

# H. B. 3137

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

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[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.**

- 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) Equaled 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,  
40 2009, or, if the application of section 2005(a) of Title II of  
41 Division B of the American Recovery and Reinvestment Act  
42 of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”)  
43 is 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 thirteen-  
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  
121 to 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  
124 chapter or any other state law (including dependents'  
125 allowances and benefits payable to federal civilian  
126 employees and ex-servicemen under 5 U.S.C., chapter 85) in  
127 his or her current benefit year that includes such week:

128 *Provided*, That for the purposes of this subdivision, an  
129 individual ~~shall be~~ is deemed to have received all of the  
130 regular benefits which were available to him or her although:

131 (i) As a result of a pending appeal with respect to wages or  
132 employment which were not considered in the original  
133 monetary determination in his or her benefit year, he or she  
134 may subsequently be determined to be entitled to added  
135 regular benefits; or (ii) he or she may be entitled to regular

136 benefits with respect to future weeks of unemployment but  
137 such benefits are not payable with respect to such week of  
138 unemployment by reason of the provisions of section one-a,  
139 article six of this chapter; or

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

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



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

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

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

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

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

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

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

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

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

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

198       (I) The minimum wages provided by 29 U.S.C.,  
199       §206(a)(1), without regard to any exemption; or

200       (II) The state or local minimum wage;

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

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

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

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

221       (D) Notwithstanding the provisions of this section to the  
222       contrary, no work ~~shall be deemed to be~~ is suitable work for

223 an individual which does not accord with the labor standard  
224 provisions required by 26 U.S.C., §3304(a)(5) and set forth  
225 herein under subdivision (12)(C)(iii)(I) of this section.

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

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

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

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

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

245 under this subdivision requiring the individual to perform  
246 service for remuneration subsequent to the date of such  
247 disqualification.

248 (13) Notwithstanding any other provisions of this  
249 chapter, if the benefit year of any individual ends within an  
250 extended benefit period, the remaining balance of extended  
251 benefits that such individual would, but for this section, be  
252 entitled to receive in that extended benefit period with  
253 respect to weeks of unemployment beginning after the end of  
254 the benefit year, ~~shall be~~ are reduced, but not below zero, by  
255 the product of the number of weeks for which the individual  
256 received any amounts as trade readjustment allowances  
257 within that benefit year, multiplied by the individual's weekly  
258 benefit amount for extended benefits.

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

266           (15) The provisions of subdivisions (11) and (12) of this  
267   section shall not apply at any time ~~should such provisions be~~  
268   if temporarily or permanently suspended by federal law. If  
269   these provisions are suspended by federal law, the provisions  
270   of state law which apply to claims for and the payment of  
271   regular benefits ~~shall~~ apply to claims for and the payment of  
272   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.

### **Finance Committee Title Amendment**

**H. B. 3137** - “A BILL 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.”