

1 **Senate Bill No. 310**

2 (By Senator Kessler (Acting President), Unger and Klempa)

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4 [Introduced January 27, 2011; referred to the Committee on Labor;
5 and then to the Committee on Finance.]

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**FISCAL
NOTE**

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10 A BILL to amend and reenact §21A-5-7 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §21A-6-1 and §21A-
12 6-3 of said code, all relating to permitting certain part-time
13 employees to be eligible for unemployment compensation
14 benefits; permitting employees who have left employment due to
15 being victims of domestic violence, sexual assault or stalking
16 to be eligible for unemployment compensation benefits;
17 permitting employees who have left employment to care for
18 disabled or ill immediate family members to be eligible for
19 unemployment compensation benefits; and permitting employees
20 who have left employment due to the work-related transfer or
21 relocation of a spouse to be eligible for unemployment
22 compensation benefits.

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

24 That §21A-5-7 of the Code of West Virginia, 1931, as amended,
25 be amended and reenacted; and that §21A-6-1 and §21A-6-3 of said

1 code be amended and reenacted, all to read as follows:

2 **ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.**

3 **§21A-5-7. Joint and separate accounts.**

4 (1) The commissioner shall maintain a separate account for each
5 employer, and shall credit his or her account with all contributions
6 paid by him or her prior to July 1, 1961. On and after July 1,
7 1961, the commissioner shall maintain a separate account for each
8 employer, and shall credit said employer's account with all
9 contributions of such employer in excess of seven tenths of one
10 percent of taxable wages; and on and after July 1, 1971, the
11 commissioner shall maintain a separate account for each employer,
12 and shall credit said employer's account with all contributions of
13 such employer in excess of four tenths of one percent of taxable
14 wages: *Provided*, That any adjustment made in any employer's account
15 after the computation date shall not be used in the computation of
16 the balance of an employer until the next following computation
17 date: *Provided, however*, That nothing in this chapter shall be
18 construed to grant an employer or individual in his or her service
19 prior claims or rights to the amounts paid by him or her into the
20 fund, either on his or her behalf or on behalf of such individuals.
21 The account of any employer which had been inactive for a period of
22 four consecutive calendar years shall be terminated for all
23 purposes.

24 (2) Benefits paid to an eligible individual for regular and
25 extended total or partial unemployment beginning after the effective

1 date of this article shall be charged to the account of the last
2 employer with whom he or she has been employed as much as thirty
3 working days, whether or not such days are consecutive: *Provided,*
4 That no employer's account shall be charged with benefits paid to
5 any individual who has been separated from a noncovered employing
6 unit in which he or she was employed as much as thirty days, whether
7 or not such days are consecutive: *Provided, however,* That no
8 employer's account shall be charged with more than fifty percent of
9 the benefits paid to an eligible individual as extended benefits
10 under the provisions of article six-a of this chapter: *Provided*
11 *further,* That state and local government employers shall be charged
12 with one hundred percent of the benefits paid to an eligible
13 individual as extended benefits. Beginning on July 1, 1984,
14 benefits paid to an individual are to be charged to the accounts of
15 his or her employers in the base period, the amount of such charges,
16 chargeable to the account of each such employer, to be that portion
17 of the total benefits paid such individual as the wages paid him or
18 her by such employer in the base period are to the total wages paid
19 him or her during his or her base period for insured work by all his
20 or her employers in the base period. For the purposes of this
21 section, no base period employer's account shall be charged for
22 benefits paid under this chapter to a former employee, provided such
23 base period employer furnishes separation information within
24 fourteen days from the date the notice was mailed or delivered,
25 which results in a disqualification under the provision set forth

1 in ~~subsection~~ subdivision (1), section three, article six, or
2 ~~subsection~~ subdivision (2), section three, article six of this
3 chapter or would have resulted in a disqualification under such
4 subsection except for a subsequent period of covered employment by
5 another employing unit. No contributory base period employer's
6 experience rating account may be charged for benefits paid under
7 this chapter to an individual who left work voluntarily but was not
8 disqualified pursuant to subdivision (1), section three, article six
9 of this chapter. Further, no contributory base period employer's
10 experience rating account shall be charged for benefits paid under
11 this chapter to an individual who has been continuously employed by
12 that employer on a part-time basis, if the part-time employment
13 continues while the individual is separated from other employment
14 and is otherwise eligible for benefits. One half of extended
15 benefits paid to an individual after July 1, 1984, and subsequent
16 years are to be charged to the accounts of his or her employers,
17 except state and local government employers, in the base period in
18 the same manner provided for the charging of regular benefits.
19 Effective January 1, 1988, the entire state share of extended
20 benefits paid to an individual shall be charged to the accounts of
21 his or her base period employers. The provisions of this section
22 permitting the noncharging of contributory employers' accounts have
23 no application to benefit charges imposed upon reimbursable
24 employers.

25 (3) The commissioner shall, for each calendar year hereafter,

1 classify employers in accordance with their actual experience in the
2 payment of contributions on their own behalf and with respect to
3 benefits charged against their accounts, with a view of fixing such
4 contribution rates as will reflect such experiences. For the
5 purpose of fixing such contribution rates for each calendar year,
6 the books of the department shall be closed on July 31 of the
7 preceding calendar year, and any contributions thereafter paid, as
8 well as benefits thereafter paid with respect to compensable weeks
9 ending on or before June 30 of the preceding calendar year, shall
10 not be taken into account until the next annual date for fixing
11 contribution rates: *Provided*, That if an employer has failed to
12 furnish to the commissioner on or before July 31 of such preceding
13 calendar year the wage information for all past periods necessary
14 for the computation of the contribution rate, such employer's rate
15 shall be, if it is immediately prior to such July 31, less than
16 three and three-tenths percent, increased to three and three-tenths
17 percent: *Provided, however*, That any payment made or any
18 information necessary for the computation of a reduced rate
19 furnished on or before the termination of an extension of time for
20 such payment or reporting of such information granted pursuant to
21 a regulation of the commissioner authorizing such extension, shall
22 be taken into account for the purposes of fixing contribution rates:
23 *Provided further*, That when the time for filing any report or making
24 any payment required hereunder falls on Saturday, Sunday, or a legal
25 holiday, the due date shall be deemed to be the next succeeding

1 business day: *And provided further,* That whenever, through mistake
2 or inadvertence, erroneous credits or charges are found to have been
3 made to or against the reserved account of any employer, the rate
4 shall be adjusted as of January 1 of the calendar year in which such
5 mistake or inadvertence is discovered, but payments, made under any
6 rate assigned prior to January 1 of such year, shall not be deemed
7 to be erroneously collected.

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

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

19 (6) Effective on and after July 1, 1981, if an employer has
20 failed to furnish to the commissioner on or before August 31, 1980,
21 and each year thereafter, with the exception of 1981, which due date
22 shall be September 30, 1981, the wage information for all past
23 periods necessary for the computation of the contribution rate, such
24 employer's rate shall be, if it is immediately prior to July 1,
25 1981, less than seven and five-tenths percent, increased to seven

1 and five-tenths percent.

2 **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

3 **§21A-6-1. Eligibility qualifications.**

4 An unemployed individual shall be eligible to receive benefits
5 only if the commissioner finds that:

6 (1) He or she or she has registered for work at and thereafter
7 continues to report at an employment office in accordance with the
8 regulations of the commissioner;

9 (2) He or she or she has made a claim for benefits in
10 accordance with the provisions of article seven of this chapter and
11 has furnished his or her Social Security number, or numbers if he
12 or she has more than one such number;

13 (3) He or she or she is able to work and is available for full-
14 time work for which he or she is fitted by prior training or
15 experience that is full-time or, if the individual's work from which
16 he or she was separated was part-time, that is at least the number
17 of hours that the individual worked for that employer in the month
18 before the individual's most recent separation from that employer,
19 and is doing that which a reasonably prudent person in his or her
20 circumstances would do in seeking work;

21 (4) He or she or she has been totally or partially unemployed
22 during his or her benefit year for a waiting period of one week
23 prior to the week for which he or she claims benefits for total or
24 partial unemployment;

25 (5) He or she or she has within his or her base period been

1 paid wages for employment equal to not less than \$2,200 and must
2 have earned wages in more than one quarter of his or her base period
3 or, if he or she is not eligible under his or her base period, has
4 within his or her alternative base period been paid wages for
5 employment equal to not less than \$2,200 and must have earned wages
6 in more than one quarter of his or her alternative base period; and

7 (6) He or she or she participates in reemployment services,
8 such as job search assistance services, if the individual has been
9 determined to be likely to exhaust regular benefits and needs
10 reemployment services pursuant to a profiling system established by
11 the commissioner, unless the commissioner determines that:

12 (a) The individual has completed such services; or

13 (b) There is justifiable cause for the claimant's failure to
14 participate in such services.

15 **§21A-6-3. Disqualification for benefits.**

16 Upon the determination of the facts by the commissioner, an
17 individual shall be disqualified for benefits:

18 (1) For the week in which he or she left his or her most recent
19 work voluntarily without good cause involving fault on the part of
20 the employer and until the individual returns to covered employment
21 and has been employed in covered employment at least thirty working
22 days.

23 (A) For the purpose of this subdivision, an individual shall
24 not be deemed to have left his or her most recent work voluntarily
25 without good cause involving fault on the part of the employer, if

1 such individual leaves his or her most recent work with an employer
2 and if he or she in fact, within a fourteen-day calendar period,
3 does return to employment with the last preceding employer with whom
4 he or she was previously employed within the past year prior to his
5 or her return to workday, and which last preceding employer, after
6 having previously employed such individual for thirty working days
7 or more, laid off such individual because of lack of work, which
8 layoff occasioned the payment of benefits under this chapter or
9 could have occasioned the payment of benefits under this chapter had
10 such individual applied for such benefits. It is the intent of this
11 paragraph to cause no disqualification for benefits for such an
12 individual who complies with the foregoing set of requirements and
13 conditions. ~~Further, for~~

14 (B) For the purpose of this subdivision, an individual shall
15 not be deemed to have left his or her most recent work voluntarily
16 without good cause involving fault on the part of the employer, if
17 such individual was compelled to leave his or her work for his or
18 her own health-related reasons and notifies the employer prior to
19 leaving the job or within two business days after leaving the job
20 or as soon as practicable and presents written certification from
21 a licensed physician within thirty days of leaving the job that his
22 or her work aggravated, worsened or will worsen the individual's
23 health problem.

24 (C) For the purpose of this subdivision, an individual may not
25 be disqualified if the individual left his or her most recent work

1 due to domestic violence by a family or household member, stalking
2 or sexual assault by a person who is not a family or household
3 member, if the domestic violence, stalking or sexual assault is
4 verified by reasonable documentation, and if the domestic violence,
5 stalking or sexual assault causes the individual to reasonably
6 believe that the individual's continuing employment would jeopardize
7 the safety of the individual or an immediate family member. For the
8 purposes of this paragraph:

9 (i) The term "domestic violence" has the same meaning as it has
10 in section two hundred two, article twenty-seven, chapter forty-
11 eight of this code;

12 (ii) The term "stalking" has the same meaning as it has in
13 section nine-a, article two, chapter sixty-one of this code; and

14 (iii) The term "sexual assault" includes sexual assault in the
15 first, second and third degrees pursuant to sections three, four and
16 five, article eight-b, chapter sixty-one of this code, sexual abuse
17 in the first, second and third degrees pursuant to sections seven,
18 eight and nine, article eight-b, chapter sixty-one of this code, and
19 battery pursuant to section nine, article two, chapter sixty-one of
20 this code if the battery was the result of "sexual contact" as
21 defined in section one, article eight-b, chapter sixty-one of this
22 code.

23 (D) For the purposes of paragraph (C) of this subdivision
24 reasonable documentation of domestic violence, stalking or sexual
25 assault includes one or more of the following:

- 1 (i) A court order of protection;
- 2 (ii) An order of bail, bond or parole restricting contact by
3the alleged perpetrator with the alleged victim;
- 4 (iii) A written certification by a licensed physician or a
5licensed physician's assistant of medical findings consistent with
6domestic violence, stalking or sexual assault;
- 7 (iv) A copy of a police report the allegations of which
8constitute domestic violence, stalking or sexual assault;
- 9 (v) A notarized certification that one of the following has
10evaluated the individual's statements and circumstances and based
11on that evaluation is providing services for domestic violence,
12stalking or sexual assault: A licensed clinical psychologist,
13licensed clinical social worker, certified social worker, licensed
14professional counselor, licensed marriage and family therapist, or
15a service provider employed by a licensed domestic violence program
16or by rape crisis center which meets the standards of the West
17Virginia Foundation for Rape Information and Services; or
- 18 (vi) Documentation not specifically identified in this
19paragraph but having equivalent circumstantial guarantees of
20trustworthiness.
- 21 (E) For the purposes of this subdivision, an individual may not
22be disqualified if the individual left his or her most recent work
23to care for an immediate family member with an illness or disability
24that is certified by a licensed physician and that necessitates the
25care of the immediate family member for a period of time longer than

1 the employer will grant leave, paid or otherwise. For the purposes
2 of this paragraph "immediate family member" includes a spouse,
3 parent, child under eighteen years of age, adult child, grandchild,
4 grandparent, step-child, parent-in-law, brother, sister, step-
5 brother and step-sister.

6 (F) For the purposes of this subdivision, an individual may not
7 be disqualified if the individual left his or her most recent work
8 to relocate in order to accompany the individual's spouse:

9 (i) To a place from which it is impractical for the individual
10 to commute; or

11 (ii) Due of a change in the location of the spouse's
12 employment.

13 (2) For the week in which he or she was discharged from his or
14 her most recent work for misconduct and the six weeks immediately
15 following such week; or for the week in which he or she was
16 discharged from his or her last thirty-day employing unit for
17 misconduct and the six weeks immediately following such week. Such
18 disqualification shall carry a reduction in the maximum benefit
19 amount equal to six times the individual's weekly benefit. However,
20 if the claimant returns to work in covered employment for thirty
21 days during his or her benefit year, whether or not such days are
22 consecutive, the maximum benefit amount shall be increased by the
23 amount of the decrease imposed under the disqualification; except
24 that:

25 If he or she were discharged from his or her most recent work

1 for one of the following reasons, or if he or she were discharged
2 from his or her last thirty days employing unit for one of the
3 following reasons: Gross misconduct consisting of willful
4 destruction of his or her employer's property; assault upon the
5 person of his or her employer or any employee of his or her
6 employer; if such assault is committed at such individual's place
7 of employment or in the course of employment; reporting to work in
8 an intoxicated condition, or being intoxicated while at work;
9 reporting to work under the influence of any controlled substance,
10 as defined in chapter sixty-a of this code without a valid
11 prescription, or being under the influence of any controlled
12 substance, as defined in said chapter without a valid prescription,
13 while at work; adulterating or otherwise manipulating a sample or
14 specimen in order to thwart a drug or alcohol test lawfully required
15 of an employee; refusal to submit to random testing for alcohol or
16 illegal controlled substances for employees in performing a safety
17 sensitive ~~positions~~ duty as defined in section two, article one-d,
18 chapter twenty-one of this code; arson, theft, larceny, fraud or
19 embezzlement in connection with his or her work; or any other gross
20 misconduct, he or she shall be and remain disqualified for benefits
21 until he or she has thereafter worked for at least thirty days in
22 covered employment: *Provided*, That for the purpose of this
23 subdivision, the words "any other gross misconduct" shall include,
24 but not be limited to, any act or acts of misconduct where the
25 individual has received prior written warning that termination of

1 employment may result from such act or acts.

2 (3) For the week in which he or she failed without good cause
3 to apply for available, suitable work, accept suitable work when
4 offered, or return to his or her customary self-employment when
5 directed to do so by the commissioner, and for the four weeks which
6 immediately follow for such additional period as any offer of
7 suitable work shall continue open for his or her acceptance. Such
8 disqualification shall carry a reduction in the maximum benefit
9 amount equal to four times the individual's weekly benefit amount.

10 (4) For a week in which his or her total or partial
11 unemployment is due to a stoppage of work which exists because of
12 a labor dispute at the factory, establishment or other premises at
13 which he or she was last employed, unless the commissioner is
14 satisfied that he or she: (†) (i) Was not participating, financing
15 or directly interested in such dispute; and ~~(2)~~ (ii) did not belong
16 to a grade or class of workers who were participating, financing or
17 directly interested in the labor dispute which resulted in the
18 stoppage of work. No disqualification under this subdivision shall
19 be imposed if the employees are required to accept wages, hours or
20 conditions of employment substantially less favorable than those
21 prevailing for similar work in the locality, or if employees are
22 denied the right of collective bargaining under generally prevailing
23 conditions, or if an employer shuts down his or her plant or
24 operation or dismisses his or her employees in order to force wage
25 reduction, changes in hours or working conditions. For the purpose

1 of this subdivision if any stoppage of work continues longer than
2 four weeks after the termination of the labor dispute which caused
3 stoppage of work, there shall be a rebuttable presumption that part
4 of the stoppage of work which exists after a period of four weeks
5 after the termination of the labor dispute did not exist because of
6 the labor dispute; and in that event the burden shall be upon the
7 employer or other interested party to show otherwise.

8 (5) For a week with respect to which he or she is receiving or
9 has received:

10 (a) Wages in lieu of notice;

11 (b) Compensation for temporary total disability under the
12 workers' compensation law of any state or under a similar law of the
13 United States; or

14 (c) Unemployment compensation benefits under the laws of the
15 United States or any other state.

16 (6) For the week in which an individual has voluntarily quit
17 employment to marry or to perform any marital, parental or family
18 duty, or to attend to his or her personal business or affairs and
19 until the individual returns to covered employment and has been
20 employed in covered employment at least thirty working days.

21 (7) Benefits shall not be paid to any individual on the basis
22 of any services, substantially all of which consist of participating
23 in sports or athletic events or training or preparing to so
24 participate, for any week which commences during the period between
25 two successive sport seasons (or similar periods) if such individual

1 performed such services in the first of such seasons (or similar
2 periods) and there is a reasonable assurance that such individual
3 will perform such services in the later of such seasons (or similar
4 periods).

5 (8) (a) Benefits shall not be paid on the basis of services
6 performed by an alien unless such alien is an individual who was
7 lawfully admitted for permanent residence at the time such services
8 were performed, was lawfully present for purposes of performing such
9 services or was permanently residing in the United States under
10 color of law at the time such services were performed (including an
11 alien who is lawfully present in the United States as a result of
12 the application of the provisions of Section 203(a)(7) or Section
13 212(d)(5) of the Immigration and Nationality Act): *Provided, That*
14 any modifications to the provisions of Section 3304(a)(14) of the
15 Federal Unemployment Tax Act as provided by Public Law 94-566 which
16 specify other conditions or other effective date than stated herein
17 for the denial of benefits based on services performed by aliens and
18 which modifications are required to be implemented under state law
19 as a condition for full tax credit against the tax imposed by the
20 Federal Unemployment Tax Act shall be deemed applicable under the
21 provisions of this section;

22 (b) Any data or information required of individuals applying
23 for benefits to determine whether benefits are not payable to them
24 because of their alien status shall be uniformly required from all
25 applicants for benefits;

1 (c) In the case of an individual whose application for benefits
2 would otherwise be approved, no determination that benefits to such
3 individual are not payable because of his or her alien status shall
4 be made except upon a preponderance of the evidence.

5 (9) For each week in which an individual is unemployed because,
6 having voluntarily left employment to attend a school, college,
7 university or other educational institution, he or she is attending
8 such school, college, university or other educational institution,
9 or is awaiting entrance thereto or is awaiting the starting of a new
10 term or session thereof, and until the individual returns to covered
11 employment.

12 (10) For each week in which he or she is unemployed because of
13 his or her request, or that of his or her duly authorized agent, for
14 a vacation period at a specified time that would leave the employer
15 no other alternative but to suspend operations.

16 (11) In the case of an individual who accepts an early
17 retirement incentive package, unless he or she: (i) Establishes a
18 well-grounded fear of imminent layoff supported by definitive
19 objective facts involving fault on the part of the employer; and
20 (ii) establishes that he or she would suffer a substantial loss by
21 not accepting the early retirement incentive package.

22 (12) For each week with respect to which he or she is receiving
23 or has received benefits under Title II of the Social Security Act
24 or similar payments under any act of Congress, or remuneration in
25 the form of an annuity, pension or other retirement pay from a base

1 period employer or chargeable employer or from any trust or fund
2 contributed to by a base period employer or chargeable employer or
3 any combination of the above, the weekly benefit amount payable to
4 such individual for such week shall be reduced (but not below zero)
5 by the prorated weekly amount of said benefits, payments or
6 remuneration: *Provided*, That if such amount of benefits is not a
7 multiple of \$1, it shall be computed to the next lowest multiple of
8 \$1: *Provided, however*, That there shall be no disqualification if
9 in the individual's base period there are no wages which were paid
10 by the base period employer or chargeable employer paying such
11 remuneration, or by a fund into which the employer has paid during
12 said base period: *Provided further*, That notwithstanding any other
13 provision of this subdivision to the contrary, the weekly benefit
14 amount payable to such individual for such week shall not be reduced
15 by any retirement benefits he or she is receiving or has received
16 under Title II of the Social Security Act or similar payments under
17 any act of Congress. Claimant may be required to certify as to
18 whether or not he or she is receiving or has been receiving
19 remuneration in the form of an annuity, pension or other retirement
20 pay from a base period employer or chargeable employer or from a
21 trust fund contributed to by a base period employer or chargeable
22 employer.

23 (13) For each week in which and for fifty-two weeks thereafter,
24 beginning with the date of the decision, if the commissioner finds
25 such individual who within twenty-four calendar months immediately

1 preceding such decision, has made a false statement or
2 representation knowing it to be false or knowingly fails to disclose
3 a material fact, to obtain or increase any benefit or payment under
4 this article: *Provided*, That disqualification under this
5 subdivision shall not preclude prosecution under section seven,
6 article ten of this chapter.

NOTE: The purpose of this bill is to permit certain part-time employees to be eligible for unemployment compensation benefits. The bill permits employees who have left employment due to being a victim of domestic violence, sexual assault or stalking to be eligible for unemployment compensation benefits. The bill permits employees who have left employment to care for disabled or ill immediate family members to be eligible for unemployment compensation benefits. The bill also permits employees who have left employment due to the transfer or relocation of a spouse to be eligible for unemployment compensation benefits.

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