemployment compensation benefits and shall repay
38 the amount withheld to the unemployment compensation
39 trust fund. If an employer fails to comply with this
40 section, the commissioner shall have the right to recover
41 from the employer the amount of unemployment
42 compensation benefits which should have been withheld
43 by a civil action.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-19. Disclosure of information to child support agencies.

1 (1) The department of employment security shall
2 disclose, upon request, to officers or employees of any
3 state or local child support enforcement agency, to
4 employees of the secretary of health and human services,
5 any wage information with respect to an identified
6 individual which is contained in its records.

7 The term "state or local child support enforcement
8 agency" means any agency of a state or political
9 subdivision thereof operating pursuant to a plan
10 described in sections 453 and 454 of the Social Security
11 Act, which has been approved by the secretary of health
12 and human services under Part D, Title IV of the Social
13 Security Act.

14 (2) The requesting agency shall agree that such
15 information is to be used only for the purpose of
16 establishing and collecting child support obligations
17 from, and locating, individuals owing such obligations
18 which are being enforced pursuant to a plan described
19 in sections 453 and 454 of the Social Security Act which
20 has been approved by the secretary of health and human
21 services under Part D, Title IV of the Social Security
22 Act.

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

26 (4) In addition to the requirements of this section, all
27 other requirements with respect to confidentiality of
28 information obtained in the administration of this
29 chapter and the sanctions imposed on improper disclo-

30 sure shall apply to the use of such information by
31 officers and employees of child support agencies.

**§21A-10-21. Recovery of benefits paid through error;
limitation.**

1 A person who, by reason of error, irrespective of the
2 nature of said error, has received a sum as a benefit
3 under this chapter, shall either have such sum deducted
4 from a future benefit payable to him or shall repay to
5 the commissioner the amount which he has received.
6 Collection shall be made in the same manner as
7 collection of past due payment: *Provided*, That such
8 collection or deduction of benefits shall be barred after
9 the expiration of two years.

**§21A-10-22. Disclosure of information to department of
housing and urban development.**

1 (1) The department of employment security shall
2 disclose, upon request, to officers and employees of the
3 department of housing and urban development and to
4 representatives of public housing agencies, any wage
5 information with respect to an identified individual
6 which is contained in its records. The term "public
7 housing agencies" means any agency described in
8 section 3(b)(6) of the United States Housing Act of 1937.

9 (2) The requesting agency shall agree that such
10 information is to be used only for the purpose of
11 determining an individual's eligibility for benefits, or
12 the amount of benefits under any housing assistance
13 program of the department of housing and urban
14 development.

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

18 (4) In addition to the requirements of this section, all
19 other requirements with respect to confidentiality of
20 information obtained in the administration of this
21 chapter and the sanctions imposed on improper disclo-
22 sure shall apply to the use of such information by
23 officers and employees of any public housing agency or
24 the department of housing and urban development.

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

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Isaac C. Milki
Clerk of the Senate

Donald L. Dwyer
Clerk of the House of Delegates

Lawrence J. ...
President of the Senate

Robert M. ...
Speaker of the House of Delegates

The within *is approved* this the *7th*
day of *April*, 1989.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 4/4/89

Time 5:20 p.m.