

H. B. 3137

(By Delegate Kominar)

(By Request of the Department of Commerce)

[Introduced February 15, 2011; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §21A-6A-1 of the Code of West Virginia,
1931, as amended, relating to circumstances giving rise to
"state 'on' indicators" for purposes of extended unemployment
compensation benefits.

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.

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:

(i) The third week after the first week for which there is a

1 state "off" indicator; or

2 (ii) The thirteenth consecutive week of such period. However,
3 for periods beginning in a "high unemployment period," as
4 determined in accordance with subdivision (3), section five of this
5 article, paragraph (B) (ii) of this subdivision shall be applied by
6 substituting "twentieth" for "thirteenth."

7 Notwithstanding the foregoing provisions of this subdivision,
8 no extended benefit period may begin by reason of a state "on"
9 indicator before the fourteenth week following the end of a prior
10 extended benefit period which was in effect with respect to this
11 state.

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

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

21 (B) Equalled or exceeded five percent.

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

26 (3) For weeks of unemployment beginning on or after February

1 1, 2009, and ending on or before December 5, 2009, or, if the
2 application of section 2005(a) of Title II of Division B of the
3 American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5,
4 123 Stat. 115 (2009) ("ARRA") is extended by Act of Congress, ending
5 on or before a date to be determined by the commissioner not to
6 exceed the extended application of section 2005(a) of the ARRA,
7 there is a "state 'on' indicator" for this state for a week if the
8 commissioner determines, in accordance with regulations of the
9 United States Secretary of Labor, that:

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

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

19 (C) For weeks of unemployment beginning after December 17,
20 2010, through weeks of unemployment ending on or before December
21 31, 2011, or the date established by section 502 of the Tax Relief,
22 Unemployment Insurance Reauthorization and Job Creation Act of
23 2010, P.L. 111-312, as amended, there is a "state 'on' indicator"
24 for a week if the commissioner determines, in accordance with
25 regulations of the United States Secretary of Labor, that:

26 (i) The average rate of total unemployment, seasonally

1 adjusted, as determined by the United States Secretary of Labor,
2 for the period consisting of the most recent three-months for which
3 data for all states are published before the close of such week
4 equals or exceeds six and one-half percent; and

5 (ii) The average rate of total unemployment in the state,
6 seasonally adjusted, as determined by the United States Secretary
7 of Labor, for the three-month period referred to in subparagraph
8 (i) of this paragraph equals or exceeds one hundred ten percent of
9 such average for any or all of the corresponding three-month
10 periods ending in the three preceding calendar years.

11 (D) There is a "high unemployment period" as provided in
12 subsection three, section five, article six-a, chapter twenty-one-a
13 of this code if paragraph (A) or subparagraph (i), paragraph(C), or
14 both, were applied by substituting "eight percent" for "six and
15 one-half percent".

16 (4) There is a "state 'off' indicator" for a week if, for the
17 period consisting of such week and the immediately preceding twelve
18 weeks, none of the options specified in either subdivision (2) or
19 subdivision (3) result in a "state 'on' indicator".

20 (5) "Rate of insured unemployment" means the percentage
21 derived by dividing:

22 (A) The average weekly number of individuals filing claims for
23 regular compensation in this state for weeks of unemployment with
24 respect to the most recent thirteen-consecutive-week period as
25 determined by the commissioner on the basis of his or her reports
26 to the United States Secretary of Labor; by

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

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

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

13 (8) "Eligibility period" of an individual means the period
14 consisting of the weeks in his or her benefit year which begin in
15 an extended benefit period and, if his or her benefit year ends
16 within such extended benefit period, any weeks thereafter which
17 begin in such period. Notwithstanding any provision of this code
18 to the contrary, an individual's eligibility period shall include
19 any eligibility period provided in section 2005(b) of the ARRA.

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

22 (A) Has received, prior to such week, all of the regular
23 benefits which were available to him or her under this chapter or
24 any other state law (including dependents' allowances and benefits
25 payable to federal civilian employees and ex-servicemen under 5
26 U.S.C., chapter 85) in his or her current benefit year that

1 includes such week: *Provided*, That for the purposes of this
2 subdivision, an individual ~~shall be~~ is deemed to have received all
3 of the regular benefits which were available to him or her
4 although: (i) As a result of a pending appeal with respect to wages
5 or employment which were not considered in the original monetary
6 determination in his or her benefit year, he or she may
7 subsequently be determined to be entitled to added regular
8 benefits; or (ii) he or she may be entitled to regular benefits
9 with respect to future weeks of unemployment but such benefits are
10 not payable with respect to such week of unemployment by reason of
11 the provisions of section one-a, article six of this chapter; or

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

16 (C) Has no right to unemployment benefits or allowances, as
17 the case may be, under the Railroad Unemployment Insurance Act, 45
18 U.S.C., §361, *et seq.*, the Trade Expansion Act of 1962, 19 U.S.C.,
19 §1801, *et seq.*, the Automotive Products Trade Act of 1965, 19
20 U.S.C., §2001, *et seq.*, and such other federal laws as are
21 specified in regulations issued by the United States Secretary of
22 Labor and has not received and is not seeking unemployment benefits
23 under the unemployment compensation law of the Virgin Islands or of
24 Canada. ~~but~~ If he or she is seeking such benefits and the
25 appropriate agency finally determines that he or she is not
26 entitled to benefits under ~~such~~ law, then he or she is considered

1 an exhaustee.

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

5 (11) No individual ~~shall be~~ is entitled to extended benefits
6 during a period of unemployment if he or she was disqualified under
7 the provisions of subdivision (1), (2) or (3) of section three,
8 article six of this chapter, which disqualification ~~shall not be~~ is
9 not terminated until ~~such the~~ individual has returned to covered
10 employment and has been employed in covered employment for at least
11 thirty working days.

12 (12) (A) Notwithstanding any other provisions of this section,
13 an individual ~~shall be~~ is ineligible for payment of extended
14 benefits for any week of unemployment in his or her eligibility
15 period if the commissioner finds that during such period:

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

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

22 (B) An individual who has been found ineligible for extended
23 benefits by reason of the provisions in subdivision (12) (A) of this
24 section ~~shall also be~~ is also denied benefits beginning with the
25 first day of the week following the week in which such failure
26 occurred and until he or she has been employed in each of four

1 subsequent weeks, whether or not consecutive, and has earned
2 remuneration equal to not less than four times the extended weekly
3 benefit amount;

4 (C) For purposes of this subdivision, the term "suitable work"
5 means, with respect to any individual, any work which is within
6 such individual's capabilities ~~Provided, That~~ so long as the gross
7 average weekly remuneration payable for the work must exceed the
8 sum of:

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

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

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

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

17 (II) The state or local minimum wage;

18 (iv) ~~Provided, That~~ no individual ~~shall be~~ is denied extended
19 benefits for failure to accept an offer or referral to ~~any~~ a job
20 which meets the definition of suitability as described above if:

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

23 (II) Such failure could not result in a denial of benefits
24 under the definition of suitable work for regular benefit claimants
25 in section five, article six of this chapter, to the extent that
26 the criteria of suitability in that section are not inconsistent

1 with the provisions of this subdivision; or

2 (III) The individual furnishes satisfactory evidence to the
3 commissioner that his or her prospects for obtaining work in his or
4 her customary occupation within a reasonably short period are good.
5 If such evidence is deemed satisfactory for this purpose, the
6 determination of whether any work is suitable with respect to such
7 individual ~~shall be~~ is made in accordance with the definition of
8 suitable work in section five, article six of this chapter, without
9 regard to the definition specified in this subdivision.

10 (D) Notwithstanding the provisions of this section to the
11 contrary, no work ~~shall be deemed to be~~ is suitable work for an
12 individual which does not accord with the labor standard provisions
13 required by 26 U.S.C., §3304(a)(5) and set forth herein under
14 subdivision (12)(C)(iii)(I) of this section.

15 (E) For the purposes of subdivision (12)(A)(ii) of this
16 section, an individual ~~shall be~~ is treated as actively engaged in
17 seeking work during any week if:

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

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

22 (F) The employment service shall refer any claimant entitled
23 to extended benefits under this article to any suitable work which
24 meets the criteria prescribed in subdivision (12)(C) of this
25 section.

26 (G) An individual ~~shall not be~~ is not eligible to receive

1 extended benefits with respect to any week of unemployment in his
2 or her eligibility period if ~~such~~ the individual has been
3 disqualified for regular benefits under this chapter because he or
4 she voluntarily left work, was discharged for misconduct or refused
5 an offer of suitable work unless the disqualification imposed for
6 such reasons has been terminated in accordance with specific
7 conditions established under this subdivision requiring the
8 individual to perform service for remuneration subsequent to the
9 date of such disqualification.

10 (13) Notwithstanding any other provisions of this chapter, if
11 the benefit year of any individual ends within an extended benefit
12 period, the remaining balance of extended benefits that such
13 individual would, but for this section, be entitled to receive in
14 that extended benefit period with respect to weeks of unemployment
15 beginning after the end of the benefit year, ~~shall be~~ are reduced,
16 but not below zero, by the product of the number of weeks for which
17 the individual received any amounts as trade readjustment
18 allowances within that benefit year, multiplied by the individual's
19 weekly benefit amount for extended benefits.

20 (14) An unemployed individual ~~shall be~~ is eligible to receive
21 benefits with respect to any week only if it has been found that he
22 or she has been paid wages by an employer who was subject to the
23 provisions of this chapter during the base period of his or her
24 current benefit year in an amount at least equal to forty times his
25 or her benefit rate for total unemployment.

26 (15) The provisions of subdivisions (11) and (12) of this

1 section shall not apply at any time ~~should such provisions be~~ if
2 temporarily or permanently suspended by federal law. If these
3 provisions are suspended by federal law, the provisions of state
4 law which apply to claims for and the payment of regular benefits
5 ~~shall~~ apply to claims for and the payment of extended benefits.

NOTE: The purpose of this bill is to provide for additional circumstances giving rise to "state 'on' indicators" for purposes of extended unemployment compensation benefits.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.