

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 246

(By Senators Tomblin (Mr. President) and Caruth,

By Request of the Executive)

[Passed April 11, 2009; in effect from passage.]

AN ACT to amend and reenact §21A-1-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §21A-1A-5, §21A-1A-6, §21A-1A-7 and §21A-1A-28 of said code; to amend and reenact §21A-6-1, §21A-6-3 and §21A-6-10 of said code; and to amend and reenact §23-2C-3 of said code, all relating generally to unemployment compensation; requiring establishment of employer violator system; providing for notice and due process; defining certain terms; providing that the maximum weekly benefit rate shall not increase or decrease under certain circumstances; providing for an alternative base wage and authorizing benefits thereunder; requiring notice to employer when employee quits for health reasons; requiring written certification from physician within thirty days; classifying certain conduct as gross misconduct; providing that an employee who voluntarily retires is not eligible for unemployment; requiring the Insurance Commissioner transfer certain funds for the benefit of the Unemployment Trust Fund; and authorizing the transfer of certain funds by the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

That §21A-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §21A-1A-5, §21A-1A-6, §21A-1A-7 and §21A-1A-28 of said code be amended and reenacted; that §21A-6-1, §21A-6-3 and §21A-6-10 of said code be amended and reenacted; and that §23-2C-3 of said code be amended and reenacted, all to read as follows:

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1. UNEMPLOYMENT COMPENSATION.

§21A-1-4. Workforce West Virginia created; divisions within Workforce West Virginia created; certain terms defined; employer violator system.

(a) There is continued an agency designated Workforce West Virginia, composed of:

- (1) Division of Unemployment Compensation;
- (2) Division of Employment Service;
- (3) Division of Workforce Development;
- (4) Division of Research, Information and Analysis; and
- (5) Any other divisions or units that the executive director determines are necessary.

(b) Wherever within this chapter the term "department", "bureau" or "fund" is used, it shall be taken to mean Workforce West Virginia unless otherwise indicated. Any reference in this code to the Bureau of Employment Programs means Workforce West Virginia. Any reference in this code to the Commissioner of the Bureau of Employment Programs or Employment Security means the Executive Director of Workforce West Virginia.

(c) Workforce West Virginia shall be administered pursuant to subsection (b), section one, article two, chapter five-f of this code.

(d) The Executive Director of Workforce West Virginia shall establish an employer violator system to identify individuals and employers who are in default on any assessment, surcharge, tax or penalty owed to the fund. The employer violator system shall prohibit violators who own, control or have a ten percent or more ownership interest, or other ownership interest as may be defined by the executive director, in any company from obtaining or maintaining any license, certificate or permit issued by the state until the violator has paid all moneys owed to the fund or has entered into and remains in compliance with a repayment agreement. The employer violator system shall work cooperatively with all state agencies to maintain an accurate, up-to-date list of violators which shall be available in electronic format and online for agencies and the public. Before an employer is added to the violator list, he or she shall be given notice and an opportunity for an expedited administrative hearing. The executive director shall propose for promulgation emergency and legislative rules to effectuate this subsection.

ARTICLE 1A. DEFINITIONS.

§21A-1A-5. Base period; alternative base period.

(a) "Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.

(b) "Alternative base period" means the last four completed calendar quarters immediately preceding the first day of the individual's benefit year.

§21A-1A-6. Base period employer; alternative base period employer.

"Base period employer" and "alternative base period employer" mean any employer who in the base period or alternative base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

§21A-1A-7. Base period wages; alternative base period wages.

"Base period wages" and "alternative base period wages" mean wages paid to an individual during the base period or alternative base period by all the individual's base period or alternative base period employers.

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

(a) "Wages" means all remuneration for personal service, including commissions, gratuities customarily

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

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

(1) That part of the remuneration which, after remuneration equal to \$8,000 or, after the amendment and reenactment of this section during the 2009 legislative session, the threshold wage is paid during a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this section, the term "employment" includes service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter; and, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his or her computation of base period wages: *Provided*, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of \$8,000 or, after the amendment and reenactment of this section during the 2009 legislative session, the threshold wage herein referred to. In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: *Provided, however*, That if the definition of the term "wages" as contained in Section 3306(b) of the Internal Revenue Code of 1954, as amended, is amended to include remuneration in excess of \$8,000 or, after the amendment and reenactment of this section during the 2009 legislative session, the threshold wage paid to an individual by an employer under the federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this chapter or his or her predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the federal Unemployment Tax Act;

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

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

(4) Any payment made by an employer on account of sickness or accident disability, or medical or

hospitalization expenses in connection with sickness or accident disability to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

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

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

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

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

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

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: *Provided*, That the term totally or partially unemployed does not include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation; or (C) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

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

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

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

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

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

- (1) He or she has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner;
- (2) He or she has made a claim for benefits in accordance with the provisions of article seven of this chapter and has furnished his or her Social Security number, or numbers if he or she has more than one such number;
- (3) He or she is able to work and is available for full-time work for which he or she is fitted by prior training or experience and is doing that which a reasonably prudent person in his or her circumstances would do in seeking work;
- (4) He or she has been totally or partially unemployed during his or her benefit year for a waiting period of one week prior to the week for which he or she claims benefits for total or partial unemployment;
- (5) He or she has within his or her base period been paid wages for employment equal to not less than \$2,200 and must have earned wages in more than one quarter of his or her base period or, if he or she is not eligible under his or her base period, has within his or her alternative base period been paid wages for employment equal to not less than \$2,200 and must have earned wages in more than one quarter of his or her alternative base period; and
- (6) He or she participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the commissioner, unless the commissioner determines that:
 - (a) The individual has completed such services; or
 - (b) There is justifiable cause for the claimant's failure to participate in such services.

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

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

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

For the purpose of this subdivision, an individual shall not be deemed to have left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if such individual leaves his or her most recent work with an employer and if he or she in fact, within a fourteen-day calendar period, does return to employment with the last preceding employer with whom he or she was previously employed within the past year prior to his or her return to workday, and which last preceding employer, after having previously employed such individual for thirty working days or more, laid off such individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had such individual applied for such benefits. It is the intent of this paragraph to cause no disqualification for benefits for such an individual who complies with the foregoing set of requirements and conditions. Further, for the purpose of this subdivision, an individual shall not be deemed to have left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if such individual was compelled to leave his or her work for his or her own health-related reasons and notifies the employer prior to leaving the job or within two business days after leaving the job or as soon as practicable and presents written certification from a licensed physician within thirty days of leaving the job that his or her work aggravated, worsened or will worsen the individual's health problem.

(2) For the week in which he or she was discharged from his or her most recent work for misconduct and the six weeks immediately following such week; or for the week in which he or she was discharged from his or her last thirty-day employing unit for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit. However, if the claimant returns to work in covered employment for thirty days during his or her benefit year, whether or not such days are consecutive, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification; except that: If he or she were discharged from his or her most recent work for one of the following reasons, or if he or she were discharged from his or her last thirty days employing unit for one of the following reasons: Gross misconduct consisting of willful destruction of his or her employer's property; assault upon the person of his or her employer or any employee of his or her employer; if such assault is committed at such individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work under the influence of any controlled substance, as defined in chapter sixty-a of this code without a valid prescription, or being under the influence of any controlled substance, as defined in said chapter without a valid prescription, while at work; adulterating or otherwise manipulating a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee; refusal to submit to random testing for alcohol or illegal controlled substances for employees in safety sensitive positions as defined in section two, article one-d, chapter twenty-one of this code; arson, theft, larceny, fraud or embezzlement in connection with his or her work; or any other gross misconduct, he or she shall be and remain disqualified for benefits until he or she has thereafter worked for at least thirty days in covered employment: *Provided*, That for the purpose of this subdivision, the words "any other gross misconduct" shall include, but not be limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from such act or acts.

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

(4) For a week in which his or her total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he or she was last employed, unless the commissioner is satisfied that he or she: (1) Was not participating, financing or directly interested in such dispute; and (2) did not belong to a grade or class of workers who were participating, financing or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subdivision shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his or her plant or operation or dismisses his or her employees in order to force wage reduction, changes in hours or working conditions. For the purpose of this subdivision if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there shall be a rebuttable presumption that part of the stoppage of work which exists after a period of four weeks after the termination of the labor dispute did not exist because of the labor dispute; and in that event the burden shall be upon the employer or other interested party to show otherwise.

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

(a) Wages in lieu of notice;

- (b) Compensation for temporary total disability under the workers' compensation law of any state or under a similar law of the United States; or
- (c) Unemployment compensation benefits under the laws of the United States or any other state.
- (6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.
- (7) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).
- (8)(a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services or was permanently residing in the United States under color of law at the time such services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): *Provided*, That any modifications to the provisions of Section 3304(a)(14) of the federal Unemployment Tax Act as provided by Public Law 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act shall be deemed applicable under the provisions of this section;
- (b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits;
- (c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence.
- (9) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university or other educational institution, he or she is attending such school, college, university or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.
- (10) For each week in which he or she is unemployed because of his or her request, or that of his or her duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.
- (11) In the case of an individual who accepts an early retirement incentive package, unless he or she: (i) Establishes a well-grounded fear of imminent layoff supported by definitive objective facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a substantial loss by not accepting the early retirement incentive package.
- (12) For each week with respect to which he or she is receiving or has received benefits under Title II of the Social Security Act or similar payments under any act of Congress, or remuneration in the form of an annuity, pension or other retirement pay from a base period employer or chargeable employer or from any trust or fund contributed to by a base period employer or chargeable employer or any combination of the above, the weekly benefit amount payable to such individual for such week shall be reduced (but not

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

(13) For each week in which and for fifty-two weeks thereafter, beginning with the date of the decision, if the commissioner finds such individual who within twenty-four calendar months immediately preceding such decision, has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this article: *Provided*, That disqualification under this subdivision shall not preclude prosecution under section seven, article ten of this chapter.

§21A-6-10. Benefit rate -- Total unemployment; annual computation and publication of rates.

(a) Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in the benefit table in this section, on the line on which in Column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section twenty-seven, article one-a of this chapter. The employee's wage class shall be determined by his or her base period wages as shown in Column (B) in the benefit table. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of \$60 as a result of odd job or subsidiary work, or is paid a bonus in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.

(b) (1) The maximum benefit for each wage class shall be equal to twenty-six times the weekly benefit rate.

(2) The maximum benefit rate shall be sixty-six and two-thirds percent of the average weekly wage in West Virginia.

(c) On July 1 of each year, the commissioner shall determine the maximum weekly benefit rate upon the basis of the formula set forth above and shall establish wage classes as are required, increasing or decreasing the amount of the base period wages required for each wage class by \$150, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty-five percent of one fifty-second of the median dollar amount of wages in the base period for such wage class and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate:

Provided, That the commissioner shall not increase or decrease the maximum weekly benefit rate for the period beginning on the effective date of the amendment and reenactment of this section in the regular session of the legislature in 2009 until the threshold wage is reduced to \$9,000, as required by subsection (d), section twenty-eight, article one-a of this chapter. The maximum weekly benefit rate, when computed

by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next lowest multiple of \$1.

(d) After he or she has established such wage classes, the commissioner shall prepare and publish a table setting forth such information.

(e) Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before June 1 following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar. (f) The computation and determination of rates as aforesaid shall be completed annually before July 1 and any such new wage class, with its corresponding wages in base period, weekly benefit rate and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on July 1 shall apply only to a new claim established by a claimant on and after July 1, and does not apply to continued claims of a claimant based on his or her new claim established before said July 1.

BENEFIT TABLE

A		B	C			
WAGE		WAGES IN	WEEKLY	MAXIMUM		
CLASS		BASE PERIOD	BENEFIT RATE	BENEFIT RATE		
		Under \$ 2,200.00	Ineligible			
1	\$	2,200.00	-	2,359.99	24.00	624.00
2		2,350.00	-	2,499.99	25.00	650.00
3		2,500.00	-	2,649.99	27.00	702.00
4		2,650.00	-	2,799.99	28.00	728.00
5		2,800.00	-	2,949.99	30.00	780.00
6		2,950.00	-	3,099.99	31.00	806.00
7		3,100.00	-	3,249.99	33.00	858.00
8		3,250.00	-	3,399.99	35.00	910.00
9		3,400.00	-	3,549.99	36.00	936.00
10		3,550.00	-	3,699.99	38.00	988.00

11		3,700.00	-	3,849.99	39.00	1,014.00
12		3,850.00	-	3,999.99	41.00	1,066.00
13		4,000.00	-	4,149.99	43.00	1,118.00
14		4,150.00	-	4,299.99	44.00	1,144.00
15		4,300.00	-	4,449.99	46.00	1,196.00
16		4,450.00	-	4,599.99	47.00	1,222.00
17		4,600.00	-	4,749.99	49.00	1,274.00
18		4,750.00	-	4,899.99	51.00	1,326.00
19		4,900.00	-	5,049.99	52.00	1,352.00
20		5,050.00	-	5,199.99	54.00	1,404.00

7,462.00 16827,250.00 -27,399.99289.00 7,514.00 16927,400.00 -27,549.99290.00 7,540.00 17027,550.00
 -27,699.99292.00 7,592.00 17127,700.00 -27,849.99293.00 7,618.00 17227,850.00 -27,999.99295.00
 7,670.00 17328,000.00 -28,149.99296.00 7,696.00 17428,150.00 -28,299.99298.00 7,748.00 17528,300.00
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 7,878.00 17828,750.00 -28,899.99304.00 7,904.00 17928,900.00 -29,049.99306.00 7,956.00 18029,050.00
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 33,699.99355.00 9,230.00 21133,700.00 -33,849.99357.00 9,282.00 21233,850.00 -33,999.99358.00
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 -34,449.99363.00 9,438.00 21634,450.00 -34,599.99365.00 9,490.00 21734,600.00 -34,749.99366.00
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 -35,949.99379.00 9,854.00 22635,950.00 -
 36,999.99381.00 9,906.00 22736,100.00 -36,249.99382.00 9,932.00 22836,250.00 -36,399.99384.00

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21		5,200.00	-	5,349.99	55.00	1,430.00
22		5,350.00	-	5,499.99	57.00	1,482.00
23		5,500.00	-	5,649.99	58.00	1,508.00
24		5,650.00	-	5,799.99	60.00	1,560.00
25		5,800.00	-	5,949.99	62.00	1,612.00
26		5,950.00	-	6,099.99	63.00	1,638.00
27		6,100.00	-	6,249.99	65.00	1,690.00
28		6,250.00	-	6,399.99	66.00	1,716.00
29		6,400.00	-	6,549.99	68.00	1,768.00
30		6,550.00	-	6,699.99	70.00	1,820.00
31		6,700.00	-	6,849.99	71.00	1,846.00
32		6,850.00	-	6,999.99	73.00	1,898.00
33		7,000.00	-	7,149.99	74.00	1,924.00
34		7,150.00	-	7,299.99	76.00	1,976.00
35		7,300.00	-	7,449.99	78.00	2,028.00
36		7,450.00	-	7,599.99	79.00	2,054.00
37		7,600.00	-	7,749.99	81.00	2,106.00

38		7,750.00	-	7,899.99	82.00	2,132.00
39		7,900.00	-	8,049.99	84.00	2,184.00
40		8,050.00	-	8,199.99	85.00	2,210.00
41		8,200.00	-	8,349.99	87.00	2,262.00
42		8,350.00	-	8,499.99	89.00	2,314.00
43		8,500.00	-	8,649.99	90.00	2,340.00
44		8,650.00	-	8,799.99	92.00	2,392.00
45		8,800.00	-	8,949.99	93.00	2,418.00
46		8,950.00	-	9,099.99	95.00	2,470.00
47		9,100.00	-	9,249.99	97.00	2,522.00
48		9,250.00	-	9,399.99	98.00	2,548.00
49		9,400.00	-	9,549.99	100.00	2,600.00
50		9,550.00	-	9,699.99	101.00	2,626.00
51		9,700.00	-	9,849.99	103.00	2,678.00
52		9,850.00	-	9,999.99	104.00	2,704.00
53		10,000.00	-	10,149.99	106.00	2,756.00
54		10,150.00	-	10,299.99	108.00	2,808.00
55		10,300.00	-	10,449.99	109.00	2,834.00
56		10,450.00	-	10,599.99	111.00	2,886.00
57		10,600.00	-	10,749.99	112.00	2,912.00
58		10,750.00	-	10,899.99	114.00	2,964.00
59		10,900.00	-	11,049.99	116.00	3,016.00
60		11,050.00	-	11,199.99	117.00	3,042.00
61		11,200.00	-	11,349.99	119.00	3,094.00

62		11,350.00	-	11,499.99	120.00	3,120.00
63		11,500.00	-	11,649.99	122.00	3,172.00
64		11,650.00	-	11,799.99	124.00	3,224.00
65		11,800.00	-	11,949.99	125.00	3,250.00
66		11,950.00	-	12,099.99	127.00	3,302.00
67		12,100.00	-	12,249.99	128.00	3,328.00
68		12,250.00	-	12,399.99	130.00	3,380.00
69		12,400.00	-	12,549.99	131.00	3,406.00
70		12,550.00	-	12,699.99	133.00	3,458.00
71		12,700.00	-	12,849.99	135.00	3,510.00
72		12,850.00	-	12,999.99	136.00	3,536.00
73		13,000.00	-	13,149.99	138.00	3,588.00
74		13,150.00	-	13,299.99	139.00	3,614.00
75		13,300.00	-	13,449.99	141.00	3,666.00
76		13,450.00	-	13,599.99	143.00	3,718.00
77		13,600.00	-	13,749.99	144.00	3,744.00
78		13,750.00	-	13,899.99	146.00	3,796.00
79		13,900.00	-	14,049.99	147.00	3,822.00
80		14,050.00	-	14,199.99	149.00	3,874.00
81		14,200.00	-	14,349.99	150.00	3,900.00
82		14,350.00	-	14,499.99	152.00	3,952.00
83		14,500.00	-	14,649.99	154.00	4,004.00
84		14,650.00	-	14,799.99	155.00	4,030.00
85		14,800.00	-	14,949.99	157.00	4,082.00

86		14,950.00	-	15,099.99	158.00	4,108.00
87		15,100.00	-	15,249.99	160.00	4,160.00
88		15,250.00	-	15,399.99	162.00	4,212.00
89		15,400.00	-	15,549.99	163.00	4,238.00
90		15,550.00	-	15,699.99	165.00	4,290.00
91		15,700.00	-	15,849.99	166.00	4,316.00
92		15,850.00	-	15,999.99	168.00	4,368.00
93		16,000.00	-	16,149.99	170.00	4,420.00
94		16,150.00	-	16,299.99	171.00	4,446.00
95		16,300.00	-	16,449.99	173.00	4,498.00
96		16,450.00	-	16,599.99	174.00	4,524.00
97		16,600.00	-	16,749.99	176.00	4,576.00
98		16,750.00	-	16,899.99	177.00	4,602.00
99		16,900.00	-	17,049.99	179.00	4,654.00
100		17,050.00	-	17,199.99	181.00	4,706.00
101		17,200.00	-	17,349.99	182.00	4,732.00
102		17,350.00	-	17,499.99	184.00	4,784.00
103		17,500.00	-	17,649.99	185.00	4,810.00
104		17,650.00	-	17,799.99	187.00	4,862.00
105		17,800.00	-	17,949.99	189.00	4,914.00
106		17,950.00	-	18,099.99	190.00	4,940.00
107		18,100.00	-	18,249.99	192.00	4,992.00
108		18,250.00	-	18,399.99	193.00	5,018.00
109		18,400.00	-	18,549.99	195.00	5,070.00

110		18,550.00	-	18,699.99	196.00	5,096.00
111		18,700.00	-	18,849.99	198.00	5,148.00
112		18,850.00	-	18,999.99	200.00	5,200.00
113		19,000.00	-	19,149.99	201.00	5,226.00
114		19,150.00	-	19,299.99	203.00	5,278.00
115		19,300.00	-	19,449.99	204.00	5,304.00
116		19,450.00	-	19,599.99	206.00	5,356.00
117		19,600.00	-	19,749.99	208.00	5,408.00
118		19,750.00	-	19,899.99	209.00	5,434.00
119		19,900.00	-	20,049.99	211.00	5,486.00
120		20,050.00	-	20,199.99	212.00	5,512.00
121		20,200.00	-	20,349.99	214.00	5,564.00
122		20,350.00	-	20,499.99	216.00	5,616.00
123		20,500.00	-	20,649.99	217.00	5,642.00
124		20,650.00	-	20,799.99	219.00	5,694.00
125		20,800.00	-	20,949.99	220.00	5,720.00
126		20,950.00	-	21,099.99	222.00	5,772.00
127		21,100.00	-	21,249.99	223.00	5,798.00
128		21,250.00	-	21,399.99	225.00	5,850.00
129		21,400.00	-	21,549.99	227.00	5,902.00
130		21,550.00	-	21,699.99	228.00	5,928.00
131		21,700.00	-	21,849.99	230.00	5,980.00
132		21,850.00	-	21,999.99	231.00	6,006.00
133		22,000.00	-	22,149.99	233.00	6,058.00

134		22,150.00	-	22,299.99	235.00	6,110.00
135		22,300.00	-	22,449.99	236.00	6,136.00
136		22,450.00	-	22,599.99	238.00	6,188.00
137		22,600.00	-	22,749.99	239.00	6,214.00
138		22,750.00	-	22,899.99	241.00	6,266.00
139		22,900.00	-	23,049.99	243.00	6,318.00
140		23,050.00	-	23,199.99	244.00	6,344.00
141		23,200.00	-	23,349.99	246.00	6,396.00
142		23,350.00	-	23,499.99	247.00	6,422.00
143		23,500.00	-	23,649.99	249.00	6,474.00
144		23,650.00	-	23,799.99	250.00	6,500.00
145		23,800.00	-	23,949.99	252.00	6,552.00
146		23,950.00	-	24,099.99	254.00	6,604.00
147		24,100.00	-	24,249.99	255.00	6,630.00
148		24,250.00	-	24,399.99	257.00	6,682.00
149		24,400.00	-	24,549.99	258.00	6,708.00
150		24,550.00	-	24,699.99	260.00	6,760.00
151		24,700.00	-	24,849.99	262.00	6,812.00
152		24,850.00	-	24,999.99	263.00	6,838.00
153		25,000.00	-	25,149.99	265.00	6,890.00
154		25,150.00	-	25,299.99	266.00	6,916.00
155		25,300.00	-	25,449.99	268.00	6,968.00
156		25,450.00	-	25,599.99	269.00	6,994.00
157		25,600.00	-	25,749.99	271.00	7,046.00

158		25,750.00	-	25,899.99	273.00	7,098.00
159		25,900.00	-	26,049.99	274.00	7,124.00
160		26,050.00	-	26,199.99	276.00	7,176.00
161		26,200.00	-	26,349.99	277.00	7,202.00
162		26,350.00	-	26,499.99	279.00	7,254.00
163		26,500.00	-	26,649.99	281.00	7,306.00
164		26,650.00	-	26,799.99	282.00	7,332.00
165		26,800.00	-	26,949.99	284.00	7,384.00
166		26,950.00	-	27,099.99	285.00	7,410.00
167		27,100.00	-	27,249.99	287.00	

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.

- (a) (1) On or before July 1, 2005, the executive director may take such actions as are necessary to establish an employers' mutual insurance company as a domestic, private, nonstock, corporation to:
- (A) Insure employers against liability for injuries and occupational diseases for which their employees may be entitled to receive compensation pursuant to this chapter and federal Longshore and Harbor Workers' Compensation Act, 33 U. S. C. §901, *et seq.*;
 - (B) Provide employer's liability insurance incidental to and provided in connection with the insurance specified in paragraph (A) of this subdivision, including coal workers' pneumoconiosis coverage and employer excess liability coverage as provided in this chapter; and
 - (C) Transact other kinds of property and casualty insurance for which the company is otherwise qualified under the provisions of this code.
- (2) The company may not sell, assign or transfer substantial assets or ownership of the company.
- (b) If the executive director establishes a domestic mutual insurance company pursuant to subsection (a) of this section:
- (1) As soon as practical, the company established pursuant to the provisions of this article shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws with the Insurance Commissioner and apply for a license with the Insurance Commissioner to transact insurance in this state. Notwithstanding any other provision of this code, the Insurance Commissioner shall act on the documents

within fifteen days of the filing by the company.

(2) In recognition of the workers' compensation insurance liability insurance crisis in this state at the time of enactment of this article and the critical need to expedite the initial operation of the company, the Legislature authorizes the Insurance Commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company, notwithstanding the provisions of section five-b, article three, chapter thirty-three of this code. The company shall furnish the Insurance Commissioner with all information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The Insurance Commissioner shall monitor the economic viability of the company during its initial operation on not less than a monthly basis, until the commissioner, in his or her discretion, determines that monthly reporting is not necessary. In all other respects the company shall comply with the applicable provisions of chapter thirty-three of this code.

(3) Subject to the provisions of subdivision (4) of this subsection, the Insurance Commissioner may waive other requirements imposed on mutual insurance companies by the provisions of chapter thirty-three of this code the Insurance Commissioner determines are necessary to enable the company to begin insuring employers in this state at the earliest possible date.

(4) Within forty months of the date of the issuance of its license to transact insurance, the company shall comply with the capital and surplus requirements set forth in subsection (a), section five-b, article three, chapter thirty-three of this code in effect on the effective date of this enactment, unless the deadline is extended by the Insurance Commissioner.

(c) For the duration of its existence, the company is not a department, unit, agency or instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the company, whenever incurred, are the debts, claims, obligations and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer or employee of the state.

(d) The moneys of the company are not part of the General Revenue Fund of the state. The debts, claims, obligations and liabilities of the company are not a debt of the state or a pledge of the credit of the state.

(e) The company is not subject to provisions of article nine-a, chapter six of this code; the provisions of article two, chapter six-c of this code; the provisions of chapter twenty-nine-b of this code; the provisions of article three, chapter five-a of this code; the provisions of article six, chapter twenty-nine of this code; or the provisions of chapter twelve of this code.

(f) If the commission has been terminated, effective upon the termination, private carriers, including the company, are not subject to payment of premium taxes, surcharges and credits contained in article three, chapter thirty-three of this code on premiums received for coverage under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the following:

(1) (A) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be collected by each private carrier from its policyholders. The surcharge percentage shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible payments by all employers into the portion of the Insurance Commissioner's budget amount attributable to regulation of the private carrier market. This resulting percentage shall be applied to each policyholder's premium payment and deductible payments as a surcharge and remitted to the Insurance Commissioner. Said surcharge shall be remitted within ninety days of receipt of premium payments;

(B) With respect to fiscal years beginning on and after July 1, 2008, in lieu of the surcharge set forth in the preceding paragraph, each private carrier shall collect a surcharge in the amount of five and five-tenths percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013 and every five years thereafter, the commissioner shall review the percentage surcharge and determine a new percentage as he or she deems

necessary.

(C) The amounts required to be collected under paragraph (B) of this subdivision shall be remitted to the Insurance Commissioner on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year.

(2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be remitted on a quarterly basis by self-insured employers and said percentage shall be calculated by dividing previous year's self-insured payroll in the state into the portion of the Insurance Commissioner's budget amount attributable to regulation of the self-insured employer market. This resulting percentage shall be applied to each self-insured employer's payroll and the resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The Industrial Council may promulgate a rule for implementation of this section. The company, all other private carriers and all self-insured employers shall furnish the Insurance Commissioner with all required information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The surcharge shall be calculated so as to only defray the costs associated with the administration of this chapter and the funds raised shall not be used for any other purpose except as set forth in subdivision (4) of this subsection;

(3) (A) Each private carrier shall collect a premiums surcharge from its policyholders as annually determined, by May 1 of each year, by the Insurance Commissioner to produce forty-five million dollars annually, of each policyholder's periodic premium amount for workers' compensation insurance: *Provided*, That the surcharge rate on policies issued or renewed on or after July 1, 2008, shall be nine percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied.

(B) By May 1 each year, the self-insured employer community shall be assessed a cumulative total of nine million dollars. The methodology for the assessment shall be fair and equitable and determined by exempt legislative rule issued by the Industrial Council. The amount collected pursuant to this subdivision shall be remitted to the Insurance Commissioner for deposit in the Workers' Compensation Debt Reduction Fund created in section five, article two-d of this chapter.

(4) On or before July 1, 2009, the Insurance Commissioner shall make a one-time lump sum transfer of \$40 million generated from the surcharges assessed pursuant to paragraph (B), subdivision (1) of this subsection and subdivision (2) of this subsection to the Bureau of Employment Programs' Commissioner for deposit with the Secretary of the Treasury of the United States as a credit of this state in the Unemployment Trust Fund Account maintained pursuant to section four, article eight, chapter twenty-one-a of this code.

(g) The new premiums surcharge imposed by paragraphs (A) and (B), subdivision (3), subsection (f) of this section sunset and are not collectible with respect to workers' compensation insurance premiums paid when the policy is renewed on or after the first day of the month following the month in which the Governor certifies to the Legislature that the revenue bonds issued pursuant to article two-d of this chapter have been retired and that the unfunded liability of the Old Fund has been paid or has been provided for in its entirety, whichever occurs last.