

# H. B. 4542

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

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[Introduced February 15, 2012; referred to the  
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §21A-5-7 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation benefits; and prevent contributory and reimbursable employers from being relieved of benefit charges to their accounts if an overpayment of benefits is the result of the employer's failure to provide requested information timely or to adequately allow the state to accurately determine a claimant's eligibility for benefits.

*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 for~~  
2 ~~each employer, and shall credit his account with all~~  
3 ~~contributions paid by him prior to July 1, 1961. On and after~~  
4 ~~July 1, 1961, the commissioner shall maintain a separate~~  
5 ~~account for each employer, and shall credit said employer's~~  
6 ~~account with all contributions of such employer in excess of~~  
7 ~~seven tenths of one percent of taxable wages; and on and after~~  
8 ~~July 1, 1971, The commissioner shall maintain a separate~~  
9 ~~account for each employer, and shall credit said the employer's~~  
10 ~~account with all contributions of such the employer in excess of~~  
11 ~~four tenths of one percent of taxable wages: *Provided*, That any~~  
12 ~~adjustment made in any employer's account after the~~  
13 ~~computation date ~~shall~~ may not be used in the computation of~~  
14 ~~the balance of an employer until the next following computation~~  
15 ~~date: *Provided, however*, That nothing in this chapter ~~shall be~~~~  
16 ~~construed to grant grants an employer or individual in his, her or~~

17 its service prior claims or rights to the amounts paid by him, her  
18 or its into the fund, either on his, her or its behalf or on behalf of  
19 ~~such~~ the individuals. The account of any employer which ~~had~~  
20 has been inactive for a period of four consecutive calendar years  
21 shall be terminated for all purposes.

22 (2) Benefits paid to an eligible individual for regular and  
23 extended total or partial unemployment beginning after the  
24 effective date of this article shall be charged to the account of  
25 the last employer with whom he or she has been employed as  
26 much as thirty working days, whether or not ~~such~~ the days are  
27 consecutive: *Provided*, That no employer's account ~~shall~~ may be  
28 charged with benefits paid to any individual who has been  
29 separated from a noncovered employing unit in which he or she  
30 was employed as much as thirty days, whether or not ~~such~~ the  
31 days are consecutive: *Provided, however*, That no employer's  
32 account ~~shall~~ may be charged with more than fifty percent of the  
33 benefits paid to an eligible individual as extended benefits under  
34 the provisions of article six-a of this chapter: *Provided further*,  
35 That state and local government employers shall be charged with

36 one hundred percent of the benefits paid to an eligible individual  
37 as extended benefits. ~~Beginning on July 1, 1984,~~ Benefits paid  
38 to an individual are to be charged to the accounts of his or her  
39 employers in the base period, the amount of ~~such~~ the charges,  
40 chargeable to the account of each ~~such~~ employer, to be that  
41 portion of the total benefits paid ~~such~~ the individual as the wages  
42 paid him or her by ~~such~~ the employer in the base period are to  
43 the total wages paid him or her during his or her base period for  
44 insured work by all his or her employers in the base period. For  
45 the purposes of this section, no base period employer's account  
46 ~~shall~~ may be charged for benefits paid under this chapter to a  
47 former employee, ~~provided such~~ if the base period employer  
48 furnishes separation information within fourteen days from the  
49 date the notice was mailed or delivered, which results in a  
50 disqualification under the provision set forth in subsection one,  
51 section three, article six, or subsection two, section three, article  
52 six of this chapter or would have resulted in a disqualification  
53 under ~~such~~ that subsection except for a subsequent period of  
54 covered employment by another employing unit. Further, no

55 contributory base period employer's experience rating account  
56 ~~shall~~ may be charged for benefits paid under this chapter to an  
57 individual who has been continuously employed by that  
58 employer on a part-time basis, if the part-time employment  
59 continues while the individual is separated from other  
60 employment and is otherwise eligible for benefits. One half of  
61 extended benefits paid to an individual ~~after July 1, 1984, and~~  
62 ~~subsequent years~~ are to be charged to the accounts of his or her  
63 employers, except state and local government employers, in the  
64 base period in the same manner provided for the charging of  
65 regular benefits. ~~Effective January 1, 1988,~~ The entire state  
66 share of extended benefits paid to an individual shall be charged  
67 to the accounts of his or her base period employers. The  
68 provisions of this section permitting the noncharging of  
69 contributory employers' accounts have no application to benefit  
70 charges imposed upon reimbursable employers.

71 Effective July 1, 2012, contributory and reimbursable  
72 employers may not be relieved of benefit charges to their  
73 accounts if an overpayment of benefits established after that

74 date is the result of the employer's failure, or the failure of  
75 third party agents acting on the employer's behalf, to provide  
76 requested information timely or to adequately allow the  
77 agency to accurately determine a claimant's eligibility for  
78 benefits when his or her claim is initially filed.

79 (3) The commissioner shall ~~for each calendar year~~  
80 ~~hereafter~~, classify employers in accordance with their actual  
81 experience in the payment of contributions on their own  
82 behalf and with respect to benefits charged against their  
83 accounts, with a view of fixing ~~such~~ the contribution rates as  
84 will reflect such experiences. For the purpose of fixing ~~such~~  
85 the contribution rates for each calendar year, the books of the  
86 department shall be closed on July 31 of the preceding  
87 calendar year, and any contributions ~~thereafter~~ paid after that,  
88 as well as benefits ~~thereafter~~ paid after that with respect to  
89 compensable weeks ending on or before June 30 of the  
90 preceding calendar year, ~~shall~~ may not be taken into account  
91 until the next annual date for fixing contribution rates:  
92 *Provided*, That if an employer has failed to furnish to the

93 commissioner on or before July 31 of ~~such~~ the preceding  
94 calendar year the wage information for all past periods  
95 necessary for the computation of the contribution rate, ~~such~~  
96 the employer's rate shall be, if it is immediately prior to ~~such~~  
97 that July 31, less than three and three-tenths percent,  
98 increased to three and three-tenths percent: *Provided,*  
99 *however,* That any payment made or any information  
100 necessary for the computation of a reduced rate furnished on  
101 or before the termination of an extension of time for ~~such~~ the  
102 payment or reporting of ~~such~~ information granted pursuant to  
103 a ~~regulation~~ rule of the commissioner authorizing ~~such~~ an  
104 extension, shall be taken into account for the purposes of  
105 fixing contribution rates: *Provided further,* That when the  
106 time for filing any report or making any payment required  
107 hereunder falls on Saturday, Sunday, or a legal holiday, the  
108 due date ~~shall be deemed to be~~ is the next succeeding  
109 business day: *And provided further,* That whenever, through  
110 mistake or inadvertence, erroneous credits or charges are  
111 found to have been made to or against the reserved account

112 of any employer, the rate shall be adjusted as of January 1 of  
113 the calendar year in which ~~such~~ the mistake or inadvertence  
114 is discovered, but payments, made under any rate assigned  
115 prior to January 1 of ~~such~~ that year, ~~shall not be deemed to be~~  
116 are not erroneously collected.

117 (4) The commissioner may prescribe ~~regulations~~ rules for  
118 the establishment, maintenance and dissolution of joint  
119 accounts by two or more employers, and shall, in accordance  
120 with ~~such regulations~~ the rules and upon application by two  
121 or more employers to establish ~~such an a~~ a joint account, or to  
122 merge their several individual accounts in a joint account,  
123 maintain ~~such a~~ a joint account as if it ~~constituted~~ is a single  
124 employer's account.

125 (5) State and local government employers ~~are hereby~~  
126 ~~authorized to~~ may enter into joint accounts and to maintain  
127 ~~such the~~ the joint account or accounts as if it or they ~~constituted~~  
128 are a single employer's account or accounts.

129 (6) ~~Effective on and after July 1, 1981,~~ If an employer  
130 has failed to furnish to the commissioner on or before August



131 ~~31 1980, and each year thereafter, with the exception of~~  
132 ~~1981, which due date shall be September 30, 1981, of each~~  
133 year the wage information for all past periods necessary for  
134 the computation of the contribution rate, ~~such~~ the employer's  
135 rate shall be, if it is immediately prior to July 1, ~~1981~~ less  
136 than seven and five-tenths percent, increased to seven and  
137 five-tenths percent.

NOTE: The purpose of this bill is to prevent contributory and reimbursable employers, under the unemployment compensation laws, from being relieved of benefit charges to their accounts if an overpayment of benefits is the result of the employer's failure to provide requested information timely or to adequately allow the state to accurately determine a claimant's eligibility for benefits.

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