

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5285

By Delegates Worrell, Toney, and Dean

[Introduced January 29, 2024; Referred to the
Committee on Finance]

1 A BILL to amend and reenact §21A-1A-28 of the Code of West Virginia, 1931, as amended,
2 relating to removing a proviso for the unemployment compensation "threshold wage".

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. DEFINITIONS.

§21A-1A-28. Wages; average annual wage; threshold wage.

1 (a) "Wages" means all remuneration for personal service, including commissions,
2 gratuities customarily received by an individual in the course of employment from persons other
3 than the employing unit, as long as such gratuities equal or exceed an amount of not less than \$20
4 each month and which are required to be reported to the employer by the employee, bonuses and
5 the cash value of all remuneration in any medium other than cash except for agricultural labor and
6 domestic service. The term "wages" includes remuneration for service rendered to the state as a
7 member of the state National Guard or Air National Guard only when serving on a temporary basis
8 pursuant to a call made by the Governor under sections one and two, article one-d, chapter fifteen
9 of this code.

10 (b) The term "wages" does not include:

11 (1) That part of the remuneration which, after remuneration equal to \$8,000 or, after the
12 amendment and reenactment of this section during the 2009 legislative session, the threshold
13 wage is paid during a calendar year to an individual by an employer or his or her predecessor with
14 respect to employment during any calendar year, is paid to such individual by such employer
15 during such calendar year unless that part of the remuneration is subject to a tax under a federal
16 law imposing a tax against which credit may be taken for contributions required to be paid into a
17 state unemployment fund. For the purposes of this section, the term "employment" includes
18 service constituting employment under any unemployment compensation law of another state; or
19 which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax
20 Act is required to be covered under this chapter; and, except that for the purposes of sections one,
21 ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in

22 employment shall be credited to the individual and included in his or her computation of base
23 period wages: *Provided*, That the remuneration paid to an individual by an employer with respect
24 to employment in another state or other states upon which contributions were required of and paid
25 by such employer under an unemployment compensation law of such other state or states shall be
26 included as a part of the remuneration equal to the amounts of \$8,000 or, after the amendment and
27 reenactment of this section during the 2009 legislative session, the threshold wage herein referred
28 to. In applying such limitation on the amount of remuneration that is taxable, an employer shall be
29 accorded the benefit of all or any portion of such amount which may have been paid by its
30 predecessor or predecessors: *Provided, however*, That if the definition of the term "wages" as
31 contained in Section 3306(b) of the Internal Revenue Code of 1954, as amended, is amended to
32 include remuneration in excess of \$8,000 or, after the amendment and reenactment of this section
33 during the 2009 legislative session, the threshold wage paid to an individual by an employer under
34 the federal Unemployment Tax Act during any calendar year, wages for the purposes of this
35 definition shall include remuneration paid in a calendar year to an individual by an employer
36 subject to this chapter or his or her predecessor with respect to employment during any calendar
37 year up to an amount equal to the amount of remuneration taxable under the federal
38 Unemployment Tax Act;

39 (2) The amount of any payment made (including any amount paid by an employer for
40 insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an
41 individual in its employ or any of his or her dependents, under a plan or system established by an
42 employer which makes provision for individuals in its employ generally (or for such individuals and
43 their dependents), or for a class or classes of such individuals (or for a class or classes of such
44 individuals and their dependents) on account of: (A) Retirement; or (B) sickness or accident
45 disability payments made to an employee under an approved state workers' compensation law; or
46 (C) medical or hospitalization expenses in connection with sickness or accident disability; or (D)
47 death;

48 (3) Any payment made by an employer to an individual in its employ (including any amount
49 paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on
50 account of retirement;

51 (4) Any payment made by an employer on account of sickness or accident disability, or
52 medical or hospitalization expenses in connection with sickness or accident disability to, or on
53 behalf of, an individual in its employ after the expiration of six calendar months following the last
54 calendar month in which such individual worked for such employer;

55 (5) Any payment made by an employer to, or on behalf of, an individual in its employ or his
56 or her beneficiary: (A) From or to a trust described in Section 401(a) which is exempt from tax
57 under Section 501(a) of the federal Internal Revenue Code at the time of such payments unless
58 such payment is made to such individual as an employee of the trust as remuneration for services
59 rendered by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan
60 which, at the time of such payment, is a plan described in Section 403(a) of the federal Internal
61 Revenue Code;

62 (6) The payment by an employer of the tax imposed upon an employer under Section 3101
63 of the federal Internal Revenue Code with respect to remuneration paid to an employee for
64 domestic service in a private home or the employer of agricultural labor;

65 (7) Remuneration paid by an employer in any medium other than cash to an individual in its
66 employ for service not in the course of the employer's trade or business;

67 (8) Any payment (other than vacation or sick pay) made by an employer to an individual in
68 its employ after the month in which he or she attains the age of sixty-five if he or she did not work
69 for the employer in the period for which such payment is made;

70 (9) Payments, not required under any contract of hire, made to an individual with respect to
71 his or her period of training or service in the Armed Forces of the United States by an employer by
72 which such individual was formerly employed; and

73 (10) Vacation pay, severance pay or savings plans received by an individual before or after

74 becoming totally or partially unemployed but earned prior to becoming totally or partially
75 unemployed: *Provided*, That the term totally or partially unemployed does not include: (A)
76 Employees who are on vacation by reason of the request of the employees or their duly authorized
77 agent, for a vacation at a specific time, and which request by the employees or their agent is
78 acceded to by their employer; (B) employees who are on vacation by reason of the employer's
79 request provided they are so informed at least ninety days prior to such vacation; or (C) employees
80 who are on vacation by reason of the employer's request where such vacation is in addition to the
81 regular vacation and the employer compensates such employee at a rate equal to or exceeding
82 their regular daily rate of pay during the vacation period.

83 (c) The reasonable cash value of remuneration in any medium other than cash shall be
84 estimated and determined in accordance with rules prescribed by the commissioner, except for
85 remuneration other than cash for services performed in agricultural labor and domestic service.

86 (d) "Average annual wage" means the state's average annual wage which is computed on
87 or before September 30 of the year immediately preceding the rate year and is the total
88 remuneration paid by employers as reported on contribution reports on or before that date with
89 respect to all employment during the four consecutive calendar quarters ending on June 30 of that
90 year divided by the average monthly number of individuals performing services in employment
91 during the same four calendar quarters as reported on the contribution reports.

92 "Threshold wage" means the wage amount the employer pays unemployment taxes on for
93 each person in his or her employ during a calendar year. On and after the effective date of the
94 amendment and reenactment of this chapter by the Legislature in 2009, the threshold wage will be
95 \$12,000: *Provided*, That when the moneys in the unemployment fund reach \$220 million on
96 February 15 of any year, the threshold wage thereafter will be reduced to \$9,000. *Provided*,
97 ~~however, That each year thereafter the threshold wage shall increase or decrease by the same~~
98 ~~percentage that the state's average wage increases or decreases~~

NOTE: The purpose of this bill is to remove a proviso for unemployment compensation

"threshold wage".

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