

HB 3137

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2011



**ENROLLED**

**House Bill No. 3137**

(By Delegate Kominar)  
[By Request of the Department of Commerce]



Passed March 11, 2011

In Effect From Passage

FILED

2011 MAR 30 PM 3:19

**E N R O L L E D**

JEFFREY WEST VIRGINIA  
SECRETARY OF STATE

**H. B. 3137**

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(BY DELEGATE KOMINAR)  
[BY REQUEST OF THE DEPARTMENT OF COMMERCE]

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..... [Passed March 11, 2011; in effect from passage.]

AN ACT to amend and reenact §21A-6A-1 of the Code of West Virginia, 1931, as amended, relating to extended unemployment benefits; adding additional circumstances giving rise to “state ‘on’ indicators” for purposes of extended unemployment compensation benefits; and providing for certain high unemployment periods.

*Be it enacted by the Legislature of West Virginia:*

That §21A-6A-1 of the Code of West Virginia, 1931, 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  
9 a state "off" indicator; or

10 (ii) The thirteenth consecutive week of such period.  
11 However, for periods beginning in a "high unemployment  
12 period," as determined in accordance with subdivision (3),  
13 section five of this article, paragraph (B)(ii) of this  
14 subdivision shall be applied by substituting "twentieth" for  
15 "thirteenth."

16 Notwithstanding the foregoing provisions of this  
17 subdivision, no extended benefit period may begin by reason  
18 of a state "on" indicator before the fourteenth week following  
19 the end of a prior extended benefit period which was in effect  
20 with respect to this state.

21 (2) After September 25, 1982, there is a "state 'on'  
22 indicator" for this state for a week if the commissioner  
23 determines, in accordance with the regulations of the United  
24 States Secretary of Labor, that for the period consisting of  
25 such week and the immediately preceding twelve weeks, the  
26 rate of insured unemployment, not seasonally adjusted, under  
27 this article:

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

32 (B) Equaled or exceeded five percent.

33 (C) An extended benefit period shall be made hereunder  
34 as if subdivision (2) did not contain paragraph (A) thereof,  
35 but only if the commissioner determines that the rate of  
36 insured unemployment, not seasonally adjusted, equals or  
37 exceeds six percent.

38 (3) For weeks of unemployment beginning on or after  
39 February 1, 2009, and ending on or before December 5, 2009,  
40 or, if the application of section 2005(a) of Title II of Division  
41 B of the American Recovery and Reinvestment Act of 2009,  
42 Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”) is  
43 extended by Act of Congress, ending on or before a date to  
44 be determined by the commissioner not to exceed the  
45 extended application of section 2005(a) of the ARRA, there  
46 is a “state ‘on’ indicator” for this state for a week if the  
47 commissioner determines, in accordance with regulations of  
48 the United States Secretary of Labor, that:

49 (A) The average rate of total unemployment, seasonally  
50 adjusted, for the period consisting of the most recent three  
51 months for which data for all states are published before the  
52 close of such week equals or exceeds six and one-half  
53 percent; and

54 (B) The average rate of total unemployment in the state  
55 for the three-month period specified in paragraph (A) of this  
56 subdivision equals or exceeds one hundred ten percent of  
57 such average for either or both of the corresponding three-  
58 month periods ending in the two preceding calendar years.

59 (C) For weeks of unemployment beginning after  
60 December 17, 2010, through weeks of unemployment ending  
61 on or before December 31, 2011, or the date established by  
62 section 502 of the Tax Relief, Unemployment Insurance  
63 Reauthorization and Job Creation Act of 2010, P.L. 111-312,

64 as amended, there is a “state ‘on’ indicator” for a week if the  
65 commissioner determines, in accordance with regulations of  
66 the United States Secretary of Labor, that:

67 (i) The average rate of total unemployment, seasonally  
68 adjusted, as determined by the United States Secretary of  
69 Labor, for the period consisting of the most recent three-  
70 months for which data for all states are published before the  
71 close of such week equals or exceeds six and one-half  
72 percent; and

73 (ii) The average rate of total unemployment in the state,  
74 seasonally adjusted, as determined by the United States  
75 Secretary of Labor, for the three-month period referred to in  
76 subparagraph (i) of this paragraph equals or exceeds one  
77 hundred ten percent of such average for any or all of the  
78 corresponding three-month periods ending in the three  
79 preceding calendar years.

80 (D) There is a “high unemployment period” as provided  
81 in subsection three, section five, article six-a, chapter twenty-  
82 one-a of this code if paragraph (A) or subparagraph (i),  
83 paragraph(C), or both, were applied by substituting “eight  
84 percent” for “six and one-half percent”.

85 (4) There is a “state ‘off’ indicator” for a week if, for the  
86 period consisting of such week and the immediately  
87 preceding twelve weeks, none of the options specified in  
88 either subdivision (2) or subdivision (3) result in a “state ‘on’  
89 indicator”.

90 (5) “Rate of insured unemployment” means the  
91 percentage derived by dividing:

92 (A) The average weekly number of individuals filing  
93 claims for regular compensation in this state for weeks of  
94 unemployment with respect to the most recent thirtecn-

95 consecutive-week period as determined by the commissioner  
96 on the basis of his or her reports to the United States  
97 Secretary of Labor; by

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

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

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

112 (8) "Eligibility period" of an individual means the period  
113 consisting of the weeks in his or her benefit year which begin  
114 in an extended benefit period and, if his or her benefit year  
115 ends within such extended benefit period, any weeks  
116 thereafter which begin in such period. Notwithstanding any  
117 provision of this code to the contrary, an individual's  
118 eligibility period shall include any eligibility period provided  
119 in section 2005(b) of the ARRA.

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

122 (A) Has received, prior to such week, all of the regular  
123 benefits which were available to him or her under this chapter  
124 or any other state law (including dependents' allowances and  
125 benefits payable to federal civilian employees and ex-

126 servicemen under 5 U.S.C., chapter 85) in his or her current  
127 benefit year that includes such week: *Provided*, That for the  
128 purposes of this subdivision, an individual is deemed to have  
129 received all of the regular benefits which were available to  
130 him or her although: (i) As a result of a pending appeal with  
131 respect to wages or employment which were not considered  
132 in the original monetary determination in his or her benefit  
133 year, he or she may subsequently be determined to be entitled  
134 to added regular benefits; or (ii) he or she may be entitled to  
135 regular benefits with respect to future weeks of  
136 unemployment but such benefits are not payable with respect  
137 to such week of unemployment by reason of the provisions  
138 of section one-a, article six of this chapter; or

139 (B) His or her benefit year having expired prior to such  
140 week has no, or insufficient, wages or employment on the  
141 basis of which he or she could establish a new benefit year  
142 which would include such week; and

143 (C) Has no right to unemployment benefits or  
144 allowances, as the case may be, under the Railroad  
145 Unemployment Insurance Act, 45 U.S.C., §361, *et seq.*, the  
146 Trade Expansion Act of 1962, 19 U.S.C., §1801, *et seq.*, the  
147 Automotive Products Trade Act of 1965, 19 U.S.C., §2001,  
148 *et seq.*, and such other federal laws as are specified in  
149 regulations issued by the United States Secretary of Labor  
150 and has not received and is not seeking unemployment  
151 benefits under the unemployment compensation law of the  
152 Virgin Islands or of Canada. If he or she is seeking such  
153 benefits and the appropriate agency finally determines that he  
154 or she is not entitled to benefits under law, then he or she is  
155 considered an exhaustee.

156 (10) "State law" means the unemployment insurance law  
157 of any state, approved by the United States Secretary of  
158 Labor under 26 U.S.C., §3304.

159       (11) No individual is entitled to extended benefits during  
160 a period of unemployment if he or she was disqualified under  
161 the provisions of subdivision (1), (2) or (3) of section three,  
162 article six of this chapter, which disqualification is not  
163 terminated until the individual has returned to covered  
164 employment and has been employed in covered employment  
165 for at least thirty working days.

166       (12)(A) Notwithstanding any other provisions of this  
167 section, an individual is ineligible for payment of extended  
168 benefits for any week of unemployment in his or her  
169 eligibility period if the commissioner finds that during such  
170 period:

171       (i) He or she failed to accept an offer of suitable work or  
172 failed to apply for suitable work, as defined under  
173 subdivision (12)(C) of this section, to which he or she was  
174 referred by the commissioner; or

175       (ii) He or she failed to actively engage in seeking work as  
176 prescribed under subdivision (12)(E) of this section.

177       (B) An individual who has been found ineligible for  
178 extended benefits by reason of the provisions in subdivision  
179 (12)(A) of this section is also denied benefits beginning with  
180 the first day of the week following the week in which such  
181 failure occurred and until he or she has been employed in  
182 each of four subsequent weeks, whether or not consecutive,  
183 and has earned remuneration equal to not less than four times  
184 the extended weekly benefit amount;

185       (C) For purposes of this subdivision, the term “suitable  
186 work” means, with respect to any individual, any work which  
187 is within such individual’s capabilities so long as the gross  
188 average weekly remuneration payable for the work must  
189 exceed the sum of:

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

192 (ii) The amount, if any, of supplemental unemployment  
193 benefits as defined in 26 U.S.C., §501(c)(17)(D)) payable to  
194 such individual for such week; and further,

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

196 (I) The minimum wages provided by 29 U.S.C.,  
197 §206(a)(1), without regard to any exemption; or

198 (II) The state or local minimum wage;

199 (iv) *Provided*, That no individual is denied extended  
200 benefits for failure to accept an offer or referral to a job  
201 which meets the definition of suitability as described above  
202 if:

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

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

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

219 (D) Notwithstanding the provisions of this section to the  
220 contrary, no work is suitable work for an individual which  
221 does not accord with the labor standard provisions required  
222 by 26 U.S.C., §3304(a)(5) and set forth herein under  
223 subdivision (12)(C)(iii)(I) of this section.

224 (E) For the purposes of subdivision (12)(A)(ii) of this  
225 section, an individual is treated as actively engaged in  
226 seeking work during any week if:

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

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

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

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

245 (13) Notwithstanding any other provisions of this chapter,  
246 if the benefit year of any individual ends within an extended  
247 benefit period, the remaining balance of extended benefits  
248 that such individual would, but for this section, be entitled to  
249 receive in that extended benefit period with respect to weeks

250 of unemployment beginning after the end of the benefit year,  
251 are reduced, but not below zero, by the product of the number  
252 of weeks for which the individual received any amounts as  
253 trade readjustment allowances within that benefit year,  
254 multiplied by the individual's weekly benefit amount for  
255 extended benefits.

256 (14) An unemployed individual is eligible to receive  
257 benefits with respect to any week only if it has been found  
258 that he or she has been paid wages by an employer who was  
259 subject to the provisions of this chapter during the base  
260 period of his or her current benefit year in an amount at least  
261 equal to forty times his or her benefit rate for total  
262 unemployment.

263 (15) The provisions of subdivisions (11) and (12) of this  
264 section shall not apply at any time if temporarily or  
265 permanently suspended by federal law. If these provisions  
266 are suspended by federal law, the provisions of state law  
267 which apply to claims for and the payment of regular benefits  
268 apply to claims for and the payment of extended benefits.

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

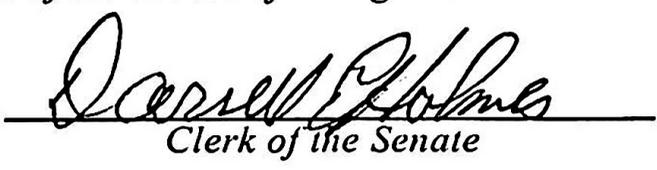
  
Chairman, House Committee

  
Chairman, Senate Committee

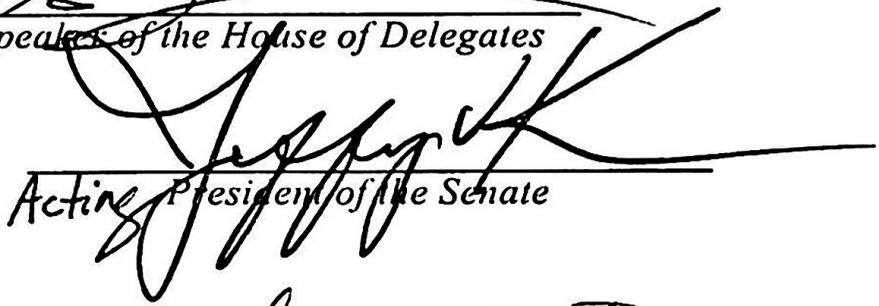
Originating in the House.

To take effect from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speakers of the House of Delegates

  
Acting President of the Senate

The within is approved this the 30<sup>th</sup>  
day of March, 2011.

  
Governor

2011 MAR 30 PM 3:19  
COMPTROLLER GENERAL OF THE STATE OF VIRGINIA  
SECRETARY OF STATE  
FILED

PRESENTED TO THE GOVERNOR

MAR 28 2011

Time 11:05 am