

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012



ENROLLED

House Bill No. 4542

(By Delegates White, T. Campbell, Varner and Williams)
[By Request of the Department of Commerce]



Passed March 10, 2012

To Take Effect July 1, 2012

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H. B. 4542

(BY DELEGATES WHITE, T. CAMPBELL, VARNER AND WILLIAMS)
[REQUESTED BY THE DEPARTMENT OF COMMERCE]

[Passed March 10, 2012; to take effect July 1, 2012.]

AN ACT to amend and reenact §21A-5-7 of the Code of West Virginia, 1931, as amended, all relating to unemployment compensation benefits; preventing contributory employers from being relieved of benefit charges to their accounts if an overpayment of benefits is the result of the employer's or an employer's agent's failure to provide requested information to the agency timely or to adequately; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §21A-5-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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 account
- 2 for each employer, and shall credit the employer's account
- 3 with all contributions of the employer in excess of four tenths
- 4 of one percent of taxable wages: *Provided*, That any

5 adjustment made in any employer's account after the
6 computation date may not be used in the computation of the
7 balance of an employer until the next following computation
8 date: *Provided, however,* That nothing in this chapter grants
9 an employer or individual in his, her or its service prior
10 claims or rights to the amounts paid by him, her or its into the
11 fund, either on his, her or its behalf or on behalf of the
12 individuals. The account of any employer which has been
13 inactive for a period of four consecutive calendar years shall
14 be terminated for all purposes.

15 (2) Benefits paid to an eligible individual for regular and
16 extended total or partial unemployment beginning after the
17 effective date of this article shall be charged to the account of
18 the last employer with whom he or she has been employed as
19 much as thirty working days, whether or not the days are
20 consecutive: *Provided,* That no employer's account may be
21 charged with benefits paid to any individual who has been
22 separated from a noncovered employing unit in which he or
23 she was employed as much as thirty days, whether or not the
24 days are consecutive: *Provided, however,* That no employer's
25 account may be charged with more than fifty percent of the
26 benefits paid to an eligible individual as extended benefits
27 under the provisions of article six-a of this chapter: *Provided*
28 *further,* That state and local government employers shall be
29 charged with one hundred percent of the benefits paid to an
30 eligible individual as extended benefits. Benefits paid to an
31 individual are to be charged to the accounts of his or her
32 employers in the base period, the amount of the charges,
33 chargeable to the account of each employer, to be that portion
34 of the total benefits paid the individual as the wages paid him
35 or her by the employer in the base period are to the total
36 wages paid him or her during his or her base period for
37 insured work by all his or her employers in the base period.
38 For the purposes of this section, no base period employer's
39 account may be charged for benefits paid under this chapter

40 to a former employee, if the base period employer furnishes
41 separation information within fourteen days from the date the
42 notice was mailed or delivered, which results in a
43 disqualification under the provision set forth in subsection
44 one, section three, article six, or subsection two, section
45 three, article six of this chapter or would have resulted in a
46 disqualification under that subsection except for a subsequent
47 period of covered employment by another employing unit.
48 Further, no contributory base period employer's experience
49 rating account may be charged for benefits paid under this
50 chapter to an individual who has been continuously employed
51 by that employer on a part-time basis, if the part-time
52 employment continues while the individual is separated from
53 other employment and is otherwise eligible for benefits. One
54 half of extended benefits paid to an individual are to be
55 charged to the accounts of his or her employers, except state
56 and local government employers, in the base period in the
57 same manner provided for the charging of regular benefits.
58 The entire state share of extended benefits paid to an
59 individual shall be charged to the accounts of his or her base
60 period employers. The provisions of this section permitting
61 the noncharging of contributory employers' accounts have no
62 application to benefit charges imposed upon reimbursable
63 employers.

64 (3) The commissioner shall classify employers in
65 accordance with their actual experience in the payment of
66 contributions on their own behalf and with respect to benefits
67 charged against their accounts, with a view of fixing the
68 contribution rates as will reflect such experiences. For the
69 purpose of fixing the contribution rates for each calendar
70 year, the books of the department shall be closed on July 31
71 of the preceding calendar year, and any contributions paid
72 after that, as well as benefits paid after that with respect to
73 compensable weeks ending on or before June 30 of the
74 preceding calendar year, may not be taken into account until

75 the next annual date for fixing contribution rates: *Provided,*
76 That if an employer has failed to furnish to the commissioner
77 on or before July 31 of the preceding calendar year the wage
78 information for all past periods necessary for the computation
79 of the contribution rate, the employer's rate shall be, if it is
80 immediately prior to that July 31, less than three and three-
81 tenths percent, increased to three and three-tenths percent:
82 *Provided, however,* That any payment made or any
83 information necessary for the computation of a reduced rate
84 furnished on or before the termination of an extension of time
85 for the payment or reporting of information granted pursuant
86 to a rule of the commissioner authorizing an extension, shall
87 be taken into account for the purposes of fixing contribution
88 rates: *Provided further,* That when the time for filing any
89 report or making any payment required hereunder falls on
90 Saturday, Sunday, or a legal holiday, the due date is the next
91 succeeding business day: *And provided further,* That
92 whenever, through mistake or inadvertence, erroneous credits
93 or charges are found to have been made to or against the
94 reserved account of any employer, the rate shall be adjusted
95 as of January 1 of the calendar year in which the mistake or
96 inadvertence is discovered, but payments, made under any
97 rate assigned prior to January 1 of that year, are not
98 erroneously collected.

99 (4) The commissioner may prescribe rules for the
100 establishment, maintenance and dissolution of joint accounts
101 by two or more employers, and shall, in accordance with the
102 rules and upon application by two or more employers to
103 establish a joint account, or to merge their several individual
104 accounts in a joint account, maintain a joint account as if it is
105 a single employer's account.

106 (5) State and local government employers may enter into
107 joint accounts and to maintain the joint account or accounts
108 as if it or they are a single employer's account or accounts.

109 (6) Effective on and after July 1, 2012 if an employer has
110 failed to furnish to the commissioner on or before August 31
111 of each year the wage information for all past periods
112 necessary for the computation of the contribution rate, the
113 employer's rate shall be, if it is immediately prior to July 1,
114 less than seven and five-tenths percent, increased to seven
115 and five-tenths percent.

116 (7) Effective July 1, 2012, a contributory employer's
117 account shall not be relieved of charges relating to a payment
118 from the Fund if the department determines that:

119 (A) The erroneous payment was made because the
120 employer, or an agent of the employer, was at fault for failing
121 to respond timely or adequately to the request of the agency
122 for information relating to the claim for compensation; and

123 (B) the employer or agent has established a pattern of
124 failing to respond timely or adequately to such requests.

125 (8) For purposes of this section:

126 (A) "Erroneous payment" means a payment that but for
127 the failure by the employer or the employer's agent with
128 respect to the claim for unemployment compensation would
129 not have been made.

130 (B) "Pattern of failing" means repeated documented
131 failure on the part of the employer or the agent of the
132 employer to respond as requested in this section, taking into
133 consideration the number of instances of failure in relation to
134 the total volume of requests by the agency to the employer or
135 the employer's agent as described in this section.

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 July 1, 2012.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor