WEST VIRGINIA CODE CHAPTER 21a

WV Legislature

§21A-1-1. Purpose of chapter.

The purpose of this chapter is to provide reasonable and effective means for the promotion of social and economic security by reducing as far as practicable the hazards of unemployment. In the furtherance of this objective, the Legislature establishes a compulsory system of unemployment reserves in order to:

(1) Provide a measure of security to the families of unemployed persons.

(2) Guard against the menace to health, morals and welfare arising from unemployment.

(3) Maintain as great purchasing power as possible, with a view to sustaining the economic system during periods of economic depression.

(4) Stimulate stability of employment as a requisite of social and economic security.

(5) Allay and prevent the debilitating consequences of poor relief assistance.

To give effect to these purposes the Legislature establishes the following system in the belief that the purposes are reasonably within the sphere of governmental control and that the agencies created for their accomplishment are the fairest and most effective devices now available.

It is the specific intent of the Legislature that the provisions of this article shall be construed as to comply with the Unemployment Compensation Amendments of 1976 (Public Law 94-566) and for that reason the provisions of this chapter are to be effective January 1, 1978.

WV Legislature

§21A-1-2. Short title.

This chapter may be cited as the "Unemployment Compensation Law."

WV Legislature

§21A-1-3.

Repealed.

Acts, 1996 Reg. Sess., Ch. 252.

WV Legislature

§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.

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§21A-1-5. Federal-state cooperation.

The bureau shall cooperate with the United States department of labor, similar agencies of the several states, and such other agencies as are concerned with the problem of employment security and public assistance and relief.

WV Legislature

§21A-1-6. Employment stabilization.

The bureau, through the commissioner and the advisory council, shall take all steps to:

(1) Reduce and prevent unemployment.

(2) Encourage and assist in the adoption of practical methods of vocational training and guidance.

(3) Encourage the establishment by the state and local subdivisions of public works reserves to finance construction programs in times of unemployment.

(4) Promote reemployment and employment readjustment between industries.

(5) Conduct researches and investigations toward these ends and publish the results.

WV Legislature

§21A-1-7. State public employment agency to become state employment service division.

The "state public employment agency" now maintained in the department of labor shall be transferred on January 1, 1937, and shall be made the state employment service division of the Bureau of Employment Programs.

WV Legislature

§21A-1-8. Cooperation within state.

Officers of the state and of its political subdivisions shall furnish to the commissioner upon his request such information relative to the purposes of this chapter as they may have in their possession.

WV Legislature

§21A-1-9.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§21A-1A-1. Construction of terms.

The terms and phrases defined by this article have the stated meanings when used in this chapter unless the context clearly requires otherwise.

WV Legislature

§21A-1A-2. Administration fund.

"Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

WV Legislature

§21A-1A-3. Annual payroll.

"Annual payroll" means the total amount of wages for employment paid by an employer during a twelve-month period ending with June 30 of any calendar year.

WV Legislature

§21A-1A-4. Average annual payroll.

"Average annual payroll" means the average of the last three annual payrolls of an employer.

WV Legislature

§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.

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§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.

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§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.

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§21A-1A-8. Benefit year.

"Benefit year" with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his or her last preceding benefit year: Provided, That if a claim is effective on the first day of a quarter, the benefit year will be fifty-three weeks in order to prevent an overlapping of the base period wages: Provided, however, That for any benefit year beginning on or after January 1, 1995, if a claim is effective on the second day of a quarter and the benefit year includes February 29, the benefit year will be fifty-three weeks in order to prevent an overlapping of the base period wages. An initial claim for benefits filed in accordance with the provisions of this chapter is a valid claim within the purposes of this definition if the individual has been paid wages in his or her base period sufficient to make him or her eligible for benefits under the provisions of this chapter.

WV Legislature

§21A-1A-9. Benefits.

"Benefits" means the money payable to an individual with respect to his or her unemployment.

WV Legislature

§21A-1A-10. Board.

"Board" means board of review.

WV Legislature

§21A-1A-11. Calendar quarter.

"Calendar quarter" means the period of three consecutive calendar months ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, December 31, or the equivalent thereof as the commissioner may by rule prescribe.

WV Legislature

§21A-1A-12. Commissioner.

"Commissioner" means the Bureau of Employment Programs' commissioner.

WV Legislature

§21A-1A-13. Computation date.

"Computation date" means June 30 the year immediately preceding January 1, on which an employer's contribution rate becomes effective.

WV Legislature

§21A-1A-14. Employing unit.

"Employing unit" means an individual, or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in paragraph (B), subdivision (9) of the definition of "employment" in this article, institution of higher education, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has in its employ one or more individuals performing service within this state.

WV Legislature

§21A-1A-15. Employer.

"Employer" means:

(1) Any employing unit which is or becomes a liable employer under any federal unemployment tax act;

(2) Any employing unit which has acquired or acquires the organization, trade or business, or substantially all the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to this chapter;

(3) For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

(4) Any employing unit which: (A) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of $1,500 or more; or (B) for some portion of a day in each of twenty different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year had in employment at least one individual (irrespective of whether the same individual was in employment in each day) except as provided in subdivisions (7) and (8) of this section;

(5) Any employing unit for which service in employment, as defined in subdivision (9), section sixteen of this article, the definition of "employment" in this article is performed;

(6) Any employing unit for which service in employment, as defined in subdivision (10), section sixteen of this article, the definition of "employment" in this article is performed;

(7) Any employing unit for which agricultural labor, as defined in subdivision (12), section sixteen of this article, the definition of "employment" is performed; or

(8) Any employing unit for which domestic service in employment, as defined in subdivision (13), section sixteen of this article, the definition of "employment" is performed.

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§21A-1A-16. Employment.

“Employment”, subject to the other provisions of this article, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed by an employee, as defined in Section 3306(i) of the federal Unemployment Tax Act, including service in interstate commerce;

(3) Any service performed, including service in interstate commerce, by any officer of a corporation;

(4) An individual’s entire service, performed within or both within and without this state if: (A) The service is localized in this state; or (B) the service is not localized in any state but some of the service is performed in this state and: (i) The base of operations, or, if there is no base of operations, then the place from which the service is directed or controlled, is in this state; or (ii) the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual’s residence is in this state;

(5) Service not covered under subdivision (4) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, is employment subject to this chapter if the individual performing the services is a resident of this state and the commissioner approves the election of the employing unit for whom the services are performed that the entire service of the individual is employment subject to this chapter;

(6) Service is localized within a state, if: (A) The service is performed entirely within the state; or (B) the service is performed both within and without the state, but the service performed without the state is incidental to the individual’s service within this state, as, for example, is temporary or transitory in nature or consists of isolated transactions;

(7) Services performed by an individual for wages are employment subject to this chapter unless and until it is shown to the satisfaction of the commissioner that the individual is classified as an independent contractor pursuant to §21-5I-4 of this code;

(8) All service performed by an officer or member of the crew of an American vessel (as defined in Section 305 of an act of Congress entitled Social Security Act Amendment of 1946, approved August 10, 1946), on or in connection with the vessel, provided that the operating office, from which the operations of the vessel operating on navigable waters within and without the United States is ordinarily and regularly supervised, managed, directed, and controlled, is within this state;

(9)(A) Service performed by an individual in the employ of this state or any of its

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instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state: *Provided*, That the service is excluded from "employment" as defined in the federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that act and is not excluded from "employment" under §21A-1A-17(9) of this code;

(B) Service performed in the employ of this state or any of its instrumentalities or political subdivisions thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any foregoing and one or more other states or political subdivisions: *Provided*, That the service is excluded from "employment" as defined in the federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under §21A-1A-17(13) of this code; and

(C) Service performed in the employ of a nonprofit educational institution which is not an institution of higher education;

(10) Service performed by an individual in the employ of a religious, charitable, educational, or other organization but only if the following conditions are met:

(A) The service is excluded from "employment" as defined in the federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(B) The organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada and in the case of the Virgin Islands after December 31, 1971, and before January 1 the year following the year in which the Secretary of Labor approves for the first time an unemployment insurance law submitted to him or her by the Virgin Islands for approval), in the employ of an American employer (other than service which is considered "employment" under the provisions of subdivision (4), (5), or (6) of this section or the parallel provisions of another state's law) if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but: (i) The employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) None of the criteria of paragraphs (A) and (B) of this subdivision is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any

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state, the individual has filed a claim for benefits, based on the service, under the law of this state.

(D) An "American employer", for purposes of this subdivision, means a person who is: (i) An individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed by an individual in agricultural labor as defined in §21A-1A-17(3) of this code when:

(A) The service is performed for a person who: (i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor including labor performed by an alien referred to in paragraph (B) of this subdivision; or (ii) for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in paragraph (B) of this subdivision, 10 or more individuals, regardless of whether they were employed at the same moment of time;

(B) The service is not performed in agricultural labor if performed by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(C) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader: (i) If the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and (ii) if the other person is not otherwise an employer of the individual;

(D) For the purposes of this subdivision, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under paragraph (C) of this subdivision: (i) The other person and not the crew leader shall be treated as the employer of the individual; and (ii) the other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader (either on his or her own behalf or on behalf of the other person) for the service in agricultural labor performed for the other person; and

(E) For the purposes of this subdivision, the term "crew leader" means an individual who: (i) Furnishes individuals to perform service in agricultural labor for any other person; (ii) pays

(either on his or her own behalf or on behalf of the other person) the individuals so furnished by him or her for the service in agricultural labor performed by them; and (iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;

(13) (A) The term "employment" includes domestic service in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of $1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in domestic service; and

(B) Notwithstanding the foregoing definition of "employment", if the services performed during one half or more of any pay period by an employee for the person employing him or her constitute employment, all the services of the employee for the period are employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him or her do not constitute employment, then none of the services of the employee for the period are employment.

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§21A-1A-17. Exclusions from employment.

The term “employment” does not include:

(1) Service performed in the employ of the United States or any instrumentality of the United States exempt under the Constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law are applicable to the instrumentalities and to service performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services: *Provided*, That if this state is not certified for any year by the Secretary of Labor under 26 U.S.C. § 3404, subsection (c), the payments required of the instrumentalities with respect to the year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in §21A-5-19 of this code with respect to payments erroneously collected;

(2) Service performed with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an Act of Congress. The commissioner may enter into agreements with the proper agency established under an Act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an Act of Congress or who have, after acquiring potential rights to unemployment compensation under an Act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective 10 days after the publications which shall comply with the general rules of the department;

(3) Service performed by an individual in agricultural labor, except as provided in §21A-1A-16(12) of this code, the definition of “employment”. For purposes of this subdivision, the term “agricultural labor” includes all services performed:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in § 15(g) of the Agricultural Marketing Act, as amended, as codified in 12 U.S.C. § 1141j, subsection (g), or in connection with the ginning of cotton, or in

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connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one half of the commodity with respect to which the service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which the operators are members) in the performance of service described in subparagraph (i) of this paragraph, but only if the operators produced more than one half of the commodity with respect to which the service is performed; but the provisions of subparagraphs (i) and (ii) of this paragraph are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(E) On a farm operated for profit if the service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges, and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(4) Domestic service in a private home except as provided in §21A-1A-16(13) of this code, the definition of "employment";

(5) Service performed by an individual in the employ of his or her son, daughter, or spouse;

(6) Service performed by a child under the age of 18 years in the employ of his or her father or mother;

(7) Service as an officer or member of a crew of an American vessel, performed on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed, and controlled, is without this state;

(8) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(9) Service performed: (A) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or (B) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the

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exercise of duties required by the order; or (C) by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of either: (i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or (ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market: *Provided*, That this exemption does not apply to services performed by individuals if they are not receiving rehabilitation or remunerative work on account of their impaired capacity; or (D) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training; or (E) by an inmate of a custodial or penal institution;

(10) Service performed in the employ of a school, college, or university, if the service is performed: (A) By a student who is enrolled and is regularly attending classes at the school, college, or university; or (B) by the spouse of a student, if the spouse is advised, at the time the spouse commences to perform the service, that: (i) The employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university; and (ii) the employment will not be covered by any program of unemployment insurance;

(11) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, except that this subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(12) Service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in this article;

(13) Service in the employ of a governmental entity referred to in §21A-1A-16(9) of this code, the definition of "employment", if the service is performed by an individual in the exercise of duties: (A) As an elected official; (B) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (C) as a member of the state National Guard or air National Guard, except as provided in §21A-1A-28 of this code; (D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; (E) in a position which, under or pursuant to the laws of this state, is designated as: (i) A major nontenured policymaking or advisory position; or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week; or (F) as any election official appointed to serve during any municipal, county, or state election, if the amount of remuneration received by the individual during the calendar year for services as an election official is less than $1,000;

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(14) Service performed by a bona fide partner of a partnership for the partnership; and

(15) Service performed by a person for his or her own sole proprietorship.

Notwithstanding the foregoing exclusions from the definition of “employment”, services, except agricultural labor and domestic service in a private home, are in employment if with respect to the services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a State Unemployment Compensation Fund, or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act are required to be covered under this chapter.

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§21A-1A-18. Employment office.

"Employment office" means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.

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§21A-1A-19. Fund.

"Fund" means the unemployment compensation fund established by this chapter.

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§21A-1A-20. Hospital.

"Hospital" means an institution which has been licensed, certified or approved by the state department of health as a hospital.

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§21A-1A-21. Institution of higher education.

"Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of postgraduate or postdoctoral studies, or provides a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition all colleges and universities in this state are institutions of higher education.

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§21A-1A-22. Payments.

"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

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§21A-1A-23. Reorganized employer.

"Reorganized employer" means: (1) An employer that alters its legal status, including changing from a sole proprietorship or a partnership to a corporation; or (2) an employer that otherwise changes its trade name or business identity while remaining under substantially the same ownership.

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§21A-1A-24. Separated from employment.

"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.

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§21A-1A-25. State.

"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

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§21A-1A-26. Successor employer.

"Successor employer" means an employer that acquires, by sale or otherwise, the entire organization, trade or business, or substantially all the assets thereof of another employer.

WV Legislature

§21A-1A-27. Total and partial unemployment.

"Total and partial unemployment" means:

(1) An individual is totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he or she performs no services and with respect to which no wages are payable to him or her.

(2) An individual who has not been separated from employment is partially unemployed in any week in which due to lack of full-time work wages payable to him or her are less than his or her weekly benefit amount plus $60: Provided, That said individual must have earnings of at least $61.

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§21A-1A-28. Wages.

(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 §15-1D-1 and §15-1D-2 of this code.

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

(1) That part of the remuneration which, after remuneration equal to $9,500 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 §21A-6-1, §21A-6-10, §21A-6-11, and §21A-6-13 of this code, 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 $9,500. 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 $9,500 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

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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 65 years 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 90 days prior to such vacation;

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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) The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

WV Legislature

§21A-1A-29. Week.

"Week" means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the rules prescribed by the commissioner.

WV Legislature

§21A-1A-30. Weekly benefit rate.

"Weekly benefit rate" means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.

WV Legislature

§21A-1A-31. Year.

"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

WV Legislature

§21A-2-1. Appointment; term of office.

The bureau shall be under the supervision of a commissioner of the Bureau of Employment Programs. The commissioner shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold his office subject to the will and pleasure of the Governor.

WV Legislature

§21A-2-1a.

Repealed.

Acts, 1991 Reg. Sess., Ch. 16.

WV Legislature

§21A-2-2. Qualifications.

The commissioner shall be selected with special reference to his training, experience, and capacity.

He shall not be a candidate for or hold any other public office or trust, nor shall he be a member of a political committee. If he becomes a candidate for a public office or becomes a member of a political committee, his office as commissioner shall be immediately vacated. He shall devote his entire time to the duties of his office.

WV Legislature

§21A-2-3. Oath.

The commissioner, before entering upon the duties of his office, shall take and subscribe to the oath prescribed by article IV, section 5 of the state Constitution. The oath shall be filed with the Secretary of State.

WV Legislature

§21A-2-4. Offices.

The office of the commissioner shall be located at the capitol. The commissioner shall keep his offices open at all reasonable times for the transaction of public business.

WV Legislature

§21A-2-5. Traveling expenses.

The commissioner of the Bureau of Employment Programs shall receive the necessary traveling expenses incident to the performance of his or her duties. Requisition for traveling expenses shall be accompanied by a sworn itemized statement which shall be filed with the Auditor and preserved as a public record.

WV Legislature

§21A-2-6. Powers and duties generally.

The commissioner is the executive and administrative head of Workforce West Virginia and has the power and duty to:

(1) Exercise general supervision for the governance of Workforce West Virginia and propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the requirements of this chapter;

(2) Prescribe uniform rules pertaining to investigations and departmental hearings, and propose rules for promulgation;

(3) Supervise fiscal affairs and responsibilities of Workforce West Virginia;

(4) Prescribe the qualifications of, appoint, remove, and fix the compensation of, the officers and employees of Workforce West Virginia, subject to the provisions of §21A-4-10 of this code, relating to the board of review;

(5) Organize and administer Workforce West Virginia so as to comply with the requirements of this chapter and to satisfy any conditions established in applicable federal law or regulation;

(6) Make reports in the form and containing information required by the United States Department of Labor and comply with any requirements that the United States Department of Labor finds necessary to assure the correctness and verification of the reports;

(7) Make available to any agency of the United States charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation, and employment status of each recipient of unemployment compensation and a statement of the recipient's rights to further compensation under this chapter;

(8) Keep an accurate and complete record of all Workforce West Virginia proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of Workforce West Virginia;

(9) Sign and execute in the name of the state, by Workforce West Virginia, any contract or agreement with the federal government, its agencies, other states, their subdivisions, or private persons;

(10) Prescribe a salary scale to govern compensation of appointees and employees of Workforce West Virginia;

(11) Exempt up to 200 positions of the offices of WorkForce West Virginia from the classified service of the state, the employees of which positions shall serve at the will and pleasure of the commissioner: Provided, That such exempt positions shall be in addition to those

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positions in classified and classified-exempt service under the classification plan adopted by the Division of Personnel. The Commissioner of Workforce West Virginia shall report all exemptions made under this section to the Director of the Division of Personnel as the commissioner determines necessary;

(12) Make the original determination of right in claims for benefits;

(13) Make recommendations and an annual report to the Governor concerning the condition, operation, and functioning of Workforce West Virginia;

(14) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(15) Exercise any other power necessary to standardize administration, expedite Workforce West Virginia business, assure the establishment of fair rules, and promote the efficiency of the service;

(16) Keep an accurate and complete record and prepare a monthly report of the number of persons employed and unemployed in the state. The report shall be made available upon request to members of the public and press;

(17) Provide, at Workforce West Virginia expense, a program of continuing professional, technical, and specialized instruction for the personnel of Workforce West Virginia;

(18) (A) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code, under which agencies of this state shall revoke or not grant, issue, or renew any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit whose account is in default with the commissioner with regard to the administration of this chapter. The term "agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations. An employing unit is not in default if it has entered into a repayment agreement with the Unemployment Compensation Division of Workforce West Virginia and remains in compliance with its obligations under the repayment agreement;

(B) The rules shall provide that, before revoking, granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit, the designated agencies shall review a list or lists provided by Workforce West Virginia that are in default. If the employing unit’s name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default with Workforce West Virginia, may grant, issue, or renew the contract, license, permit, certificate, or other authority to conduct a trade, profession, or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the revocation or refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter;

WV Legislature

(C) The rules may be promulgated or implemented in phases so that specific agencies or specific types of contracts, licenses, permits, certificates, or other authority to conduct trades, professions, or businesses will be subject to the rules beginning on different dates. The presumptions of ownership or control contained in the Department of Environmental Protection's surface mining reclamation regulations promulgated under the provisions of §22-3-1 *et seq*. of this code are not applicable or controlling in determining the identity of employing units who are in default for the purposes of this subdivision. The rules shall also provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition Workforce West Virginia to be exempt from the provisions of the rules;

(19) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest, and penalties thereon and attorney's fees and costs collected under the provisions of this chapter. The amounts collected shall not be treated by the Auditor or Treasurer as part of the general revenue of the state; and

(20) Enter into interagency agreements to assist in exchanging information and fulfilling the provisions of this article.

WV Legislature

§21A-2-6a. Reciprocal agreements.

(1) The commissioner may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or the federal government, or both, whereby:

(a) Services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states (i) in which any part of such individual's service is performed or (ii) in which such individual has his residence or (iii) in which the employing unit maintains a place of business, provided there is in effect, as to such services, an election by an employing unit, and approved by the agency charged with the administration of such state's unemployment compensation law pursuant to which services performed by such individual for such employing unit are deemed to be performed entirely within such state;

(b) Potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commissioner finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(c) Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under this chapter, and wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter and shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this chapter upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the commissioner finds will be fair and reasonable as to all affected interests; and

(d) Contributions due under this chapter with respect to wages for insured work shall for the purposes of this chapter be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the commissioner finds will be fair and reasonable as to all affected interests.

(2) Reimbursements paid from the fund pursuant to paragraph (c) of subsection one of this section shall be deemed to be benefits for the purpose of this chapter. The commissioner is authorized to make to other states or federal agencies and to receive from such other states or federal agencies, reimbursements from or to the fund, in accordance with arrangements

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entered into pursuant to subsection one of this section.

(3) To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the Employment Security Law of this state or under a similar law of such government.

WV Legislature

§21A-2-6b. Commissioner to be furnished information by State Tax Commissioner; secrecy of information; violation a misdemeanor.

(a) Notwithstanding the provisions of any other statute in this code, specifically, but not exclusively, section five, article ten, chapter eleven of this code, the State Tax Commissioner shall deliver to the commissioner of the Bureau of Employment Programs the following information: The names, addresses and other identifying information of all business receiving a business franchise registration certificate.

(b) All information acquired by the Bureau of Employment Programs commissioner pursuant to subsection (a) of this section shall be used to implement and administer a single point of registration program as created in section seven, article twelve, chapter eleven of this code. The commissioner of the Bureau of Employment Programs, upon receiving the business franchise certificate information made available pursuant to subsection (a) of this section, shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms to register the business under the provisions of article five of this chapter.

(c) Any officer or employee of this state who uses the aforementioned information in any manner other than the one stated herein or authorized elsewhere in this code or who divulges or makes known in any manner any of the aforementioned information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned in the county jail for not more than one year, or both, together with cost of prosecution.

(d) Reasonable cost of compilation and production of any information made available pursuant to subsection (a) of this section shall be charged to the Bureau of Employment Programs.

(e) Information acquired by the Bureau of Employment Programs commissioner pursuant to subsection (a) of this section shall not be subject to disclosure under the provisions of chapter twenty-nine-b of this code.

WV Legislature

§21A-2-6c. Payment withholding and interception.

(a) All state, county, district and municipal officers and agents making contracts on behalf of the State of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of contracts until the receipt of a certificate from the commissioner to the effect that all payments, interest and penalties thereon accrued against the contractor under this chapter have been paid or that provisions satisfactory to the commissioner have been made for payment. Any official violating this subsection is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than $1,000 or confined in a county or regional jail for not more than one year, or both fined and confined.

(b) Any agency of the state, for the limited purpose of intercepting, pursuant to section sixteen, article five of this chapter and pursuant to section five-a, article two, chapter twenty-three of this code, any payment by or through the state to an employer who is in default in payment of contributions, premiums, deposits, interest or penalties under the provisions of this chapter or of chapter twenty-three of this code, shall assist the commissioner in collecting the payment that is due. For this purpose, disclosure of joint delinquency and default lists of employers with respect to unemployment compensation and workers' compensation as provided in section one-c, article one, chapter twenty-three of this code contributions, premiums, interest, deposits or penalties is authorized. The bureau and the workers' compensation commission may enter into an interagency agreement to effect the provisions of this section. The lists may be in the form of a computerized database to be accessed by the Auditor, the Department of Tax and Revenue, the Department of Administration, the Division of Highways or any other appropriate state agency or officer.

WV Legislature

§21A-2-7.

Repealed.

Acts, 1991 Reg. Sess., Ch. 16.

WV Legislature

§21A-2-8. Assistants and employees.

The commissioner shall appoint, upon a nonpartisan merit basis, the division and unit heads and such assistants and employees as may be necessary to the efficient operation of the bureau. He shall fix their compensation in accordance with the provisions of article six, chapter twenty-nine of this code.

WV Legislature

§21A-2-9.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§21A-2-10. Examinations and annual merit ratings.

The commissioner shall hold examinations to determine the technical and professional qualifications of applicants for positions. The examinations shall be a guide to the commissioner in making his appointments.

The commissioner shall annually rate the employees according to their merit and shall determine whether they are maintaining standards of eligibility.

WV Legislature

§21A-2-11. Dismissals, terminations, layoffs and suspensions.

The commissioner shall establish regulations governing dismissals, terminations, layoffs and suspensions. Severance of employees' relationship with the bureau shall be in accordance with these regulations. All severances shall be for good cause. Failure to maintain technical or professional qualifications shall be a good cause for severance.

WV Legislature

§21A-2-12. Delegation of commissioner's duties.

All powers and duties vested in the commissioner may be delegated by him to his appointees and employees; but the commissioner shall be responsible for their acts.

WV Legislature

§21A-2-13. Deputies.

For the original determination of claims under this chapter, the commissioner shall appoint a necessary number of deputies as his or her representatives.

WV Legislature

§21A-2-14. Head of division of employment service.

The commissioner shall appoint upon a nonpartisan merit basis the head of the division of the employment service and shall fix his salary and prescribe his duties.

WV Legislature

§21A-2-15. Employment offices.

The commissioner shall establish and maintain free public employment offices in such places as necessary for the proper administration of this chapter and for the purpose of performing the duties within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such system, and for other purposes," approved June 6, 1933, as amended.

WV Legislature

§21A-2-16. Federal-state cooperation.

The commissioner shall have all powers and duties necessary to secure to the state the benefits of congressional action for the promotion and maintenance of a system of public employment offices. To this end the provisions of the act referred to in the preceding section and such additional congressional action consistent with the above act are accepted by the state and the state pledges its observance and compliance therewith.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of compliance with the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such systems, and for other purposes," approved June 6, 1933, as amended: Provided, That the functions formerly performed by the advisory council under article three of this chapter, which advisory council was required under the provisions of section eleven of the Wagner-Peyser Act, shall be performed by the state job training coordinating council in accordance with section 122 (c) of the Job Training Partnership Act.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of compliance with the act of Congress entitled "An act to provide for a job training program, and for other purposes," enacted October 18, 1982, as amended.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering sections sixteen and seventeen of an act of Congress entitled "An act to extend and improve the unemployment compensation program," approved September 1, 1954.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act to amend Title XV of the Social Security Act to extend the unemployment insurance system to exservicemen, and for other purposes," approved August 28, 1958.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act relating to manpower requirements, resources, development, and utilization, and for other purposes," approved March 15, 1962.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act to establish an effective program to alleviate conditions of substantial and persistent unemployment and under employment in certain economically distressed areas," approved May 1, 1961.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering chapter three of Title III of an act of Congress entitled "An act to promote the general welfare, foreign policy, and security of

WV Legislature

the United States through international trade agreements and through adjustment assistance to domestic industry, agriculture, and labor, and for other purposes," approved October 11, 1962.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act to provide for the establishment of a temporary program of extended unemployment compensation, to provide for a temporary increase in the rate of the federal unemployment tax, and for other purposes," approved January 3, 1961.

The Bureau of Employment Programs, by its commissioner, is also designated the agent of this state for the purpose of complying with and administering other programs of the United States government such as the foregoing.

The commissioner of the Bureau of Employment Programs is designated as the officer of this state for the purpose of complying with and administering the tasks assigned to the Bureau of Employment Programs pursuant to section six, article two-b, chapter eighteen of this code relating to the area vocational educational program of this state.

The commissioner is also authorized to apply for an advance to the unemployment compensation fund in accordance with the conditions specified in Title XII of the "Social Security Act," as amended, in order to secure to this state and its citizens the advantages available under the provisions of that title.

In the administration of this chapter the commissioner shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the "Social Security Act" which relate to unemployment compensation, the "Federal Unemployment Tax Act," the "Wagner-Peyser Act," and the "Federal-State Extended Unemployment Compensation Act of 1970."

In the administration of the provisions in article six-a of this chapter, which are enacted to conform with the requirements of the "Federal-State Extended Unemployment Compensation Act of 1970," the commissioner shall take such action as may be necessary (i) to ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act, and (ii) to secure this state the full reimbursement of the federal share of extended and regular benefits paid under this chapter which are reimbursable under said federal act.

WV Legislature

§21A-2-16a. Work incentive program.

The Bureau of Employment Programs, by its commissioner, is hereby designated the sponsor or agent of the United States department of labor for the establishment and operation within the State of West Virginia of the work incentive program for recipients of aid under Part A of Title IV of the Social Security Act. Such work incentive program is provided for in Part C of said Title IV of said Social Security Act. Part C was enacted by the Ninetieth Congress in Social Security Amendments of 1967, Public Law 90-248, under Section 204 thereof.

The commissioner, on behalf of the bureau, may do any and all acts necessary to establish and operate such work incentive program within the State of West Virginia.

The commissioner is hereby empowered and authorized to enter into agreements with the secretary of labor, or his designee, for the purpose of establishing and operating said work incentive program, or any part thereof, within the State of West Virginia.

WV Legislature

§21A-2-17. Acceptance of aid.

All moneys received by this state under the said act of Congress, as amended, shall be paid into the employment service account, to be expended as provided by this chapter and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, the commissioner may enter into agreements with any political subdivision of the state or with any private nonprofit organization, and as part of such an agreement the commissioner may accept money, services, or quarters as a contribution to the employment service account.

WV Legislature

§21A-2-18. Legal counsel.

The Attorney General and his assistants and the prosecuting attorneys of the several counties shall render to the commissioner without additional compensation such legal services as in the discharge of his duties he shall require.

The commissioner may employ temporarily or as regular members of the department additional legal counsel. The remuneration of such counsel shall be paid from the administration fund.

WV Legislature

§21A-2-19. Rules and regulations.

The commissioner may issue rules and regulations in accordance with such regular procedure as the commissioner shall prescribe.

WV Legislature

§21A-2-20. Oaths and witnesses.

The commissioner and his specially authorized representatives shall have the power to administer oaths, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of papers necessary as evidence in connection with a dispute or the administration of this chapter.

WV Legislature

§21A-2-21. Subpoenas.

The commissioner or his authorized representative shall have the power to issue subpoena for the production of persons and papers in all proceedings within the purview of this chapter. In case a person refuses to obey such subpoena the commissioner or his representative may invoke the aid of any circuit court in order that the testimony or evidence be produced. Upon proper showing, such court shall issue a subpoena or order requiring such persons to appear before the commissioner or his representative and produce all evidence and give all testimony touching the matter in question.

A person failing to obey such order may be punished by such court as for contempt.

WV Legislature

§21A-2-22. Publications.

The commissioner shall print for public distribution:

(1) The text of this chapter;

(2) The regulations and general rules of the division; and

(3) Such other material as the commissioner deems relevant and suitable for the more effective administration of the chapter, including, for distribution to employers and organizations and associations representative of employer and employee interests, quarterly statements of the condition of the unemployment compensation trust fund and any other information relating to the administration thereof which the commissioner may deem to be pertinent and proper.

WV Legislature

§21A-2-23. Veteran's training program.

(1) The Bureau of Employment Programs, by its commissioner, is hereby authorized and empowered to establish a training program for qualified veteran medical personnel and former military medical corpsmen under the "medex" training program for the training of medical assistants or any similar program.

(2) The commissioner, on behalf of the bureau, may do any and all acts necessary to establish and operate such training program within the State of West Virginia.

(3) The commissioner is hereby empowered and authorized to receive funds to finance such program from agencies of the United States government, including the department of labor, the veterans administration and the department of health, education and welfare, and from other appropriate fund sources.

(4) In order to assist in the administration of this program, the commissioner shall appoint an advisory committee consisting of not more than nine members which members shall be qualified medical professionals and shall consist of representatives of state medical departments and the state medical association. This committee shall be advisory to the commissioner and shall determine general guidelines for the development and promotion of the program.

(5) The trainee under this program shall work under the supervision of a licensed physician for a period of one year and shall receive an appropriate training allowance.

WV Legislature

§21A-2A-1. Legislative declaration of finding and purpose.

The Legislature hereby finds and declares that, due to adverse economic conditions existing in the state, substantial unemployment of the residents of the state has resulted and continues, all to the detriment of its people, its business and industry and of the health, safety and welfare of the state as a whole.

The Legislature further finds and declares that the stimulation and encouragement of, and the providing of incentive and inducement for, employment by private business in the private sector is of greater long-term benefit to the state than is public, make-work employment; that it constitutes a wiser expenditure of public moneys, aids in the economic recovery of our private business and industry, the employment of our people, the generation of state revenues, and the advancement of the health, safety and welfare of the state as a whole; and thus constitutes a public purpose.

WV Legislature

§21A-2A-2. Definitions.

For the purposes of this article the following terms shall have the following meanings, unless the context in which they are used clearly indicates otherwise:

(1) "Commissioner" means the commissioner of the Bureau of Employment Programs.

(2) "Private business" means any nongovernmental business or industry in the private sector which maintains an active, bona fide place of business in this state, is duly qualified to do business in the state, and is in good standing under the laws of this state.

(3) "Eligible unemployed person" means any person who is a bona fide resident of this state who has been eligible for unemployment compensation benefits and has received all the benefits available to him or her, and who is not gainfully employed.

(4) "Head of household" means any person who: (A) Claims one or more persons, other than the filing taxpayer, as a dependent on his or her federal income tax return; (B) has living in the same household one or more dependents; and (C) receives no income from the household and does not have a spouse or dependent living in the same household who is employed in regular full-time employment: Provided, That participation in any public assistance program or receipt of public assistance benefits shall not disqualify any person from entitlement to head of household status.

WV Legislature

§21A-2A-3. Application for employment by eligible unemployed person; forms and notice.

Any person who is an eligible unemployed person as defined in section two of this article may apply for employment in the emergency employment supplemental matching program by making application with the commissioner on forms made available by the commissioner at each local job service office: Provided, That nothing contained in this section shall be construed to permit funds under this program to be used to interfere or hinder existing employment or employment agreements including, but not limited to, collective bargaining agreements. Funds may not be used in instances where work stoppages resulting from labor management disputes are in effect.

The form furnished by the commissioner shall provide for listing the eligible unemployed person's prior work experience, skills, educational history, and such other information as the commissioner deems necessary for the purposes of this article. Priority for employment under this program shall be given to eligible unemployed persons who are heads of households.

The commissioner, within fifteen days after the effective date of legislation appropriating funds for the implementation of this article, shall cause to be published a statewide notice of the availability of such application forms under the emergency employment supplemental matching program.

WV Legislature

§21A-2A-4. Notice to private business employers; applications for prospective employers.

The commissioner, within fifteen days after the effective date of legislation appropriating funds for the implementation of this article, shall publish statewide a notice to private business employers of the opportunity to employ eligible unemployed persons as provided for under this article.

Any private business, as defined in section two of this article, seeking to employ eligible unemployed persons may make application at any local job service office on forms to be supplied by the commissioner. Such forms shall provide space for a listing of the nature of the employment position available and the minimum experience, skills and educational requirements therefor. The form shall also provide space for an affidavit by the employer that the employment position to be filled is not being used in lieu of the recall of laid-off workers, to replace existing employees or to supplement the compensation paid existing employees. This affidavit shall also contain a statement by the private business employer that there is a reasonable expectation that this employment may continue beyond the end of the six-month reimbursement period provided for under this article. At each job service office of the Bureau of Employment Programs, the commissioner shall cause to be compiled a list of job openings under this program. The list shall be available for inspection by any eligible unemployed person applying for employment hereunder. The commissioner is authorized to require, prior to approval of an application by an employer, examination of such records and documents of the employer as the commissioner may consider necessary to ensure the correctness and truthfulness of the employer's affidavit.

WV Legislature

§21A-2A-5. Payments to private business employers; maximums.

The commissioner shall reimburse private business employers of eligible unemployed persons from funds appropriated and made available by the Legislature to the commissioner. Such reimbursement shall equal one half of the employer's prevailing starting hourly wage for each person employed under the provisions of this article, but the state's share of the total reimbursement shall not exceed the federal hourly minimum wage. The workweek shall not exceed forty hours per week, per eligible employee, nor shall any reimbursement extend for a period longer than six months. In addition to the compensation provided under the emergency employment supplemental matching program to the employee, each private business employer shall pay an additional sum to each such employee of not less than one half the employer's prevailing starting hourly wage plus applicable costs for each such employee of payments for workers' compensation and employer social security requirements. Any employment and reimbursement provided for in this section shall be agreed to in writing by the employer, the prospective employee and the commissioner prior to such employee's actual employment.

The commissioner shall provide by rule and regulation: The total number of employees who may be employed by any single private business employer under this program, the total number of employees who may be employed under the entire program and the priority preference to be given eligible unemployed persons who are heads of households.

The commissioner may promulgate such rules and regulations, not inconsistent with the provisions of this article, as may be deemed necessary by him to provide for proper administration of this article.

Any funds appropriated for this program which have not been committed for private sector employment purposes within a reasonable period of time determined by the commissioner to be necessary for implementation of this article shall be redistributed for public employment purposes: Provided, That this is consistent with the language of the legislative appropriation making the funds available.

WV Legislature

§21A-2B-1. Inaugurating group insurance plans.

The commissioner of the Bureau of Employment Programs is hereby authorized and empowered to negotiate for, secure and adopt for the regular employees thereof (other than provisional, temporary, emergency, and intermittent employees) who are in employee status with the Bureau of Employment Programs on and after effective date of this article, a policy or policies of group insurance written by a carrier or carriers chartered under the laws of any state and duly licensed to do business in this state and covering life; health; hospital care; surgical or medical diagnosis, care, and treatment; drugs and medicines; remedial care; other medical supplies and services; or any other combination of these; and any other policy or policies of group insurance which in the discretion of the commissioner bear a reasonable relationship to the foregoing coverages; but subject to the terms and conditions of this article.

WV Legislature

§21A-2B-2. Acceptance of grants from United States department of labor, bureau of employment security; state not to pay premiums.

The group insurance plans so authorized to be established shall be subject to the following terms and conditions:

The commissioner is hereby authorized and empowered to accept on behalf of the regular employees of the Bureau of Employment Programs, who in writing agree to participate in any plan of group insurance, granted funds provided by the United States department of labor, bureau of employment security, to pay the agency's share of the premium cost of said group policy or policies. The state of West Virginia shall not pay, or be liable for the payment of, any portion of said premiums for such group insurance.

WV Legislature

§21A-2B-3. Approval of terms of plans.

The provisions and terms of any such group plan or plans of insurance shall comply in all respects with the conditions and requirements of the United States department of labor, bureau of employment security, and shall be approved in writing by the Insurance Commissioner of the State of West Virginia as to form, rate and benefits.

WV Legislature

§21A-2B-4. Payroll deductions; employee continuing in group after retirement.

(a) Whenever the above-described regular employees shall indicate in writing that they have subscribed to any of the aforesaid insurance plans on a group basis, the commissioner of the Bureau of Employment Programs is hereby authorized and empowered to approve periodic premium deductions from the salary payments due such employees as specified in a written assignment furnished the commissioner by each such employee subscribing to a group insurance plan, which deductions shall be made by the Auditor of the State of West Virginia.

(b) Upon proper requisition of the commissioner, the Auditor shall periodically issue a warrant payable as specified in the requisition, for the total deductions from the salaries of employees participating in any such group insurance plan. To promote efficiency and economy in making deductions and issuing warrants as provided herein, the Auditor is authorized to promulgate rules and regulations specifying the form and the time and manner of presentation of requisitions issued pursuant to this section.

(c) When a participating employee shall retire from his employment, he may, if he so elects and the insurance carrier or carriers agree, remain a member of the group plan by paying the entire premium for the coverage involved.

WV Legislature

§21A-2B-5. Custodian of funds; disbursements.

The State Treasurer shall be custodian of the funds under the aforesaid group insurance plans, and disbursements from the funds to pay all premiums shall be made only upon warrants signed by the State Auditor and the State Treasurer.

WV Legislature

§21A-2C-1. Short title.

This article shall be known and may be cited as the "Military Incentive Program Act of 1991."

WV Legislature

§21A-2C-2. Declaration of legislative intent and purpose.

The Legislature of West Virginia hereby recognizes that disabled veterans and economically disadvantaged veterans of the Vietnam era and of the Korean conflict, members of the West Virginia National Guard and the reserve forces of the United States have made sacrifices which merit preferential employment treatment in both the public and private sectors. Economically disadvantaged and disabled veterans traditionally suffer a disproportionately higher unemployment rate than that of nonveterans of similar age and skills. Members of the West Virginia National Guard and reserve forces of the United States who are called upon to leave their jobs to perform military obligations are frequently placed in conflict with their employers and as such are frequently discriminated against by prospective employers. It is the intent and purpose of the Legislature to encourage the employment of these veterans and members of the guard and reserve forces in the private sector by providing tax credits for private sector employers who employ economically disadvantaged Vietnam era and Korean conflict veterans, disabled veterans, unemployed members of the West Virginia National Guard and unemployed members of the reserve forces of the United States generally.

WV Legislature

§21A-2C-3. Definitions.

For the purposes of this article:

(a) "Active duty" means full-time duty in the Armed Forces, other than duty for training in the reserves or National Guard. Any period of duty for training in the reserves or National Guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in line of duty, is considered "active duty."

(b) "Economically disadvantaged" means a person who:

(1) Receives, or is a member of a family which receives, cash welfare payments under a federal, state or local welfare program;

(2) Has, or is a member of a family which has, received a total family income for the six months prior to application which, in relation to family size, was not in excess of the higher of:

(i) The poverty level determined in accordance with criteria established by the federal office of management and budget; or

(ii) Seventy percent of the lower living standard income level;

(3) Is receiving food stamps pursuant to the food stamp act of 1977;

(4) Is a foster child on behalf of whom state or local government payments are made; or

(5) Is an adult handicapped individual whose own income meets the requirements of subdivisions (1) and (2) of this subsection, but who is a member of a family whose income does not meet such requirements.

(c) "Korean conflict veteran" means a person who served in the armed services of the United States at least one day during the period of time beginning June 27, 1950, and extending through January 31, 1955.

(d) "National guard member" means a member of any component of the West Virginia National Guard.

(e) "Reserve member" means a member of any component of the reserve forces of the United States.

(f) "Veteran" means a member of the United States Armed Forces who:

(1) Served on active duty for a period of more than one hundred eighty days and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty because of a service-connected disability.

WV Legislature

(g) "Vietnam era veteran" means a person who served in the armed services of the United States at least one day during the period of time beginning August 5, 1964, and extending through May 7, 1975.

WV Legislature

§21A-2C-4. Tax credit; eligibility; amount.

(a) Each person, partnership or corporation which employs an economically disadvantaged Vietnam era or Korean conflict veteran or any disabled veteran, or an unemployed member of the West Virginia National Guard or a member of the reserve forces of the United States for a continuous period of one year, except as otherwise provided in this article, shall be entitled to an appropriate tax credit for each such individual so employed. In the case of a person or partnership so employing such individuals, the tax credit provided for in this section shall be applied against the employer's personal income tax liability. In the case of a corporation so employing such individuals, the tax credit provided for in this section shall be applied against the corporation's corporate net income tax liability. This tax credit shall be nonassignable and may not exceed an employer's total tax liability with respect to the specific tax against which the tax credit is required to be applied.

(b) The amount of the tax credit allowed under subsection (a) of this section shall be an amount equal to the following:

(1) For each economically disadvantaged Vietnam era or Korean conflict veteran employed as described in subsection (a), the amount of the tax credit allowed shall be thirty percent of the employee's wage base. For the purposes of this section, the employee's wage base is the first $5,000 in wages or compensation actually paid to the employee by the employer;

(2) For each disabled veteran employed as described in subsection (a), the amount of the tax credit allowed shall be a percentage equal to the percentage of disability suffered by the veteran multiplied by the employee's wage base. The employee's wage base is the same as provided in subdivision (1) of this subsection. The percentage of disability referred to in this subdivision means the percentage of compensation for service connected disability as determined by the United States department of Veterans Affairs; and

(3) For each member of the West Virginia National Guard or member of the reserve forces of the United States employed as described in subsection (a), the amount of the tax credit allowed shall be twenty-five percent of the employee's wage base. For the purpose of this section, the employee's wage base is the first $5,000 in wages or compensation actually paid to the employee by the employer.

WV Legislature

§21A-2C-5. Restrictions and limitations regarding tax credit.

(a) An employer may not claim a tax credit provided for in this article for any individual employed for less than a continuous period of one year, unless:

(1) The individual voluntarily leaves employment with the employer;

(2) The individual becomes totally disabled and unable to continue his employment; or

(3) The individual is terminated for good cause shown.

In the event that the individual is employed for less than a one continuous year period due to circumstances enumerated in subdivision (1), (2) or (3) above, the employer shall be entitled to a partial tax credit in a proportional amount corresponding to the ratio of the time period during which the veteran was actually employed to the one-year period required for a full tax credit multiplied by the amount of the full tax which would have accrued to the employer had the individual's employment continued for a full year.

(b) An employer may not claim tax credit provided for in this article for any individual who is employed and displaces a person already employed. In addition, no tax credit may be claimed for the employment of any individual for whom the employer is receiving job training payments from either the federal or state government. Nothing in this section prohibits an employer from receiving tax credits from both the federal and state governments under similar targeted jobs programs if the employer is otherwise qualified to receive both.

WV Legislature

§21A-2C-6. Program administration.

The program established by this article shall be conducted primarily under the direction of the employment services section of the Bureau of Employment Programs or its successor agency and the West Virginia National Guard. Reserve forces units may also verify through approved vouchers, eligibility of reserve members to participate in this program. Each individual who qualifies under this article for participation in this program shall be given, upon request, a voucher certifying that the individual is eligible for participation in the program described in this article. The voucher shall be in a form prescribed by the commissioner of employment programs and the Adjutant General, and they may conduct such investigations and collect such data as they deem necessary to ensure that each individual applying for the voucher is actually qualified for participation in the program.

When an employer employs an eligible individual who presents the voucher herein provided for, the employer shall submit the voucher along with basic information to the issuing agency as may be required for participation in this program. Each year, the issuing agency shall certify to the State Tax Commissioner a list of employers who may be qualified to receive a tax credit under this program. In order to receive the appropriate tax credit, an employer must file for the tax credit provided for under this article as required by section forty-two, article twenty-one, chapter eleven of this code or by section twelve, article twenty-four, chapter eleven of this code.

WV Legislature

§21A-2D-1. Definitions.

This article may be cited as the Unemployment Insurance Program Integrity Act. For the purposes of this article the following terms shall have the following meanings, unless the context in which they are used clearly indicates otherwise:

(1) “Division of Corrections and Rehabilitation” means the Division of Corrections and Rehabilitation, as defined in §15A-3-2 of this code.

(2) “Department of Commerce” means the Department of Commerce, as defined in §5B-1-1 of this code.

(3) “New hire records” means any available directory of newly hired and re-hired employees reported under state and federal law and managed by the state Department of Commerce.

(4) “Unemployment insurance enrollment” means the list of all jobless workers receiving unemployment insurance at a given moment in time.

(5) “Commissioner” means the Workforce West Virginia Commissioner, formerly known as the Bureau of Employment Programs’ Commissioner, as defined in §21A-1A-12 of this code.

(6) “Bureau” means Workforce West Virginia, formerly known as the Bureau of Employment Programs, as defined in §21A-1-4 of this code.

WV Legislature

§21A-2D-2. Unemployment insurance program integrity.

The commissioner shall, on a weekly basis, be required to:

(a) Check the unemployment insurance rolls against the Division of Corrections and Rehabilitation's list of imprisoned individuals to verify eligibility for unemployment benefits and ensure program integrity;

(b) Check new hire records against the National Directory of New Hires to verify eligibility for unemployment benefits; and

(c) Check the unemployment insurance rolls against a commercially available database that provides cross-matching functions to verify eligibility for unemployment benefits.

WV Legislature

§21A-2D-3. Data sharing.

The commissioner shall have the authority to execute a memorandum of understanding with any department, agency, or division for information required to be shared between agencies outlined in this article.

WV Legislature

§21A-2D-4. Action on eligibility determinations.

If the bureau receives information concerning an individual receiving unemployment insurance benefits that indicates a change in circumstances that may affect eligibility, the bureau shall review the individual's case and make a new eligibility determination within one week of receiving the information.

WV Legislature

§21A-2D-5. Recovering overpayments and preventing fraud.

The commissioner shall adopt and implement internal administrative policy to:

(a) Prioritize and always pursue the recovery of fraudulent unemployment overpayments to the fullest extent allowable under state and federal law;

(b) Enter into a cooperative agreement with the U.S. Department of Labor Office of Inspector General to proactively detect and investigate cases of unemployment fraud; and

(c) Recover improper overpayments of unemployment benefits, without exception, to the fullest extent possible by state and federal law.

WV Legislature

§21A-2D-6. Employer reporting procedure to Workforce West Virginia when employees refuse re-hire opportunities.

An employer may contact Workforce West Virginia by e-mail, telephone, or other method of communication in situations when an employee who was previously laid off by that employer is given the opportunity to be rehired but declines to do so. The bureau shall investigate such contacts from employers to determine whether the employee should continue to receive unemployment benefits.

WV Legislature

§21A-2D-7. Reporting to the Legislature.

The commissioner shall maintain detailed records on the ability of the bureau to carry out and implement the actions required in this article. The commissioner shall issue a written report to the legislature annually, no later than December 31. This report shall include relevant data, to the extent permitted by federal law, including, but not limited to:

(a) Whether cross-checks referenced in §21A-2D-2 of this code occurred and with what consistency they occurred;

(b) Improper unemployment benefit payment rates;

(c) Recovery of overpayments;

(d) The reasoning for and extent to which any improper unemployment benefit payments are not corrected or recovered;

(e) The number of contacts from employers under §21A-2D-6 of this code;

(f) The results of any state-federal cooperative fraud investigations; and

(g) Any savings produced or monies from activities of the bureau.

WV Legislature

§21A-2D-8. Rulemaking.

Workforce West Virginia shall promulgate and propose rules under §29A-3-1 *et seq*. of this code for implementing this article.

WV Legislature

§21A-2D-9. Effective date.

This article shall take effect July 1, 2022.

WV Legislature

§21A-3-1.

Repealed.

Acts, 2003 2nd Ex. Sess., Ch. 27.

WV Legislature

§21A-3-2.

Repealed.

Acts, 2003 2nd Ex. Sess., Ch. 27.

WV Legislature

§21A-3-3.

Repealed.

Acts, 2003 2nd Ex. Sess., Ch. 27.

WV Legislature

§21A-3-4.

Repealed.

Acts, 2003 2nd Ex. Sess., Ch. 27.

WV Legislature

§21A-3-5.

Repealed.

Acts, 2003 2nd Ex. Sess., Ch. 27.

WV Legislature

§21A-3-6.

Repealed.

Acts, 2003 2nd Ex. Sess., Ch. 27.

WV Legislature

§21A-3-7.

Repealed.

Acts, 2003 2nd Ex. Sess., Ch. 27.

WV Legislature

§21A-3-8.

Repealed.

Acts, 1991 Reg. Sess., Ch. 16.

WV Legislature

§21A-3-9.

Repealed.

Acts, 1991 Reg. Sess., Ch. 16.

WV Legislature

§21A-3-10.

Repealed.

Acts, 1991 Reg. Sess., Ch. 16.

WV Legislature

§21A-3-11.

Repealed.

Acts, 1991 Reg. Sess., Ch. 16.

WV Legislature

§21A-3-12.

Repealed.

Acts, 1991 Reg. Sess., Ch. 16.

WV Legislature

§21A-4-1. Creation; composition.

There is hereby created on October 1, 1937, a board of review, consisting of three members. They shall devote their entire time to the duties of their offices.

WV Legislature

§21A-4-2. Appointment; terms; vacancies; chairman.

On October 1, 1937, the Governor, by and with the advice and consent of the Senate, shall appoint the members of the board of review for terms of six years, except that the terms of the members first taking office shall be two, four, and six years, respectively, as designated by the Governor at the time of their appointment. Vacancies shall be filled by the Governor for the unexpired term. The Governor shall designate one member as chairman of the board.

WV Legislature

§21A-4-3. Qualifications.

The members of the board shall be selected with special reference to their ability and fitness to adjudicate claims. Selections shall be upon a nonpartisan merit basis. The Governor shall not appoint a person who is identified with the interests of either employers or employees.

WV Legislature

§21A-4-4. Oaths of office.

Members of the board shall take and subscribe to the Constitutional oath before entering upon their duties. Their oaths shall be filed with the Secretary of State.

WV Legislature

§21A-4-5. Compensation and travel expenses.

Each member of the board shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and the necessary traveling expenses incurred in the performance of his or her duties.

Requisition for traveling expenses shall be accompanied by a sworn and itemized statement which shall be filed with the Auditor and preserved as a public record.

The salaries and expenses of the members shall be paid from the administration fund.

WV Legislature

§21A-4-6. Offices; meetings.

The offices and meeting place of the board shall be at the capital; but the board may sit at such other places as the prompt and efficient hearing of claims may require. The board shall sit for hearing of appeals at least every ten days.

WV Legislature

§21A-4-7. Quorum.

A majority of the members of the board shall constitute a quorum for the hearing of appealed claims.

WV Legislature

§21A-4-8. Removal of members.

After hearing, and upon cause shown, the Governor may remove a member of the board.

WV Legislature

§21A-4-9. Powers and duties.

The board shall have the following powers and duties, to:

(1) Hear and determine all disputed claims presented to it in accordance with the provisions of article seven.

(2) Organize from salaried examiners such appeal tribunals as are necessary for the expedition of disputed claim procedure.

(3) Establish procedure for the hearing of disputed claims.

(4) Take oaths, examine witnesses, and issue subpoenas.

(5) Establish the amount of witness fees.

(6) Keep such records and make such reports as are necessary for disputed claims.

(7) Exercise such additional powers as may be necessary for the proper conduct of a system of administrative review of disputed claims.

WV Legislature

§21A-4-10. Appointment and supervision of personnel; administrative expenses; budget; assignment of hearings.

By and with the consent and approval of the commissioner, the board shall appoint such examiners as are necessary to hear appeals from determinations of deputies, and such other personnel as is necessary for the proper conduct of a system of administrative review of disputed claims. Subject to the provisions of the merit system and with the consent and approval of the commissioner, the board shall prescribe the qualifications of, fix the compensation of, and remove the employees of the board. No person who is identified with the interests of either employers or employees shall be appointed examiner.

The administrative expense of the board of review shall be paid from the administration fund. The board, with the assistance of the fiscal officer of the department, shall prepare and submit to the commissioner the budget of the board of review.

The chairman of the board shall fix the time and place for hearing appeals and shall assign such hearings to members of the board, appeal tribunals, or the full board, as the case may require, subject, however, to the provisions of article seven of this chapter.

WV Legislature

§21A-4-11. Oaths and witnesses.

The board, appeal tribunal, or examiner will have the power to administer oaths, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and the production of papers necessary as evidence in connection with a dispute or disputed claim.

WV Legislature

§21A-4-12. Subpoenas.

The board, appeal tribunal, or examiner shall have the power to issue subpoenas for the production of persons and papers in all proceedings within their jurisdiction. In case a person refuses to obey such subpoena the board, appeal tribunal, or examiner may invoke the aid of a circuit court in order that the testimony or evidence be produced. Upon proper showing such court shall issue an order requiring such persons to appear before the board, appeal tribunal, or examiner and produce all evidence and give all testimony touching the matter in question. A person failing to obey such order may be punished by the court as for contempt.

WV Legislature

§21A-5-1. Employer coverage.

An employing unit which is or becomes an employer subject to this chapter during any year shall be subject to the provisions of the chapter for the whole of the year.

WV Legislature

§21A-5-2. Termination of coverage.

Except as otherwise provided in section three of this article, an employing unit, with the exception of any employing unit for which service in employment is defined in subdivision (10), section sixteen, article one-a of this chapter, shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the commissioner not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the commissioner finds that within the preceding calendar year the employing unit did not pay wages of $1,500 or more in any calendar quarter for employment subject to this chapter and during that calendar year no service was performed for it with respect to which it was liable for any tax against which credit may be taken for contributions required to be paid into the unemployment compensation fund of this state; and any employing unit for which service in employment is defined in subdivision (10), section sixteen, article one-a of this chapter, shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the commissioner not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the commissioner finds that there were no twenty different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit had four or more individuals in employment subject to this chapter: Provided, That the commissioner may for good cause extend the time for filing application for termination of coverage, effective as of the first day of the next succeeding quarter after the application is approved.

WV Legislature

§21A-5-3. Voluntary coverage; elective coverage by political subdivisions.

(a) An employing unit, not otherwise subject to the provisions of this chapter, which files with the commissioner its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January one of any calendar year subsequent to such two calendar years, only if during January of such year it has filed with the commissioner a written notice to that effect.

(b) Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the commissioner a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business are employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the commissioner, such services are employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January first of any calendar year subsequent to such two calendar years, only if during January of such year such employing unit has filed with the commissioner a written notice to that effect.

(c) An employing unit which is or becomes an employer subject to this chapter within any calendar year is subject to this chapter during the whole of such calendar year.

(d) Any political subdivision of this state may elect to cover under this chapter service performed by employees in all of the hospitals and institutions of higher education, as defined in sections twenty and twenty-one, article one-a of this chapter, operated by such political subdivision. Any such election of coverage is to be made by filing with the commissioner a notice of such election at least thirty days prior to the effective date of such election. Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in section three-a of this article. The provisions of section fifteen, article six of this chapter with respect to benefit rights based on service for state and nonprofit institutions of higher education are applicable also to service covered by an election under this subsection. The amounts required to be paid in lieu of contributions by any political subdivision under this subsection shall be billed and payment made as provided in section thirteen of this article with respect to similar payments by nonprofit organizations. An election under this subsection may be terminated, by filing with the commissioner written notice not later than thirty days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.

WV Legislature

§21A-5-3a. Financing benefits paid to employees of nonprofit organizations.

Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in section 501(c) (3) of the "U.S. Internal Revenue Code" which is exempt from income tax under section 501(a) of such code.

(1) Liability for contribution payments and election of reimbursement. -- Any nonprofit organization which, pursuant to the provisions of this chapter, is, or becomes, subject to this chapter on or after January 1, 1972, shall be liable for payments and shall pay contributions in accordance with the provisions of this article and of this chapter, unless it elects, in accordance with this subdivision (1), to pay to the commissioner for the unemployment fund an amount equal to the amount of regular benefits and of one half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(a) Any nonprofit organization which is, or becomes, subject to this chapter on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one taxable year beginning with January 1, 1972, provided it files with the commissioner a written notice of its election within the thirty-day period immediately following such date or within a like period immediately following the date of enactment of this section, whichever occurs later.

(b) Any nonprofit organization which becomes subject to this chapter after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(c) Any nonprofit organization which makes an election in accordance with subparagraph (a) or subparagraph (b) of this subdivision (1) will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(d) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(e) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(f) The commissioner, in accordance with such regulations as he may prescribe, shall notify each nonprofit organization of any determination which he may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election.

(2) Reimbursement payments. -- Payments in lieu of contributions shall be made in accordance with the provisions of this subdivision (2) including either subparagraph (a) or subparagraph (b) of this subdivision (2).

(a) At the end of each calendar quarter, or at the end of any other period as determined by the commissioner, the commissioner shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one half of the amount of extended benefits paid during such quarter or other prescribed period which is attributable to service in the employ of such organization.

(b) Each nonprofit organization which has elected payments in lieu of contributions may request permission to make such payments as provided herein. Such method of payment shall become effective upon approval by the commissioner.

At the end of each calendar quarter, or at the end of such other period as determined by the commissioner, the commissioner shall bill each nonprofit organization for an amount representing one of the following: (i) For 1972, one percent of its total payroll for 1971; or (ii) for years after 1972, such percentage of its total payroll for the immediately preceding calendar year as the commissioner shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year; or (iii) for any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall determine.

At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

At the end of each taxable year, the commissioner shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subparagraph (c) of this subdivision (2). If the total payments exceed the amount so determined for the taxable year, all or a part of the excess may, at the discretion of the commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

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(c) Payment of any bill rendered under subparagraph (a) or subparagraph (b) of this subdivision (2) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph (e) of this subdivision (2).

(d) Payments made by any nonprofit organization under the provisions of this subdivision (2) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(e) The amount due specified in any bill from the commissioner shall be conclusive on the organization unless, not later than fifteen days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the commissioner, setting forth the grounds for such application. The commissioner shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than fifteen days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the board of review, setting forth the grounds for the appeal.

(f) Past-due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to section seventeen of this article and the provisions of article ten of this chapter, apply to past-due contributions. Also, unpaid amounts in lieu of contributions are subject to the same assessment and civil action provisions of this chapter as apply to unpaid contributions. Further, the provisions of this chapter which provide for the adjustment or refund of contributions shall apply to the adjustment or refund of payments in lieu of contributions.

(3) Allocation of benefit costs. -- Each employer which is liable for payments in lieu of contributions shall pay to the commissioner for the fund the amount of regular benefits plus the amount of one half of extended benefits paid which are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer which is liable for such payments shall be determined in accordance with the provisions of subparagraph (a) or subparagraph (b) of this subdivision (3).

(a) Proportionate allocation (when fewer than all base period employers are liable for reimbursement). -- If benefits paid to an individual are based on wages paid by one or more employers which are liable for payments in lieu of contributions and on wages paid by one or more employers which are liable for contributions, the amount of benefits payable by each employer which is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to

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the individual by all of his base period employers.

(b) Proportionate allocation (when all base period employers are liable for reimbursement). -- If benefits paid to an individual are based on wages paid by two or more employers which are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(4) Group accounts. -- Two or more employers which have become liable for payments in lieu of contributions, in accordance with the provisions of this section, may file a joint application with the commissioner for the establishment of a group account for the purpose of sharing the cost of benefits paid which are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subdivision (4). Upon his approval of the application, the commissioner shall establish a group account for such employers effective as of the beginning of the calendar quarter in which he receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than three years and thereafter until terminated at the discretion of the commissioner or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount which bears the same ratio to the total benefits paid in such quarter which are attributable to service performed in the employ of all members of the group as to total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The commissioner shall prescribe such regulation as he deems necessary with respect to applications for establishment, maintenance and termination of group accounts which are authorized by this subdivision (4), for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts which are payable under this subdivision (4) by members of the group and the time and manner of such payments.

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§21A-5-3b. Financing benefits paid to employees of governmental entities; liability of governmental entities for payments.

Benefits paid to employees of governmental entities referred to in paragraph (B), subdivision (9), section sixteen, article one-a of this chapter, shall be financed in the same manner and in accordance with the provisions of section three-a, article five of this chapter; except that for extended benefits reimbursement shall be one hundred percent of the benefits paid.

Any governmental entity which, pursuant to the provisions of this chapter, is, or becomes, subject to this chapter, is liable for payments and shall pay contributions in accordance with the provisions of this article and of this chapter, unless it elects to make payments in lieu of contributions as set forth in section three-a.

Governmental entities electing to make payments in lieu of contributions are liable for the full amount of extended benefits paid for weeks of unemployment.

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§21A-5-3c. Designating method of financing.

The Governor or any person or persons he may designate shall elect whether to finance unemployment compensation for the employees of this state or any of its agencies, bureaus, commissions, departments or other instrumentalities by choosing the contribution method or the reimbursement method. Nothing in this chapter shall be construed to require the state or any of its agencies, bureaus, commissions, departments or other instrumentalities to choose the same method of financing.

The county commission for each county or any of its agencies, bureaus, commissions, departments or other instrumentalities or the governing body for a municipality or any of its agencies, bureaus, commissions, departments or other instrumentalities shall elect whether to finance unemployment compensation liabilities by choosing the contribution method or the reimbursement method.

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§21A-5-4. Required payments; failure to make required payments; criminal penalties.

(a) An employer is liable for payments in respect to wages paid for employment occurring during each year in which he or she is subject to this chapter.

(b) Any person, firm, partnership, company, corporation, or association who, as an employer, is subject to the provisions of this chapter, and who knowingly and willfully fails to make any payment or file a report as required by the provisions of this chapter within the time periods specified by law, is guilty of an offense as follows:

(1) Any employer who knowingly and willfully fails to make any payment or file a report within the time period specified by law for two calendar quarters, which quarters need not be consecutive but are within twenty-five quarters of each other, is guilty of a misdemeanor and:

(A) Upon a first conviction under this subdivision, shall be fined not less than $500 nor more than $1,000; or

(B) Upon a second conviction under this subdivision, shall be fined not less than $1,000 nor more than $5,000, imprisoned for not longer than thirty days or both fined and imprisoned.

(2) Any employer who, having been twice convicted of the offense specified in subdivision (1) of this subsection, knowingly and willfully fails to make any payment or file a report as required by the provisions of this chapter within the time period specified by law for two calendar quarters, which quarters need not be consecutive but are within twenty-five quarters of each other, is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, or imprisoned in the penitentiary for a definite term of imprisonment which is not less than one year nor more than two years, or both fined and imprisoned.

(3) Any employer who knowingly and willfully fails to make any payment or file a report within the time period specified by law for four calendar quarters, which quarters need not be consecutive but are within thirty six quarters of each other, is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $25,000, or imprisoned in the penitentiary for a definite term of imprisonment which is not less than one year nor more than two years, or both fined and imprisoned.

(c) In charging a person with a second or subsequent offense under the provisions of paragraph (B), subdivision (1), subsection (b) of this section or under subdivision (2), subsection (b) of this section, the warrant, indictment or information must set forth the date and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense unless the conviction for the previous offense has become final and unless a prior offense occurred within the ten year period next preceding the second or subsequent offense. The venue for prosecution of any violation of this subsection is either

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the county in which the defendant's principal business operations are located or in Kanawha County where the fund is located.

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§21A-5-4a. Voluntary payments.

An employer may make voluntary payments under such regulations as the commissioner may prescribe, in addition to the required payments, and such voluntary payments shall be credited to the employer's account in the same manner and under the same conditions as the required payments. Any payment so made shall not be considered a prepayment of any future payment required nor can such payment be refunded under any condition.

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§21A-5-5. Rate of contribution.

(a) On or after January 1, 1941, an employer shall make payments to the unemployment compensation fund equal to two and seven-tenths percent of wages paid by him or her with respect to employment during each calendar year beginning with the calendar year 1941, subject, however, to other provisions of this article; except that on and after January 1, 1972, each employer subject to this chapter shall pay contributions at the rate of one and five-tenths percent of wages paid by him or her with respect to employment during each calendar year until he or she has been an employer for not less than 36 consecutive months ending on the computation date; thereafter, his or her contribution rate shall be determined in accordance with the provisions of section ten of this article.

(b) On and after July 1, 1981, each employer subject to this chapter shall pay contributions at the rate of two and seven-tenths percent of wages paid by him or her with respect to employment during each calendar year until he or she has been an employer for not less than

36 consecutive months ending on the computation date; thereafter, his or her contribution rate shall be determined in accordance with the provisions of §21A-5-10 of this code.

(c) Notwithstanding any other provision of this chapter to the contrary, on or after July 1, 1981, any foreign corporation or business entity engaged in the construction trades shall pay contributions at the rate of seven and five-tenths percent of wages paid by him or her with respect to employment during each calendar year until he or she has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his or her contribution rate shall be determined in accordance with the provisions of §21A-5-10 of this code.

(d) Effective July 1, 2026, the otherwise applicable unemployment contribution rate for each employer liable for contributions under this chapter shall be reduced by seven percent, except that such contribution rate shall not be less than zero.

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§21A-5-6. Payments to be pooled in fund.

All payments shall be made to the unemployment compensation fund. All payments to the fund shall be pooled and available to pay benefits to any individual entitled thereto under this chapter, irrespective of the source of the payment. Nothing in this chapter shall be construed to grant to an employer or individual in his service prior claim or right to the amount paid by him to the unemployment compensation fund.

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§21A-5-7. Joint and separate accounts.

(1) The commissioner shall maintain a separate account for each employer, and shall credit the employer's account with all contributions of the employer in excess of four tenths of one percent of taxable wages: Provided, That any adjustment made in any employer's account after the computation date may not be used in the computation of the balance of an employer until the next following computation date: Provided, however, That nothing in this chapter grants an employer or individual in his, her or its service prior claims or rights to the amounts paid by him, her or its into the fund, either on his, her or its behalf or on behalf of the individuals. The account of any employer which has been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for regular and extended total or partial unemployment beginning after the effective date of this article shall be charged to the account of the last employer with whom he or she has been employed as much as thirty working days, whether or not the days are consecutive: Provided, That no employer's account may be charged with benefits paid to any individual who has been separated from a noncovered employing unit in which he or she was employed as much as thirty days, whether or not the days are consecutive: Provided, however, That no employer's account may be charged with more than fifty percent of the benefits paid to an eligible individual as extended benefits under the provisions of article six-a of this chapter: Provided further, That state and local government employers shall be charged with one hundred percent of the benefits paid to an eligible individual as extended benefits. Benefits paid to an individual are to be charged to the accounts of his or her employers in the base period, the amount of the charges, chargeable to the account of each employer, to be that portion of the total benefits paid the individual as the wages paid him or her by the employer in the base period are to the total wages paid him or her during his or her base period for insured work by all his or her employers in the base period. For the purposes of this section, no base period employer's account may be charged for benefits paid under this chapter to a former employee, if the base period employer furnishes separation information within fourteen days from the date the notice was mailed or delivered, which results in a disqualification under the provision set forth in subsection one, section three, article six, or subsection two, section three, article six of this chapter or would have resulted in a disqualification under that subsection except for a subsequent period of covered employment by another employing unit. Further, no contributory base period employer's experience rating account may be charged for benefits paid under this chapter to an individual who has been continuously employed by that employer on a part-time basis, if the part-time employment continues while the individual is separated from other employment and is otherwise eligible for benefits. One half of extended benefits paid to an individual are to be charged to the accounts of his or her employers, except state and local government employers, in the base period in the same manner provided for the charging of regular benefits. The entire state share of extended benefits paid to an individual shall be charged to the accounts of his or her base period employers. The provisions of this section permitting the noncharging of contributory employers' accounts have no application to benefit charges imposed upon reimbursable employers.

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(3) The commissioner shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view of fixing the contribution rates as will reflect such experiences. For the purpose of fixing the contribution rates for each calendar year, the books of the department shall be closed on July 31 of the preceding calendar year, and any contributions paid after that, as well as benefits paid after that with respect to compensable weeks ending on or before June 30 of the preceding calendar year, may not be taken into account until the next annual date for fixing contribution rates: Provided, That if an employer has failed to furnish to the commissioner on or before July 31 of the preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate, the employer's rate shall be, if it is immediately prior to that July 31, less than three and three-tenths percent, increased to three and three-tenths percent: Provided, however, That any payment made or any information necessary for the computation of a reduced rate furnished on or before the termination of an extension of time for the payment or reporting of information granted pursuant to a rule of the commissioner authorizing an extension, shall be taken into account for the purposes of fixing contribution rates: Provided further, That when the time for filing any report or making any payment required hereunder falls on Saturday, Sunday, or a legal holiday, the due date is the next succeeding business day: And provided further, That whenever, through mistake or inadvertence, erroneous credits or charges are found to have been made to or against the reserved account of any employer, the rate shall be adjusted as of January 1 of the calendar year in which the mistake or inadvertence is discovered, but payments, made under any rate assigned prior to January 1 of that year, are not erroneously collected.

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

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

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

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

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

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

(8) For purposes of this section:

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

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

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§21A-5-8.

Repealed.

Acts, 1937 Reg. Sess., Ch. 100.

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§21A-5-9.

Repealed.

Acts, 1981 Reg. Sess., Ch. 206.

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§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

(a) On and after July 1, 1981, an employer's payment shall remain two and seven-tenths percent, until:

(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits.

(2) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least the percent of his average annual payroll as shown in Column B of Table II. His rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed one hundred percent but are less than one hundred twenty-five percent of the average benefit payments from the trust fund for the three preceding calendar years, an employer's rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed one hundred twenty-five percent but are less than one hundred fifty percent, an employer's rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed one hundred fifty percent, an employer's rate shall be the amount appearing in Column F of Table II on line with the percentage in Column B.

TABLE II

Col. A Col. B Col. C Col. D Col. E Col. F

Percentage of

Average

Annual Payroll

By Which

Credits Ex Employer's

Rate -ceed

Class Charges Rate

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(1) 0.0 to 6.0 4.5 3.5 2.5 1.5

(2) 6.0 4.1 3.1 2.1 1.1

(3) 7.0 3.9 2.9 1.9 0.9

(4) 8.0 3.7 2.7 1.7 0.7

(5) 9.0 3.5 2.5 1.5 0.5

(6) 10.0 3.3 2.3 1.3 0.3

(7) 10.5 3.1 2.1 1.1 0.1

(8) 11.0 2.9 1.9 0.9 0.0

(9) 11.5 2.7 1.7 0.7 0.0

(10) 12.0 2.5 1.5 0.5 0.0

(11) 12.5 2.3 1.3 0.3 0.0

(12) 13.0 2.1 1.1 0.1 0.0

(13) 14.0 1.9 0.9 0.0 0.0

(14) 16.0 1.7 0.7 0.0 0.0

(15) 18.0 and over 1.5 0.5 0.0 0.0

All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June 30, 1967, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June 30, 1984, the noncredited contribution identified in section seven of this article shall not be added to the employer's debit balance to determine the employer contribution rate.

Effective on and after the computation date of June 30, 1967, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including ten percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of three percent of wages paid by them with respect to employment; except that effective on and after July 1, 1981, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including five

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percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of five and five-tenths percent of wages paid by them with respect to employment.

Effective on or after July 1, 1981, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount in excess of five percent but less than ten percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of six and five-tenths percent of wages paid by them with respect to employment.

Effective on and after the computation date of June 30, 1967, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount of ten percent or above of their average annual payroll shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment; except that effective on and after July 1, 1981, such payments to the unemployment compensation fund shall be at the rate of seven and five-tenths percent of wages paid by them with respect to employment or at such other rate authorized by this article.

"Debit balance account" for the purpose of this section means an account in which the benefits charged for all past years exceed the payments credited for such past years.

"Credit balance account" for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.

Once a debit balance account rate is established for an employer's account for a year, it shall apply for the entire year.

"Due date" means the last day of the month next following a calendar quarter. In determining the amount in the fund on any due date, contributions received, but not benefits paid, for such month next following the end of a calendar quarter shall be included.

(b) Notwithstanding any other provision of this section, every debit balance employer subject to the provisions of this chapter, and any foreign corporation or business entity engaged in the construction trades which has not been an employer in the State of West Virginia for thirty-six consecutive months ending on the computation date, shall, in addition to any other tax provided for in this section, pay contributions at the rate of one percent surtax on wages paid by him with respect to employment.

(c) Effective June 30, 1985, and each computation date thereafter, the reserve balance of a debit balance employer shall be reduced to fifteen percent if such balance exceeds fifteen percent. The amount of noncredited tax shall be reduced by an amount equal to the eliminated charges. If the eliminated charges exceed the amount of noncredited tax, the

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noncredited tax shall be reduced to zero.

(d) On and after January 1, 19991, an employer's payment shall remain two and seven-tenths percent, until:

(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits; and

(2) The payments credited to the account for all past years exceed the benefits charged to the account by an amount equal to at least the percent of the average annual payroll as shown in Column B of Table III. The rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed one and seventy-five one-hundredths percent but are less than two and twenty-five one-hundredths percent of gross covered wages for the twelve-month period ending on June 30 of the preceding year, an employer's rate shall be the amount appearing in Column D of Table III on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed two and twenty-five one-hundredths percent but are less than two and seventy-five one-hundredths percent of gross covered wages for the twelve-month period ending on June 30 of the preceding year, an employer's rate shall be the amount appearing in Column E of Table III on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed two and seventy-five one-hundredths percent but are less than three percent of gross covered wages for the twelve-month period ending on June 30 of the preceding year, an employer's rate shall be the amount appearing in Column F of Table III on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed three percent of gross covered wages for the twelve-month period ending on June 30 of the preceding year, an employer's rate shall be the amount appearing in Column G of Table III on line with the percentage in Column B.

TABLE III

Col. A Col. B Col. C Col. D Col. E Col. F Col. G

Percentage of

Average

Annual Payroll

By Which

Rate Credits Exceed Employer's

Class Charges Rate

(1) 0.0 to 6.0 4.5 4.0 3.5 3.0 2.0

(2) 6.0 4.1 3.6 3.1 2.6 1.6

(3) 7.0 3.9 3.4 2.9 2.4 1.4

(4) 8.0 3.7 3.2 2.7 2.2 1.2

(5) 9.0 3.5 3.0 2.5 2.0 1.0

(6) 10.0 3.3 2.8 2.3 1.8 0.8

(7) 10.5 3.1 2.6 2.1 1.6 0.6

(8) 11.0 2.9 2.4 1.9 1.4 0.4

(9) 11.5 2.7 2.2 1.7 1.2 0.2

(10) 12.0 2.5 2.0 1.5 1.0 0.0

(11) 12.5 2.3 1.8 1.3 0.8 0.0

(12) 13.0 2.1 1.6 1.1 0.6 0.0

(13) 14.0 1.9 1.4 0.9 0.4 0.0

(14) 16.0 1.7 1.2 0.7 0.2 0.0

(15)1 8.0 and over 1.5 1.0 0.5 0.0 0.0

(e) Notwithstanding any other provision of this section, all employers' rates for the calendar year beginning January 1, 1990, and ending on December 31, 1990, shall be the amount in Column D of Table II on line with the percentage in Column B.

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§21A-5-10a. Optional assessments on employers and employees.

(a) On and after July 1, 1987, if the commissioner determines for a given projected quarter that the rates established under the provisions of section ten of this article will not result in payments being made to the unemployment compensation fund in an amount sufficient to finance the payment of benefits during such quarter, the commissioner shall certify such fact to the Governor, and the Governor shall, by executive order, direct the commissioner to establish a level of assessment for employees and employers in accordance with the provisions of this section which is sufficient to prevent, to the extent possible, a deficit in the funds available to pay benefits to eligible individuals.

(b) Pursuant to such executive order, every employer, contributing and reimbursable, subject to this chapter, shall be required to withhold from all persons in his employment an assessment which shall be in an amount not to exceed fifteen one hundredths (15/100) of one percent of an employee's gross wages, which amount, together with an assessment contributed by the employer in an amount as determined in accordance with the provisions of subsection (c) of this section, except for reimbursable employers who shall not be assessed, shall be paid to the Bureau of Employment Programs on a form prescribed by the commissioner, at the same time and under the same conditions as the quarterly contribution payments required under the provisions of section seven, article five, chapter twenty-one-a of this code. The commissioner shall have the right to collect any delinquent assessments under this section in the same manner as provided for in section sixteen, article five, chapter twenty-one-a of this code; and in addition, any delinquency hereunder shall bear interest as set forth in section seventeen, article five, chapter twenty-one-a of this code.

(c) The commissioner shall establish the exact amounts of the employers' and employees' assessments at a level sufficient to generate the revenues needed to prevent a deficit which would otherwise result from the payment of benefits to eligible individuals, subject only to the limitation established in the preceding subsection (b) of this section. After determining the level of assessment on the gross wages of employees, the commissioner shall determine a rate of assessment to be imposed upon employers, except reimbursable employers, which rate shall be expressed as a percentage of wages as defined in section three, article one of this chapter, and which is sufficient to cause the total statewide assessment on such employers to equal the total statewide assessment imposed upon employees.

Notwithstanding any other provision of this section to the contrary, the solvency assessments on employers and employees established by this section hereby terminate on April 1, 1990.

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§21A-5-10b. Transfer of business.

If a subject employer transfers his or her entire organization, trade or business, or substantially all the assets thereof, to another employer, the commissioner shall combine the contribution records and the benefit experience records of the transferring and acquiring employers. The acquiring employer's contribution rate for the remainder of the calendar year shall not be affected by the transfer but such rate shall apply to the whole of his or her business, including the portion acquired by the transfer, through the following thirty-first day of December. If a subject employer makes such transfer to an employing unit which is not an employer on the date of the transfer, such subject employer's rate continues as the rate of the acquiring employing unit until the next effective rate date. If an employing unit acquires simultaneously the entire organization, trade or business, or substantially all the assets thereof, of two or more covered employers, the successor shall be assigned as a contribution rate the then current rate of the transferring employer which had, in the calendar quarter immediately preceding the date of the transfer, the higher or highest payroll. If a subject employer transfers his or her entire organization, trade or business, or substantially all the assets thereof, to two or more employers or employing units, apportionment of the contribution records and benefit experience records of the transferring employer shall be made between the acquiring units in accordance with the ratio that the total assets acquired by each transferee bears to the total assets transferred by the transferring employer as of the date of the transfers. The current contribution rate of the transferring employer continues as the rate of each transferee who or which is an employing unit until the next effective rate date; the current contribution rate of each transferee who or which is an employer continues as his or her or its rate until the next effective rate date. For the succeeding calendar year the rate of each transferee shall be determined as provided in section ten of this article. As to any transfers which occur prior to the thirty-first day of July of the current calendar year such rate remains effective for the balance of that calendar year: Provided, That if the transfers occur subsequent to the thirty-first day of July such rate remains effective for the balance of that calendar year and the rate for the succeeding calendar year shall, notwithstanding anything to the contrary provided in section seven of this article, be recomputed on the basis of the combined experience of the transferring employers as of the thirty-first day of July of the year in which the transfers occur. In case the transferring employer is delinquent in the payment of contributions or interest thereon the acquiring employer is not entitled to any benefit of the contribution record of the transferring employer unless payment of such delinquent contributions and interest thereon is assumed by the acquiring employer. The commissioner shall upon joint request of the transferor and transferee furnish the transferee a statement of the amount of any contribution and interest due and unpaid by the transferor. A statement so furnished is controlling for the purposes of the foregoing proviso.

The provisions of this section do not apply to any employer which is established through the assistance of any state economic development agency irrespective of the contribution rate of any related predecessor.

A reorganized employer keeps the contribution rate of the employing unit before the

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reorganization until December 31, immediately following the date of reorganization and is liable for all contributions, interest and penalties owed by the employing unit. Effective with January 1, of the calendar year immediately following reorganization, a reorganized employer will have his or her contribution rate based on all of his or her experience with the fund in accordance with section ten of this article. If the predecessor does not remain in business after the transfer of all or part of the assets, business, organization, or trade of the predecessor employer: (1) The successor employer is liable for all contributions, interest and penalties owed by the predecessor employer at the time of the transfer; and (2) if two or more successor employers receive the transfer, the successor employers are liable in the same proportion as the assets of the unit being transferred is to the total assets of the predecessor employer.

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§21A-5-10c. Special rules regarding transfers of experience and assignment of rates.

Notwithstanding any other provision of law to the contrary, the following shall apply regarding assignment of rates and transfers of experience:

(a) (1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of trade or business. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as a result of such transfer, the transferring employer no longer performs the trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(2) If, following a transfer of experience under paragraph (1) of this section, the Commissioner determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer, as defined in section fifteen, article one-a of this chapter, at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the Commissioner or his or her representative finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the applicable new employer rate under section five of this article. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Commissioner or his or her representative shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c) (1) If a person knowingly violates or attempts to violate subsection (a) or (b) of this section or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

(A) If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three rate years immediately following this rate year. However, if the person's business is already at the highest rate for any year, or if the amount of increase

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in the person's rate would be less than two percent for that year, then a penalty rate of contributions of two percent of taxable wages shall be imposed for that year.

(B) If the person is not an employer, that person shall be subject to a civil money penalty of not more than $5,000. Any fine collected pursuant to this paragraph shall be deposited in the Special Administrative Fund Account established under section five-a, article nine of this chapter.

(2) For purposes of this section, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(3) For purposes of this section, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(4) In addition to the penalty imposed by paragraph (1) of this subsection, any violation of this chapter may be prosecuted as a misdemeanor under section ten, article ten of this chapter.

(d) The Commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(e) For purposes of this section:

(1) "Person" has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986; and

(2) "Trade or business" shall include the employer's workforce.

(f) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor in effect at the time this section becomes law.

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§21A-5-11.

Repealed.

Acts, 1941 Reg. Sess., Ch. 97.

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§21A-5-12.

Repealed.

Acts, 1943 Reg. Sess., Ch. 76.

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§21A-5-13. Method of payment.

All payments shall be made in accordance with rules and regulations of the commissioner.

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§21A-5-14. Deduction of payments from wages prohibited.

An employer shall not deduct payments in whole or in part from the wages of an individual in his employ.

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§21A-5-15. Fractions of cents.

In any payment, a fractional part of a cent shall be disregarded unless it amount to one-half cent or more, in which case, it shall be increased to 1¢.

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§21A-5-16. Collection of payments.

(a) The commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment, interest or penalty thereon required by this chapter. Civil actions under this section shall be given preference on the calendar of the court over all other civil actions except petitions for judicial review under article seven of this chapter and cases arising under the workers' compensation law. Upon prevailing in any such civil action, the commissioner is entitled to recover attorneys' fees and costs of action from the employer.

(b) Any payment, interest and penalty thereon due and unpaid under this chapter is a debt due the state in favor of the commissioner. It is a personal obligation of the employer immediately due and owing and is, in addition thereto, a lien that may be enforced as other judgment liens are enforced through the provisions of chapter thirty-eight of this code and the same shall be deemed by the circuit court to be a judgment lien for this purpose against all the property of the employer: Provided, That no such lien is enforceable as against a purchaser (including lien creditor) of real estate or personal property for a valuable consideration, without notice, unless docketed as provided in article ten-c, chapter thirty-eight of this code.

(c) In addition to all other civil remedies prescribed herein the commissioner may in the name of the state, after giving appropriate notice as required by due process, distrain upon any personal property, including intangibles, of any employer delinquent for any payment, interest and penalty thereon. If the commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, upon giving appropriate notice, either before or after the seizure, as is proper in the circumstances, he or she may likewise distrain in the name of the state before such delinquency occurs. For purposes of effecting a distraint under this subsection, the commissioner may require the services of a sheriff of any county in the state in levying distress in the county in which the sheriff is an officer and in which the employer's personal property is situated. A sheriff so collecting any payments, interest and penalties thereon is entitled to compensation as provided by law for his or her services in the levy and enforcement of executions. Upon prevailing in any distraint action, the commissioner is entitled to recover his or her attorney fees and costs of action from the employer.

(d) In case a business subject to the payments, interest and penalties thereon imposed under this chapter is operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or decree in the cause, make provision, so far as the assets in administration will permit, for the regular payment of such payments as the same become due.

(e) The Secretary of State of this state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state,

until notified by the commissioner that all payments, interest and penalties thereon against any such corporation which is an employer under this chapter have been paid or that provision satisfactory to the commissioner has been made for payment.

(f) In any case where an employer defaults in payments, interest or penalties thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains delinquent after due notice, the commissioner may bring action in the circuit court of Kanawha County to enjoin that employer from continuing to carry on the business in which such liability was incurred: Provided, That the commissioner may as an alternative to this action require such delinquent employer to file a bond in the form prescribed by the commissioner with satisfactory surety in an amount not less than fifty percent more than the payments, interest and penalties due.

(g) Amounts of payments and penalties collected under this section shall be deposited to the credit of the unemployment compensation trust fund. Amounts of interest, attorneys' fees and costs collected under this section shall be paid into the employment security special administration fund. Any such amounts are not to be treated by the Auditor or treasurer as part of the general revenue of the state.

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§21A-5-17. Interest and rate on past-due payments; penalties for late payment and reporting.

(a) Payments, including penalties, unpaid on the date on which due and payable, as prescribed by the commissioner, shall bear interest at the rate of one percent per month until payment plus accrued interest is received by the commissioner. Interest shall be compounded quarterly until payment plus accrued interest is received by the commissioner.

Interest collected pursuant to this section shall be paid into the employment security special administration fund.

(b) Each employer who fails to timely pay, in whole or in part, the contribution due with any report for any quarter commencing on and after July 1, 1996, shall pay a late payment penalty of the greater of $50 or ten percent of the contribution due, but not to exceed $500. Such late penalty is due immediately along with the payment of the outstanding amount of contribution. Penalties collected pursuant to this section shall be paid into the unemployment compensation trust fund.

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§21A-5-17a. Summary assessments.

(1) If an employer fails to file reports for the purpose of determining the amount of contribution in accordance with the regulations of the commissioner, or files manifestly incorrect or insufficient reports, the commissioner may assess the contribution and any interest due on the basis of the information submitted by the employer or on the basis of an estimate as to the amount due and shall give written notice of such assessment to such employer: Provided, That such assessment shall be subject to redetermination by the commissioner upon the filing by the employer of correct and sufficient reports within thirty days after notice of such assessment shall be given to him

(2) If the commissioner determines that the collection of any contribution or interest under the provisions of this chapter are (is) or may be jeopardized by delay, he may, whether or not the time prescribed by this chapter or any regulations issued pursuant thereto for making reports and paying contributions has expired, immediately assess such contribution, together with interest, then due or estimated by him to be due, and shall give written notice of such assessment to the employer: Provided, That such assessment, unless based on information submitted by the employer, shall be subject to redetermination upon the same condition and in the same manner as provided in subsection (1) hereof.

(3) Any such assessment may be enforced in the manner provided in section sixteen hereof.

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§21A-5-17b. Comity in collection of past-due payments and overpayments.

The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The commissioner in the name of this state is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties if any, due such state; in any such case the commissioner of the Bureau of Employment Programs of this state may through his legal assistant or assistants institute and conduct such suit for such other state.

Notwithstanding any other provisions of this chapter, the commissioner may recover an overpayment of benefits paid to any individual under this state or another state law or under an unemployment benefit program of the United States.

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§21A-5-17c. Service of process on nonresident employer.

If an employer is not a resident of West Virginia, was a resident but has left the State of West Virginia or is a corporation not authorized to do business in this state and for which employer services are performed in insured work within the State of West Virginia and liability for payment of unemployment compensation contributions is due and payable to this state under the provisions of the West Virginia unemployment compensation law, such employer shall be deemed to appoint the Secretary of State of West Virginia, or his successor in office, to be the employer's true and lawful attorney upon whom may be served all lawful process in any action or any proceeding for all purposes under this chapter and when served as hereinafter provided such service shall have the same force, effect and validity as if said nonresident employer were personally served with summons and complaint in this state.

Service shall be made by leaving the original and two copies of both the summons and complaint, and the fee required by section two, article one, chapter fifty-nine of this code, with the Secretary of State, or in his office, and said service shall be sufficient upon said nonresident. In the event any such summons and complaint is so served on the Secretary of State he shall immediately cause one of the copies of the summons and complaint to be sent by registered or certified mail, return receipt requested, to the employer at the latter's last known or reasonably ascertainable address. The employer's return receipt or, if such registered or certified mail is returned to the Secretary of State refused by the addressee or for any other reason is undelivered, such mail showing thereon the stamp of the post-office department that delivery has been refused, or other reason for nondelivery, shall be appended to the original summons and complaint, and filed by the Secretary of State in the clerk's office of the court from which said process issued.

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§21A-5-18. Priorities.

(1) In the event of any distribution of an employer's assets pursuant to an order of the court under a law of this state, payments then or thereafter due and interest allowable thereon shall be paid in full prior to all other claims except taxes and claims for wages. Wage claims in excess of $250 per claimant or earned more than six months before the commencement of the proceeding, shall not be entitled to priority.

(2) In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of one thousand eight hundred ninety-eight, as amended, claims for payments then or thereafter due and interest thereon, which have not been reduced to lien, shall be entitled to such priority as is provided in said bankruptcy act for taxes due any state of the United States.

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§21A-5-19. Refunds.

Within two years after the date on which payment of contribution, or interest thereon, is made, an employer, who has paid such payment or interest, may make application for:

(1) An adjustment thereof in connection with subsequent payments.

(2) A refund thereof if adjustment cannot be made.

If the commissioner determines that payments and interest were erroneously collected, he shall make the adjustment, without interest, in connection with subsequent payments of the employer, or if such adjustment cannot be made, refund the amount of the payments erroneously collected, without interest, from the clearing account of the unemployment compensation fund, and the amount of the interest erroneously collected, from the employment security special administration fund.

For like cause and within the same period the commissioner, on his own initiative, may make an adjustment or refund: Provided, That nothing in this chapter shall be construed as permitting a cash refund of any contribution required under the law in effect when such contribution became due.

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§21A-5-20. Qualifying wages for regular benefits of newly covered workers during transition period on the basis of previously uncovered services.

Wages for insured work includes wages paid for previously uncovered service. For the purposes of this section, the term "previously uncovered services" means services:

(1) Which were not employment as defined in section sixteen, article one-a of this chapter, or by election pursuant to section three, article five of this chapter, at any time during the one-year period ending December 31, 1975; and

(2) Which (A) Are agricultural labor, or domestic services as defined in subdivisions (12) and (13), section sixteen, article one-a of this chapter or (B) are services performed by an employee of this state or a political subdivision thereof, or a nonprofit educational institution as provided in paragraphs (B) and (C), subdivision (9), section sixteen, article one-a of this chapter; except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

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§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 §21A-7-1 *et seq*. of this code 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 actively seeking work as defined in §21A-6-1d of this code;

(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 as defined in §21A-6-1d of this code, 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.

The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

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§21A-6-1a. Seasonal employment.

An individual working less than one hundred days during his base period in an industry recognized as seasonal, such as food processing and canning, shall not be eligible for benefits unless he has earned wages during his base period in other covered employment equal to not less than $100.

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§21A-6-1b. Requalification requirement.

An individual filing a claim for benefits which, if otherwise valid, would establish a subsequent benefit year, in order to be eligible for benefits for such subsequent benefit year, must have returned to work and earned wages in covered employment after the beginning of his previous benefit year equal to or exceeding an amount eight times his weekly benefit rate amount established for the previous benefit year, and be otherwise eligible under the provisions of this article and of this chapter.

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§21A-6-1c. Voluntary withholding program.

(a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, be advised by the appropriate bureau employee that:

(1) Unemployment compensation is subject to federal and state income tax;

(2) Requirements exist pertaining to estimated tax payments;

(3) The individual may elect to have federal and state income tax deducted and withheld from the individual's payment of unemployment compensation at the appropriate federal and state withholding rate; and

(4) The individual may change a previously elected withholding status.

(b) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the appropriate federal or state taxing authority as payment of income tax.

(c) The commissioner shall follow all procedures specified by the United States Department of Labor, federal Internal Revenue Service and the West Virginia State Tax Division pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld in accordance with the priorities established in rules developed by the commissioner.

(e) Effective date. -- The amendments made to this section regarding withholding for state income tax shall be effective for payments made on and after January 1, 2010.

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§21A-6-1d. Jobs and Reemployment Act.

(a) In addition to compliance with all other eligibility requirements, an individual shall be eligible, and shall remain eligible, for unemployment benefits only if he or she actively seeks, and continues to seek, work by conducting at least four work search activities weekly, defined as:

(1) Registering for work with the state's labor exchange system, placement firm, temporary work agencies, or educational institution with job placement offices;

(2) Logging on and looking for work in the state's labor exchange or other online job matching system;

(3) Using reemployment services in job centers or completing similar online or self-service activities, including, but not limited to, obtaining and using labor market and career information, participating in Reemployment Services and Eligibility Assessment activities, participating in skills assessment for occupational matching, instructional workshops, or other specialized activities;

(4) Completing job applications for employers that have, or are reasonably expected to have, job openings, or following through on job referrals or job development attempts, as directed by Workforce West Virginia staff;

(5) Applying for or participating in employment and training services provided by partner programs in job centers;

(6) Participating in work-related networking events, such as job clubs, job fairs, industry association events, or networking groups;

(7) Making contacts with, or in-person visits to, employers that have, or are reasonably expected to have, job openings;

(8) Taking a civil service examination;

(9) Going on interviews with employers, either in-person or virtually; or

(10) Performing any other work search activities prescribed or allowed by rules promulgated by Workforce West Virginia.

(b) The commissioner may:

(1) Require an individual, at the time of application for unemployment benefits and weekly thereafter, to provide proof of all his or her work search activities;

(2) Verify submissions of proof of work search activities by individuals applying for or receiving unemployment benefits; and

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(3) Determine any individual who fails to perform work search activities or provide proof of work search activities as required by this section, ineligible to receive unemployment benefits unless the individual can reasonably explain his or her failure to do so or timely remedy the failure to provide proof of his or her work search activity.

(c) The commissioner shall have discretion to determine the sufficiency of the proof of work search activities submitted, the explanation of a failure to submit such proof, the provision of such proof after an inaccuracy in the proof provided is identified, and whether an individual has otherwise complied with the requirements of this section.

(d) The commissioner shall, utilizing existing resources:

(1) Establish a process by which Workforce West Virginia will share open positions submitted to, or posted by, the Division of Personnel or any other state-administered job board by employers directly with individuals applying for or receiving unemployment benefits; and

(2) Establish a process by which, for the purpose of helping individuals applying for or receiving unemployment benefits secure suitable work, Workforce West Virginia shall refer individuals applying for or receiving unemployment benefits to such open positions, including facilitating contact between employers and those individuals, and monitoring whether those individuals are sufficiently responsive to a referral.

(e) An individual applying for or receiving unemployment benefits who receives referrals from Workforce West Virginia to a job or jobs considered to be suitable, as that term is defined in this chapter, shall apply for that job or those jobs within one-week of receiving the referrals and accept employment in suitable work if offered.

(f) Employers shall report the refusal of any individual who is receiving unemployment benefits and who receives job referrals from Workforce West Virginia to accept an offer of employment to the commissioner and also report those that accept employment and either leave or are dismissed from that employment within six weeks of the start date of that employment. The report shall be made in writing in a manner prescribed by the commissioner and shall be signed by the employer. The report shall become part of the file of the individual’s claim for benefits.

(g) Individuals receiving unemployment benefits who accept a referral to a part-time open position or otherwise accept part-time employment for which the wages are less than his or her weekly benefit rate, shall continue to receive unemployment benefits without reduction for those wages for the duration of his or her benefits period.

(h) With the exception of individuals who have received or been served with a summons for jury duty or are serving on a jury in any court of this state, the United States, or any state of the United States; are receiving vocational training as described in the provisions of §21A-6-4 of this code; are partially unemployed and are receiving low-earnings reports from

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their employer; are eligible to receive short-time compensation under a work-sharing plan as described in §21A-6B-5 of this code; or who are members in good standing of a union that refers its members to employment from a union hall; all individuals applying for or receiving unemployment benefits shall be subject to the requirements of this section, including, but not limited to, individuals who are seasonally unemployed or laid off subject to recall by their employer.

(i) Workforce West Virginia shall notify individuals seeking benefits, at the time an initial claim is filed and at any other time during the benefit year that the requirements substantively change, of the obligation to actively seek work. Delivery of the notification shall be made by the method selected by the individual seeking benefits, and may include United States mail, email, online mailbox, or text message. The notification shall include, at a minimum, the types of work search activities that are acceptable; the number of work search activities that are required in any week; the requirement that work search activities be documented; and the requirement to apply, and accept if offered, suitable jobs referred by the agency.

(j) The commissioner shall promulgate rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code.

(k) The provisions of this section shall become effective July 1, 2024.

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§21A-6-2. Waiting period construed.

If the benefit year ends during a period of total unemployment for any individual, such individual shall serve a new waiting period of one week before benefits accruing in the new benefit year shall be payable.

During the waiting period, the individual must be eligible in all respects, except for the requirements of subsection (2) of section one of this article. No week shall be counted as the waiting period week if benefits have been paid with respect to such week.

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

Upon the determination of the facts by the commissioner, an individual is 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 30 working days.

For the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer if the individual leaves his or her most recent work with an employer and if he or she in fact, within a 14-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 work, and which last preceding employer, after having previously employed the individual for 30 working days or more, laid off the 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 the individual applied for benefits. It is the intent of this paragraph to cause no disqualification for benefits for an individual who complies with the foregoing set of requirements and conditions. Further, for the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if the 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 30 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 that week; or for the week in which he or she was discharged from his or her last 30-day employing unit for misconduct and the six weeks immediately following that week. The disqualification carries 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 30 days during his or her benefit year, whether or not the days are consecutive, the maximum benefit amount is 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 30 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 the assault is committed at the 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 60A 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;

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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, or failure of, random testing for alcohol or illegal controlled substances for employees in an employment position where alcohol or drug use creates an inherent risk to the health and safety of the employee or others, or employees in safety-sensitive positions as defined in §21-1D-2 of this code; violation of an employer's drug-free workplace program; violation of an employer's alcohol-free workplace program; arson, theft, larceny, fraud, or embezzlement in connection with his or her work; or any other gross misconduct, he or she is disqualified for benefits until he or she has thereafter worked for at least 30 days in covered employment: *Provided*, That for the purpose of this subdivision, the words "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from the 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. The disqualification carries a reduction in the maximum benefit amount equal to four times the individual's weekly benefit amount.

(4) For any week or portion thereof in which he or she did not work as a result of:

(a) A strike or other bona fide labor dispute which caused him or her to leave or lose his or her employment.

(b) A lockout is not a strike or a bona fide labor dispute and no individual may be denied benefits by reason of a lockout. However, the operation of a facility by nonstriking employees of the company, contractors, or other personnel is not a reason to grant employees of the company on strike unemployment compensation benefit payments. If the operation of a facility is with workers hired to permanently replace the employees on strike, the employees would be eligible for benefits.

(c) For the purpose of this subsection, an individual shall be determined to leave or lose his or her employment by reason of a lockout where the individual employee has established that: (i) The individual presented himself or herself physically for work at the workplace on the first day of such lockout or on the first day he or she is able to present himself at the workplace or herself; and (ii) the employer denied the individual the opportunity to perform work.

(d) For purposes of this subsection, an individual is determined to be permanently replaced where the individual employee establishes that: (i) He or she is currently employed by an employer who is the subject of a strike or other bona fide labor dispute; and (ii) the position of the employee has been occupied by another employee who has been notified they are permanently replacing the employee who previously occupied the position. Employees or contractors who are hired to perform striking employees' work on a temporary basis, such as

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the duration of a strike or other bona fide labor dispute, or a shorter period of time, may not be determined to have permanently replaced a striking employee.

(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 30 working days: *Provided*, That an individual who has voluntarily quit employment to accompany a spouse serving in active military service who has been reassigned from one military assignment to another is not disqualified for benefits pursuant to this subdivision: *Provided, however*, That the account of the employer of an individual who leaves the employment to accompany a spouse reassigned from one military assignment to another may not be charged.

(7) Benefits may 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 the individual performed the services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform the services in the later of the seasons (or similar periods).

(8) (a) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services or was permanently residing in the United States under color of law at the time the 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 in this subdivision 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 are 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

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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 the individual are not payable because of his or her alien status may 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 that 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 the individual for that week shall be reduced (but not below zero) by the prorated weekly amount of those benefits, payments, or remuneration: *Provided*, That if the amount of benefits is not a multiple of $1, it shall be computed to the next lowest multiple of $1: *Provided, however*, That there is 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 the remuneration, or by a fund into which the employer has paid during the base period: *Provided further*, That notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount payable to the individual for that week may 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. A 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 52 weeks thereafter, beginning with the date of the decision, if the commissioner finds the individual who within 24 calendar months immediately preceding the 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

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payment under this article: *Provided*, That disqualification under this subdivision does not preclude prosecution under §21A-10-7 of this code.

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§21A-6-4. Individual not denied benefits by receiving vocational training.

Notwithstanding any other provision in this article, no individual shall be denied unemployment compensation benefits because of his receiving training as part of an area vocational program, or similar program, which has as its object the training of unemployed individuals in new occupational skills: Provided, That such individual's training and training institution are approved by the commissioner, and such individual produces evidence of his continued attendance and satisfactory progress at such training institution when requested to do so by the commissioner.

Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the Federal Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, if the work left is not suitable employment, or because of the application of the provisions of this chapter or any applicable federal unemployment compensation law relating to availability for work, active search for work or refusal to work to any such week in training.

For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment as defined for purposes of the Federal Trade Act of 1974 and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Federal Trade Act of 1974.

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§21A-6-4a. National guard or reserve training not to be considered employment; such individual not unavailable for work; remuneration for training not to be deducted from unemployment compensation benefit.

Notwithstanding any other provision of this chapter to the contrary, the following provisions apply to an individual who is a member of the state National Guard or other reserve component of the United States Armed Forces:

(1) If such individual is otherwise unemployed under the provisions of this chapter, he may not be considered to be employed because he is engaged in inactive duty for training;

(2) Such individual may not be considered unavailable for work by reason of his inactive duty for training; and

(3) Remuneration which the individual receives for participating in inactive duty for training may not be deducted from the unemployment compensation benefit to which he is otherwise entitled.

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§21A-6-5. Considerations in determining if work is suitable.

In determining whether work is suitable for an individual, the commissioner shall consider:

(1) The degree of risk involved to the individual's health, safety, and morals.

(2) The individual's physical fitness and prior training.

(3) His experience and prior earnings.

(4) His length of unemployment.

(5) His prospects of securing local work in his customary occupation.

(6) The distance of the available work from his residence: Provided, however, That the distance from his new residence shall not be considered in determining suitable work if such distance from available work was created as the result of the individual voluntarily changing his residence to a locality other than that locality in which he resided at the time he voluntarily quit his last employment without good cause involving fault on the part of the employer.

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§21A-6-6. New work not deemed suitable.

Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied to an individual, otherwise eligible, for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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§21A-6-7. When departments treated as separate establishments with respect to labor disputes.

In case separate branches of work commonly conducted as separate businesses are conducted in separate departments on the same premises, each department shall, for the purposes of subsection four, section three, be treated as a separate establishment.

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§21A-6-8. Payment of benefits.

Benefits shall become payable from the fund twenty-four months after the first day when payments first accrue.

Benefits shall be payable only with respect to unemployment occurring after expiration of such twenty-four months.

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§21A-6-9. Place of payment.

Benefits shall be paid through employment offices or, if the commissioner by rules so prescribes, through the Bureau of Employment Programs' offices, in accordance with such regulations as the commissioner shall prescribe.

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§21A-6-10. Benefit rate — total unemployment;

(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 §21A-1A-27 of this code. 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.

(b) The maximum benefit for each wage class shall be equal to 26 times the weekly benefit rate.

BENEFIT TABLE

A	B	C	
WAGE CLASS	WAGES IN BASE PERIOD	WEEKLY BENEFIT RATE	MAXIMUM 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

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20	5,050.00 - 5,199.99	54.00	1,404.00
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

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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

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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

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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	7,462.00
168	27,250.00 - 27,399.99	289.00	7,514.00
169	27,400.00 - 27,549.99	290.00	7,540.00
170	27,550.00 - 27,699.99	292.00	7,592.00
171	27,700.00 - 27,849.99	293.00	7,618.00

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172	27,850.00 - 27,999.99	295.00	7,670.00
173	28,000.00 - 28,149.99	296.00	7,696.00
174	28,150.00 - 28,299.99	298.00	7,748.00
175	28,300.00 - 28,449.99	300.00	7,800.00
176	28,450.00 - 28,599.99	301.00	7,826.00
177	28,600.00 - 28,749.99	303.00	7,878.00
178	28,750.00 - 28,899.99	304.00	7,904.00
179	28,900.00 - 29,049.99	306.00	7,956.00
180	29,050.00 - 29,199.99	308.00	8,008.00
181	29,200.00 - 29,349.99	309.00	8,034.00
182	29,350.00 - 29,499.99	311.00	8,086.00
183	29,500.00 - 29,649.99	312.00	8,112.00
184	29,650.00 - 29,799.99	314.00	8,164.00
185	29,800.00 - 29,949.99	315.00	8,190.00
186	29,950.00 - 30,099.99	317.00	8,242.00
187	30,100.00 - 30,249.99	319.00	8,294.00
188	30,250.00 - 30,399.99	320.00	8,320.00
189	30,400.00 - 30,549.99	322.00	8,372.00
190	30,550.00 - 30,699.99	323.00	8,398.00
191	30,700.00 - 30,849.99	325.00	8,450.00
192	30,850.00 - 30,999.99	327.00	8,502.00
193	31,000.00 - 31,149.99	328.00	8,528.00
194	31,150.00 - 31,299.99	330.00	8,580.00
195	31,300.00 - 31,449.99	331.00	8,606.00
196	31,450.00 - 31,599.99	333.00	8,658.00
197	31,600.00 - 31,749.99	335.00	8,710.00
198	31,750.00 - 31,899.99	336.00	8,736.00
199	31,900.00 - 32,049.99	338.00	8,788.00
200	32,050.00 - 32,199.99	339.00	8,814.00
201	32,200.00 - 32,349.99	341.00	8,866.00
202	32,350.00 - 32,499.99	342.00	8,892.00
203	32,500.00 - 32,649.99	344.00	8,944.00
204	32,650.00 - 32,799.99	346.00	8,996.00
205	32,800.00 - 32,949.99	347.00	9,022.00
206	32,950.00 - 33,099.99	349.00	9,074.00
207	33,100.00 - 33,249.99	350.00	9,100.00
208	33,250.00 - 33,399.99	352.00	9,152.00
209	33,400.00 - 33,549.99	354.00	9,204.00

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210	33,550.00 - 33,699.99	355.00	9,230.00
211	33,700.00 - 33,849.99	357.00	9,282.00
212	33,850.00 - 33,999.99	358.00	9,308.00
213	34,000.00 - 34,149.99	360.00	9,360.00
214	34,150.00 - 34,299.99	361.00	9,386.00
215	34,300.00 - 34,449.99	363.00	9,438.00
216	34,450.00 - 34,599.99	365.00	9,490.00
217	34,600.00 - 34,749.99	366.00	9,516.00
218	34,750.00 - 34,899.99	368.00	9,568.00
219	34,900.00 - 35,049.99	369.00	9,594.00
220	35,050.00 - 35,199.99	371.00	9,646.00
221	35,200.00 - 35,349.99	373.00	9,698.00
222	35,350.00 - 35,499.99	374.00	9,724.00
223	35,500.00 - 35,649.99	376.00	9,776.00
224	35,650.00 - 35,799.99	377.00	9,802.00
225	35,800.00 - 35,949.99	379.00	9,854.00
226	35,950.00 - 36,999.99	381.00	9,906.00
227	36,100.00 - 36,249.99	382.00	9,932.00
228	36,250.00 - 36,399.99	384.00	9,984.00
229	36,400.00 - 36,549.99	385.00	10,010.00
230	36,550.00 - 36,699.99	387.00	10,062.00
231	36,700.00 - 36,849.99	388.00	10,088.00
232	36,850.00 - 36,999.99	390.00	10,140.00
233	37,000.00 - 37,149.99	392.00	10,192.00
234	37,150.00 - 37,299.99	393.00	10,218.00
235	37,300.00 - 37,449.99	395.00	10,270.00
236	37,450.00 - 37,599.99	396.00	10,296.00
237	37,600.00 - 37,749.99	398.00	10,348.00
238	37,750.00 - 37,899.99	400.00	10,400.00
239	37,900.00 - 38,049.99	401.00	10,426.00
240	38,050.00 - 38,199.99	403.00	10,478.00
241	38,200.00 - 38,349.99	404.00	10,504.00
242	38,350.00 - 38,499.99	406.00	10,556.00
243	38,500.00 - 38,649.99	408.00	10,608.00
244	38,650.00 - 38,799.99	409.00	10,634.00
245	38,800.00 - 38,949.99	411.00	10,686.00
246	38,950.00 - 39,099.99	412.00	10,712.00
247	39,100.00 - 39,249.99	414.00	10,764.00

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248	39,250.00 - 39,399.99	415.00	10,790.00
249	39,400.00 - 39,549.99	417.00	10,842.00
250	39,550.00 - 39,699.99	419.00	10,894.00
251	39,700.00 - 39,849.99	420.00	10,920.00
252	39,850.00 - 39,999.99	422.00	10,972.00
253	40,000.00 - 40,149.99	423.00	10,998.00
254	40,150.00 - and above	424.00	11,024.00
254	40,150.00 - 40,299.99	425.00	11,050.00
255	40,300.00 - 40,449.99	427.00	11,102.00
256	40,450.00 - 40,599.99	428.00	11,128.00
257	40,600.00 - 40,749.99	430.00	11,180.00
258	40,750.00 - 40,899.99	431.00	11,206.00
259	40,900.00 - 41,049.99	433.00	11,258.00
260	41,050.00 - 41,199.99	434.00	11,284.00
261	41,200.00 - 41,349.99	436.00	11,336.00
262	41,350.00 - 41,499.99	438.00	11,388.00
263	41,500.00 - 41,649.99	439.00	11,414.00
264	41,650.00 - 41,799.99	441.00	11,466.00
265	41,800.00 - 41,949.99	442.00	11,492.00
266	41,950.00 - 42,099.99	444.00	11,544.00
267	42,100.00 - 42,249.99	446.00	11,596.00
268	42,250.00 - 42,399.99	447.00	11,622.00
269	42,400.00 - 42,549.99	449.00	11,674.00
270	42,550.00 - 42,699.99	450.00	11,700.00
271	42,700.00 - 42,849.99	452.00	11,752.00
272	42,850.00 - 42,999.99	454.00	11,804.00
273	43,000.00 - 43,149.99	455.00	11,830.00
274	43,150.00 - 43,299.99	457.00	11,882.00
275	43,300.00 - 43,449.99	458.00	11,908.00
276	43,450.00 - 43,599.99	460.00	11,960.00
277	43,600.00 - 43,749.99	461.00	11,986.00
278	43,750.00 - 43,899.99	463.00	12,038.00
279	43,900.00 - 44,049.99	465.00	12,090.00
280	44,050.00 - 44,199.99	466.00	12,116.00
281	44,200.00 - 44,349.99	468.00	12,168.00
282	44,350.00 - 44,499.99	469.00	12,194.00
283	44,500.00 - 44,649.99	471.00	12,246.00
284	44,650.00 - 44,799.99	473.00	12,298.00

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285	44,800.00 - 44,949.99	474.00	12,324.00
286	44,950.00 - 45,099.99	476.00	12,376.00
287	45,100.00 - 45,249.99	477.00	12,402.00
288	45,250.00 - 45,399.99	479.00	12,454.00
289	45,400.00 - 45,549.99	480.00	12,480.00
290	45,550.00 - 45,699.99	482.00	12,532.00
291	45,700.00 - 45,849.99	484.00	12,584.00
292	45,850.00 - 45,999.99	485.00	12,610.00
293	46,000.00 - 46,149.99	487.00	12,662.00
294	46,150.00 - 46,299.99	488.00	12,688.00
295	46,300.00 - 46,449.99	490.00	12,740.00
296	46,450.00 - 46,599.99	492.00	12,792.00
297	46,600.00 - 46,749.99	493.00	12,818.00
298	46,750.00 - 46,899.99	495.00	12,870.00
299	46,900.00 - 47,049.99	496.00	12,896.00
300	47,050.00 - 47,199.99	498.00	12,948.00
301	47,200.00 - 47,349.99	500.00	13,000.00
302	47,350.00 - 47,499.99	501.00	13,026.00
303	47,500.00 - 47,649.99	503.00	13,078.00
304	47,650.00 - 47,799.99	504.00	13,104.00
305	47,800.00 - 47,949.99	506.00	13,156.00
306	47,950.00 - 48,099.99	507.00	13,182.00
307	48,100.00 - 48,249.99	509.00	13,234.00
308	48,250.00 - 48,399.99	511.00	13,286.00
309	48,400.00 - 48,549.99	512.00	13,312.00
310	48,550.00 - 48,699.99	514.00	13,364.00
311	48,700.00 - 48,849.99	515.00	13,390.00
312	48,850.00 - 48,999.99	517.00	13,442.00
313	49,000.00 - 49,149.99	519.00	13,494.00
314	49,150.00 - 49,299.99	520.00	13,520.00
315	49,300.00 - 49,449.99	522.00	13,572.00
316	49,450.00 - 49,599.99	523.00	13,598.00
317	49,600.00 - 49,749.99	525.00	13,650.00
318	49,750.00 - 49,899.99	526.00	13,676.00
319	49,900.00 - 50,049.99	528.00	13,728.00
320	50,050.00 - 50,199.99	530.00	13,780.00
321	50,200.00 - 50,349.99	531.00	13,806.00
322	50,350.00 - 50,499.99	533.00	13,858.00

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323	50,500.00 - 50,649.99	534.00	13,884.00
324	50,650.00 - 50,799.99	536.00	13,936.00
325	50,800.00 - 50,949.99	538.00	13,988.00
326	50,950.00 - 51,099.99	539.00	14,014.00
327	51,100.00 - 51,249.99	541.00	14,066.00
328	51,250.00 - 51,399.99	542.00	14,092.00
329	51,400.00 - 51,549.99	544.00	14,144.00
330	51,550.00 - 51,699.99	546.00	14,196.00
331	51,700.00 - 51,849.99	547.00	14,222.00
332	51,850.00 - 51,999.99	549.00	14,274.00
333	52,000.00 - 52,149.99	550.00	14,300.00
334	52,150.00 - 52,299.99	552.00	14,352.00
335	52,300.00 - 52,449.99	553.00	14,378.00
336	52,450.00 - 52,599.99	555.00	14,430.00
337	52,600.00 - 52,749.99	557.00	14,482.00
338	52,750.00 - 52,899.99	558.00	14,508.00
339	52,900.00 - 53,049.99	560.00	14,560.00
340	53,050.00 - 53,199.99	561.00	14,586.00
341	53,200.00 - 53,349.99	563.00	14,638.00
342	53,350.00 - 53,499.99	565.00	14,690.00
343	53,500.00 - 53,649.99	566.00	14,716.00
344	53,650.00 - 53,799.99	568.00	14,768.00
345	53,800.00 - 53,949.99	569.00	14,794.00
346	53,950.00 - 54,099.99	571.00	14,846.00
347	54,100.00 - 54,249.99	573.00	14,898.00
348	54,250.00 - 54,399.99	574.00	14,924.00
349	54,400.00 - 54,549.99	576.00	14,976.00
350	54,550.00 - 54,699.99	577.00	15,002.00
351	54,700.00 - 54,849.99	579.00	15,054.00
352	54,850.00 - 54,999.99	580.00	15,080.00
353	55,000.00 - 55,149.99	582.00	15,132.00
354	55,150.00 - 55,299.99	584.00	15,184.00
355	55,300.00 - 55,449.99	585.00	15,210.00
356	55,450.00 - 55,599.99	587.00	15,262.00
357	55,600.00 - 55,749.99	588.00	15,288.00
358	55,750.00 - 55,899.99	590.00	15,340.00
359	55,900.00 - 56,049.99	592.00	15,392.00
360	56,050.00 - 56,199.99	593.00	15,418.00

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361	56,200.00 - 56,349.99	595.00	15,470.00
362	56,350.00 - 56,499.99	596.00	15,496.00
363	56,500.00 - 56,649.99	598.00	15,548.00
364	56,650.00 - 56,799.99	599.00	15,574.00
365	56,800.00 - 56,949.99	601.00	15,626.00
366	56,950.00 - 57,099.99	603.00	15,678.00
367	57,100.00 - 57,249.99	604.00	15,704.00
368	57,250.00 - 57,399.99	606.00	15,756.00
369	57,400.00 - 57,549.99	607.00	15,782.00
370	57,550.00 - 57,699.99	608.00	15,808.00
371	57,700.00 - 57,849.99	611.00	15,886.00
372	57,850.00 - 57,999.99	612.00	15,912.00
373	58,000.00 - 58,149.99	614.00	15,964.00
374	58,150.00 - 58,299.99	615.00	15,990.00
375	58,300.00 - 58,449.99	617.00	16,042.00
376	58,450.00 - 58,599.99	619.00	16,094.00
377	58,600.00 - 58,749.99	620.00	16,120.00
378	58,750.00 - 58,899.99	622.00	16,172.00
379	58,900.00 - 59,049.99	623.00	16,198.00
380	59,050.00 - 59,199.99	625.00	16,250.00
381	59,200.00 - 59,349.99	626.00	16,276.00
382	59,350.00 - 59,499.99	628.00	16,328.00
383	59,500.00 - 59,649.99	630.00	16,380.00
384	59,650.00 - 59,799.99	631.00	16,406.00
385	59,800.00 - 59,949.99	633.00	16,458.00
386	59,950.00 - 60,099.99	634.00	16,484.00
387	60,100.00 - 60,249.99	636.00	16,536.00
388	60,250.00 - 60,399.99	638.00	16,588.00
389	60,400.00 - 60,549.99	639.00	16,614.00
390	60,550.00 - 60,699.99	641.00	16,666.00
391	60,700.00 - 60,849.99	642.00	16,692.00
392	60,850.00 - 60,999.99	644.00	16,744.00
393	61,000.00 - 61,149.99	645.00	16,770.00
394	61,150.00 - 61,299.99	647.00	16,822.00
395	61,300.00 - 61,449.99	649.00	16,874.00
396	61,450.00 - 61,599.99	650.00	16,900.00
397	61,600.00 - 61,749.99	652.00	16,952.00
398	61,750.00 - 61,899.99	653.00	16,978.00

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399	61,900.00 - 62,049.99	655.00	17,030.00
400	62,050.00 - 62,199.99	657.00	17,082.00
401	62,200.00 - 62,349.99	658.00	17,108.00
402	62,350.00 - 62,499.99	660.00	17,160.00
403	62,500.00 - 62,649.99	661.00	17,186.00
404	62,650.00 - and over	662.00	17,212.00

(a) For individuals with base period wages of $62,650 or more, the weekly benefit amount shall be $662.

(b) An individual who is totally unemployed but earns in excess of $60 as a result of an odd job, a non-payrolled job or work from a non-covered employer or is paid a bonus in any benefit week, shall be paid benefits for such week in accordance with the provisions of §21A-6-11 of this code pertaining to benefits for partial unemployment.

(c) If a balance of benefits remains after an individual receives 26 weeks of unemployment benefits, due to partial unemployment as defined in §21A-6-11 of this code, the individual may receive benefit payments at the same weekly benefit rate as the most recent week, until the maximum benefit balance is exhausted.

(f) 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.

(g) The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

WV Legislature

§21A-6-11. Benefit rate -- Partial unemployment.

An eligible individual who is partially unemployed in any week shall, upon claim therefor filed within such time and in such manner as the commissioner may by regulation prescribe, be paid benefits for such partial unemployment in an amount equal to his weekly benefit rate, as determined in accordance with section ten of this article, less that part of wages from any source payable or bonus paid to him with respect to such week which is in excess of $60: Provided, That such amount of benefits if not a multiple of $1 shall be computed to the next lowest multiple of $1. Such partial benefits shall be paid to such individual for the week for which he is claiming benefits without regard to the provisions of subdivision (1), section one of this article.

WV Legislature

§21A-6-12. Suspension of partial benefit rights.

If at any time the unemployment compensation fund, including the trust fund, clearing account and benefit account, and excluding therefrom an amount, estimated by the commissioner, equal to the sum of the benefit liabilities then accrued and unpaid, shall fall below the sum of $5 million, the commissioner, with the concurrence of a majority of the advisory council, and with the consent and approval of the Governor, may suspend the right to receive benefit for periods of partial unemployment not then completed, and no right to benefit for periods of partial unemployment completed or occurring during the period of such suspension shall then or thereafter accrue. At any time subsequent to such suspension the commissioner, with the concurrence of a majority of the advisory council, and with the consent and approval of the Governor, may rescind, and whenever the unemployment compensation fund, including the trust fund, clearing account and benefit account, and excluding therefrom an amount, estimated by the commissioner, equal to the sum of the benefit liabilities then accrued and unpaid, reaches the sum of $10 million, the commissioner shall rescind such suspension as to periods of partial unemployment not then completed.

WV Legislature

§21A-6-13. Computation of wage credits; determination of maximum benefits.

The commissioner shall compute wage credits for each individual by crediting him with the wages paid to him for employment by employers during his base period. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the amount appearing in column (D) on line indicating individual's wage class, of Table A, in this article hereinabove contained.

WV Legislature

§21A-6-14. Payment of benefits upon decease of claimant.

Accrued benefits due and unpaid on claims filed prior to decease of a claimant may, in the discretion of the commissioner, be paid, without letters of administration, to the surviving spouse, children, or parents of the deceased, in the order of priority enumerated.

WV Legislature

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

(a) Benefits based on service in employment as defined in subdivisions (9) and (10), section sixteen, article one-a of this chapter, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services, in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

(b) Benefits based on service in employment defined in subdivisions (9) and (10), section sixteen, article one-a of this chapter, are payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

(1) With respect to services in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or after such holiday or vacation period.

(2) With respect to services in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this subsection and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause.

(3) With respect to services described in subdivisions (1) and (2) of this subsection, benefits shall not be paid to any individual for any week which commences during an established and

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customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(4) Benefits payable on the basis of services in any such capacities as specified in subdivisions (1) and (2) of this subsection shall be denied as specified in subdivisions (1), (2) and (3) of this subsection to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subdivision the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

WV Legislature

§21A-6-16. Child support intercept of unemployment benefits.

(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as hereafter defined under subsection (g) of this section. If any such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the child support enforcement division of the Department of Human Services that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual that owes such child support obligations as defined under subsection (g) of this section:

(1) The amount specified by the individual to the commissioner to be deducted and withheld under this subsection, if neither subdivision (2) nor subdivision (3) is applicable;

(2) The amount, if any, determined pursuant to an agreement submitted to the commissioner under section 454 (19)(B)(i) of the Social Security Act, (B)(i), by the Department of Human Services, unless subdivision (3) is applicable; or

(3) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 459 (i)(5) of the Social Security Act, as codified in 42 U.S.C. §659 (i)(5), properly served upon the commissioner.

(c) Any amount deducted and withheld under subsection (b) of this section shall be paid by the commissioner to the child support enforcement division of the Department of Human Services.

(d) Any amount deducted and withheld under subsection (b) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the child support enforcement division of the Department of Human Services in satisfaction of the individual's child support obligations.

(e) For purposes of subsections (a) through (d) of this section, the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(f) This section applies only if appropriate arrangements have been made for reimbursement by the child support enforcement division of the Department of Human Services for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

WV Legislature

(g) The term "child support obligations" means, for purposes of these provisions, only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act, as codified in 42 U.S.C. §654, which has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act, as codified in 42 U.S.C. §§651 through 669b.

WV Legislature

§21A-6-17. Food stamp overissuance intercept of unemployment benefits.

(a) Notwithstanding the provisions of section two, article ten of this chapter, the commissioner shall deduct and withhold from any unemployment compensation payable to an individual that owes an uncollected overissuance of food stamp coupons, as defined under subsection (f) of this section:

(1) The amount, if any, determined pursuant to a written agreement between the individual and the Department of Human Services under Section 13(c)(3)(A) of the Food Stamp Act of 1977, as codified in 7 U.S.C. 2022(c)(3)(A), and submitted to the commissioner; or

(2) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to legal process, as that term is used in Section 13(c)(3)(B) of the Food Stamp Act of 1977, as codified in 7 U.S.C. 2022(c)(3)(B) properly served upon the commissioner.

(b) Any amount deducted and withheld under subsection (a) of this section shall be paid by the commissioner to the Department of Human Services.

(c) Any amount deducted and withheld under subsection (a) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the Department of Human Services in satisfaction of the individual's uncollected overissuance.

(d) For purposes of this section, the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(e) This section applies only if appropriate arrangements have been made for reimbursement by the Department of Human Services for the administrative costs incurred by the commissioner under this section which are attributable to uncollected overissuance being enforced by the state or Department of Human Services.

(f) The term "uncollected overissuance" means, for purposes of this section, obligations which are being enforced pursuant to a plan described in Section 13(c)(1) of the Food Stamp Act of 1977, as codified in 7 U.S.C. 2022(c)(1).

WV Legislature

§21A-6A-1. Definitions.

As used in this article, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(A) Begins with the third week after a week for which there is a state "on" indicator; and

(B) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state "off" indicator; or

(ii) The thirteenth consecutive week of such period. However, for periods beginning in a "high unemployment period," as determined in accordance with subdivision (3), section five of this article, paragraph (B)(ii) of this subdivision shall be applied by substituting "twentieth" for "thirteenth."

Notwithstanding the foregoing provisions of this subdivision, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) After September 25, 1982, there is a "state >on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under this article:

(A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; and

(B) Equaled or exceeded five percent.

(C) An extended benefit period shall be made hereunder as if subdivision (2) did not contain paragraph (A) thereof, but only if the commissioner determines that the rate of insured unemployment, not seasonally adjusted, equals or exceeds six percent.

(3) For weeks of unemployment beginning on or after February 1, 2009, and ending on or before December 5, 2009, or, if the application of section 2005(a) of Title II of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009)("ARRA") is extended by Act of Congress, ending on or before a date to be determined by the commissioner not to exceed the extended application of section 2005(a) of the ARRA, there is a "state >on' indicator" for this state for a week if the commissioner determines, in accordance with regulations of the United States Secretary of Labor, that:

(A) The average rate of total unemployment, seasonally adjusted, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent; and

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(B) The average rate of total unemployment in the state for the three-month period specified in paragraph (A) of this subdivision equals or exceeds one hundred ten percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(C) For weeks of unemployment beginning after December 17, 2010, through weeks of unemployment ending on or before December 31, 2011, or the date established by section 502 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, P.L. 111-312, as amended, there is a "state >on' indicator" for a week if the commissioner determines, in accordance with regulations of the United States Secretary of Labor, that:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three-months for which data for all states are published before the close of such week equals or exceeds six and one-half percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in subparagraph (i) of this paragraph equals or exceeds one hundred ten percent of such average for any or all of the corresponding three-month periods ending in the three preceding calendar years.

(D) There is a "high unemployment period" as provided in subsection three, section five, article six-a, chapter twenty-one-a of this code if paragraph (A) or subparagraph (i), paragraph(C), or both, were applied by substituting "eight percent" for "six and one-half percent".

(4) There is a "state >off' indicator" for a week if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in either subdivision (2) or subdivision (3) result in a "state >on' indicator".

(5) "Rate of insured unemployment" means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period as determined by the commissioner on the basis of his or her reports to the United States Secretary of Labor; by

(B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-

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servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(7) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his or her eligibility period.

(8) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Notwithstanding any provision of this code to the contrary, an individual's eligibility period shall include any eligibility period provided in section 2005(b) of the ARRA.

(9) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(A) Has received, prior to such week, all of the regular benefits which were available to him or her under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his or her current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual is deemed to have received all of the regular benefits which were available to him or her although: (i) As a result of a pending appeal with respect to wages or employment which were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular benefits; or (ii) he or she may be entitled to regular benefits with respect to future weeks of unemployment but such benefits are not payable with respect to such week of unemployment by reason of the provisions of section one-a, article six of this chapter; or

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

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

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

(11) No individual is entitled to extended benefits during a period of unemployment if he or she was disqualified under the provisions of subdivision (1), (2) or (3) of section three, article

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six of this chapter, which disqualification is not terminated until the individual has returned to covered employment and has been employed in covered employment for at least thirty working days.

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

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

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

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

(C) For purposes of this subdivision, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities so long as the gross average weekly remuneration payable for the work must exceed the sum of:

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

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

(iii) Pays wages equal to the higher of:

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

(II) The state or local minimum wage;

(iv) Provided, That no individual is denied extended benefits for failure to accept an offer or referral to a job which meets the definition of suitability as described above if:

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

(II) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section five, article six of this chapter, to the extent that the

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criteria of suitability in that section are not inconsistent with the provisions of this subdivision; or

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

(D) Notwithstanding the provisions of this section to the contrary, no work is suitable work for an individual which does not accord with the labor standard provisions required by 26 U.S.C., §3304(a)(5) and set forth herein under subdivision (12)(C)(iii)(I) of this section.

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

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

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

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

(G) An individual is not eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if the individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or refused an offer of suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this subdivision requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

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

(14) An unemployed individual is eligible to receive benefits with respect to any week only if it has been found that he or she has been paid wages by an employer who was subject to the

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provisions of this chapter during the base period of his or her current benefit year in an amount at least equal to forty times his or her benefit rate for total unemployment.

(15) The provisions of subdivisions (11) and (12) of this section shall not apply at any time if temporarily or permanently suspended by federal law. If these provisions are suspended by federal law, the provisions of state law which apply to claims for and the payment of regular benefits apply to claims for and the payment of extended benefits.

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§21A-6A-2. Effect of state law provisions relating to regular benefits on claims for, and payment of, extended benefits.

Except when the result would be inconsistent with the other provisions of this article, as provided in the regulations of the commissioner, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

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§21A-6A-3. Eligibility requirements for extended benefits.

An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the commissioner finds that with respect to such week:

(1) He is an "exhaustee" as defined in subdivision ten, section one of this article,

(2) He has satisfied the eligibility requirements of this chapter for the receipt of regular benefits which are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

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§21A-6A-4. Weekly extended benefit amount.

The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit payable to the eligible individual during the eligible individual's applicable benefit year: *Provided*, That for any week during a period in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower full dollar amount.

The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

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§21A-6A-5. Total extended benefit amount.

The total extended benefit amount payable to an eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(1) Fifty percent of the total amount of regular benefits which were payable to him or her under this chapter in his or her applicable benefit year;

(2) Thirteen times his or her weekly benefit amount which was payable to him or her under this chapter for a week of total unemployment in the applicable benefit year: *Provided*, That an individual filing for extended benefits through the interstate benefit payment plan and residing in a state where an extended benefit period is not in effect shall be limited to payment for only the first two weeks of such extended benefits: *Provided, however*, That during any fiscal year in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the total extended benefit amount payable to an individual with respect to his or her applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions under §21A-6A-4 of this code in the weekly amounts paid to the individual.

(3)(A) For weeks beginning in a high unemployment period, subdivision (1) of this section shall be applied by substituting 80 percent for 50 percent, and subdivision (2) of this section shall be applied by substituting 20 for 13.

(B) For the purposes of this article, the term "high unemployment period" means any period during which the provisions of §21A-6A-1(3) of this code would result in a "state >on' indicator" if §21A-6A-1(3) of this code were applied by substituting eight percent for six and one-half percent.

(4) The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

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§21A-6A-6. Beginning and termination of extended benefit period.

(1) Whenever an extended benefit period is to become effective in this state, or in all states, as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator or state and national "off" indicators, the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of subdivision (5), section one of this article shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor.

(3) Whenever, during a period when emergency unemployment compensation benefits are being paid under the provisions of the Emergency Unemployment Compensation Act of 1991, as amended, or under any subsequent extension or reenactment thereof, the state "on" indicator as defined in subdivisions (2) or (3) of section one of this article triggers on a period of extended benefits, the Governor of this state may elect to not implement the state statutory provision and continue the payment of benefits under the Emergency Unemployment Compensation Act of 1991, as amended, to those individuals who have exhausted their entitlement to regular unemployment compensation under state law.

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§21A-6A-7. Effective date of article.

The provisions of this article shall be applicable to compensable weeks beginning on or after February 7, 1971, determined in accordance with the provisions of this article on the basis of a state "on" indicator which occurred prior to said February seven, as determined by the commissioner.

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§21A-6B-1. Definitions:

As used in this article, unless the context requires a different meaning:

“Affected unit” means a specific plant, department, shift, or other definable unit of an employing unit that has at least two employees to which an approved short-time compensation plan applies.

“Commissioner” means the Workforce West Virginia Commissioner, formerly known as the Bureau of Employment Programs’ Commissioner, as defined in §21A-1A-12 of this code.

“Exhaustee” has the same meaning as defined in §21A-6A-1 of this code.

“Health and retirement benefits” means employer-provided health benefits and retirement benefits under a defined benefit pension plan as defined in 26 U.S.C. §414(j) or contributions under a defined contribution plan as defined in 26 U.S.C. §414(i) that are incidents of employment in addition to the cash remuneration earned.

“Program” means the short-time compensation program established pursuant to this article.

“Short-time compensation” means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan, as distinguished from the unemployment benefits otherwise payable under the unemployment benefits provisions of this chapter.

“Work sharing plan” or “plan” means a plan submitted by an employer to the commissioner for approval to participate in the program.

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§21A-6B-2. Application to participate in short-time compensation program.

(a) The commissioner shall establish and implement a short-time compensation program by July 1, 2023. The program shall meet the requirements of 26 U.S.C. § 3306(v) and all other applicable federal and state laws.

(b) An employer that wishes to participate in the program shall submit to the commissioner a signed, written work sharing plan for approval. The commissioner shall develop an application form to request approval of a plan and an approval process. The application shall include:

(1) The affected unit covered by the plan, including the number of employees in the unit; the percentage of employees in the affected unit covered by the plan; identification of each individual employee in the affected unit by name, Social Security number, and the employer's unemployment tax account number; and any other information required by the commissioner to identify plan participants.

(2) A description of how employees in the affected unit will be notified of the employer's participation in the plan if such application is approved, including how the employer will notify those employees in a collective bargaining unit as well as any employees in the affected unit who are not in a collective bargaining unit. If the employer does not intend to provide advance notice to employees in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice.

(3) A requirement that the employer identify, in the application, the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. The percentage of reduction for which a work sharing plan application may be approved shall be not less than 10 percent and not more than 60 percent. If the plan includes any week for which the employer regularly does not provide work, including incidences due to a holiday or other work closure, then such week shall be identified in the application.

(4) Certification by the employer that, if the employer provides health benefits and retirement benefits to any employee whose usual weekly hours of work are reduced under the program, such benefits will continue to be provided to employees participating in the program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the program. For defined benefit retirement plans, the hours that are reduced under the plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation.

(5) Certification by the employer that the aggregate reduction in work hours is in lieu of

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layoffs, whether temporary or permanent layoffs or both. The application shall include an estimate of the number of employees who would have been laid off in the absence of the plan. The employer shall also certify that new employees will not be hired in or transferred to an affected unit for the duration of the plan.

(6) Certification by the employer that, to the best of the employer's available knowledge, participation in the plan and its implementation is consistent with the employer's obligations under applicable federal and state laws.

(7) Agreement by the employer to: (i) Furnish reports to the commissioner relating to the proper conduct of the plan; (ii) allow the commissioner access to all records necessary to approve or disapprove the plan application and, after approval of a plan, monitor and evaluate the plan; and (iii) follow any other directives the commissioner deems necessary to implement the plan and that are consistent with the requirements for plan applications.

(8) Any other provision added to the application by the commissioner that the U.S. Secretary of Labor determines to be appropriate for purposes of a work sharing plan.

WV Legislature

§21A-6B-3. Approval and disapproval of plan.

The commissioner shall approve or disapprove a work sharing plan in writing within 10 business days of its receipt and promptly communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. If a plan is disapproved, the employer may submit a different work sharing plan for approval.

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§21A-6B-4. Effective date of plan, revocation of plan, and modification of plan.

(a) A work sharing plan shall be effective on the date that is mutually agreed upon by the employer and the commissioner, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the commissioner. However, if a work sharing plan is revoked by the commissioner under subsection (b) of this section, the plan shall terminate on the date specified in commissioner's written order of revocation. An employer may terminate a plan at any time upon written notice to the commissioner. Upon receipt of such notice from the employer, the commissioner shall promptly notify each member of the affected unit of the termination date. An employer may submit a new application to participate in another plan at any time after the expiration or termination date.

(b) The commissioner may revoke approval of a work sharing plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective. The commissioner may periodically review the operation of each employer's plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of any criteria on which approval of the plan was based.

(c) An employer may request a modification of an approved plan by filing a written request to the commissioner. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the plan. The commissioner shall approve or disapprove the proposed modification in writing within 10 working days and promptly communicate the decision to the employer. An employer is not required to request approval of a plan modification from the commissioner if the change is not substantial, but the employer shall report every change to the plan to the commissioner promptly and in writing.

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§21A-6B-5. Eligibility for short-time compensation.

(a) An employee is eligible to receive short-time compensation under a work sharing plan with respect to any week only if the employee is monetarily eligible for unemployment benefits, not otherwise disqualified for unemployment benefits, and:

(1) During the week, the employee is employed as a member of an affected unit under an approved work sharing plan that was approved prior to that week, and the plan is in effect with respect to the week for which short-time compensation is claimed; and

(2) Notwithstanding any other provisions of this title relating to availability for work and actively seeking work, the employee is available for the employee's usual hours of work with the short-time compensation employer, which may include, for purposes of this section, participating in training, including employer-sponsored training or training funded under the federal Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, 128 Stat. 1425 (2014) to enhance job skills that is approved by the commissioner.

(b) Notwithstanding any other provision of law, an employee covered by a work sharing plan is deemed unemployed in any week during the duration of that plan if the employee's remuneration as an employee in an affected unit is reduced based on a reduction of the employee's usual weekly hours of work under an approved work sharing plan.

(c) The short-term compensation program shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment.

WV Legislature

§21A-6B-6. Benefits

(a) The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment as defined in §21A-6-10 multiplied by the percentage of reduction in the individual's usual weekly hours of work.

(b) An individual may be eligible for short-time compensation or unemployment benefits, as appropriate: *Provided*, That no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment benefits: *Provided, however*, That no individual shall be paid short-time compensation benefits for more than 26 weeks under a plan.

(c) Provisions applicable to unemployment benefits claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with the program's provisions. An individual who files an initial claim for short-time compensation benefits shall receive a monetary determination.

(d) An employee who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment benefits shall be eligible for the amount of regular unemployment compensation to which he or she would otherwise be eligible.

(e) An employee who is not provided any work by the short-time compensation employer during a week, but who works for another employer and is otherwise eligible, may be paid unemployment benefits for that week subject to the disqualifying income and other provisions applicable to claims for regular unemployment benefits.

(f) An employee who has received all of the short-time compensation or combined unemployment benefits and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

(g) The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

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§21A-6B-7. Rulemaking.

Workforce West Virginia shall promulgate and propose rules under §29A-3-1 *et seq*. of this code for implementing this article.

WV Legislature

§21A-7-1. Claims.

Claims for benefit shall be made in accordance with the rules and regulations prescribed by the commissioner.

WV Legislature

§21A-7-2. Display of regulations.

An employer shall post and maintain in places readily accessible to individuals in his service the claim procedure regulations prescribed by the commissioner. At the time any such individual becomes unemployed, an employer shall furnish such individual with a copy of the regulations. The commissioner shall provide an employer copies of the regulations without cost.

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§21A-7-3. Deputies.

The commissioner shall appoint deputies to investigate all claims, and to hear and initially determine all claims for benefits excepting claims relating to labor disputes or disqualification under subdivision four of section three, article six of this chapter.

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§21A-7-4. Investigation by deputy; notice and hearing before deputy; referral of labor dispute claims for hearing and determination by appeal tribunal; initial determination of other claims by deputy; notice of findings and decision.

(a) A deputy shall promptly investigate all claims.

(b) Upon the filing of any claim for benefits, notice thereof shall promptly be given by the commissioner or his designee to the employer concerned, in writing. The employer shall have a period of four calendar days from the receipt of such notice within which to furnish to the deputy or his local office initial information respecting the claim and the facts and circumstances pertaining to the claimant's unemployment. If, within said four-day period, any party shall request a hearing before the deputy, such hearing shall be held, upon notice to all parties by the commissioner or his designee, either by delivery in person or by mail, within five calendar days of receipt of such request. Such hearing shall be informal in nature, but shall afford the parties reasonable opportunity to present, in person, information relevant to the eligibility and disqualification of the claimant.

(c) If it appears from the deputy's investigation and from all of the information before him that a claim relates to a labor dispute or to a disqualification under subdivision (4), section three, article six of this chapter, the claim shall be transferred to the board for full hearing and initial determination by an appeal tribunal.

(d) If it appears from the deputy's investigation, and from all of the information before him that a claim does not relate to a labor dispute or to a disqualification under subdivision (4), section three, article six of this chapter, the deputy shall determine whether or not such claim is valid, and, if valid, shall determine:

(1) The week with respect to which benefits will commence;

(2) The amount of benefit;

(3) The maximum duration of benefits.

(e) After any finding or determination by a deputy, the deputy shall promptly notify the claimant and the employer of his findings and decision.

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§21A-7-5.

Repealed.

Acts, 1939 Reg. Sess., Ch. 134.

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§21A-7-6.

Repealed.

Acts, 1939 Reg. Sess., Ch. 134.

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§21A-7-7. Appeal tribunals.

The board shall determine the manner of hearing cases transferred or appealed from a decision of a deputy. All cases relating to labor disputes or to disqualification under subdivision (4), section three, article six of this chapter, and transferred to an appeal tribunal for initial determination, shall be heard by an appeal tribunal composed either of three administrative law judges assigned by the board, or the board itself, as the board may direct in particular cases or in particular areas. All other appeals from the decision of a deputy shall be heard by an appeal tribunal composed, as the board may direct in particular cases or in particular areas, of a single administrative law judge; a tribunal of three administrative law judges assigned by the board; a member of the board; or the board itself.

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§21A-7-7a. Hearings and determinations by appeal tribunal in labor dispute cases.

Upon transfer to the board of a case relating to a labor dispute or to a disqualification under subdivision four, section three, article six of this chapter, for hearing and initial determination by an appeal tribunal, the parties shall be entitled to a full and complete hearing and opportunity to present evidence before an appeal tribunal as provided in section seven of this article. Within eight days after the transfer or referral of such a case to the board, the board shall fix the time and place for hearing such case, and notify the claimant, last employer, and the commissioner, ten days in advance of the date set for hearing. All such cases shall be heard and determined as expeditiously as possible and shall be given priority over all other cases. Upon consideration of all evidence the appeal tribunal shall make a decision with respect to all questions fairly raised by the record, within fourteen days after the date of the hearing, and shall notify the claimant, last employer, and the commissioner of its findings and decisions.

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§21A-7-8. Appeal from deputy's decision.

A claimant, last employer or other interested party, may file an appeal from the decision of the deputy within eight calendar days after notice of the decision has been delivered or mailed to the claimant and last employer as provided in section four of this article. The period within which an appeal from the decision of the deputy may be filed shall be stated in such notice. The decision of the deputy shall be final and benefits shall be paid or denied in accordance therewith unless an appeal is filed within such time.

Upon appeal from the determination of a deputy, an individual shall be entitled to a fair hearing and reasonable opportunity to be heard before an appeal tribunal as provided in section seven of this article.

Within eight days after receipt by the board of notice of appeal from the decision of a deputy, the board shall fix the time and place for hearing such appeal, and notify the claimant, last employer, and the commissioner, ten days in advance of the date set for hearing.

Upon consideration of all evidence the appeal tribunal shall make a decision within twenty-one days after the date of the hearing and shall notify the claimant, last employer, and the commissioner of its findings and decision.

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§21A-7-9. Appeal from appeal tribunal's decision; finality of decision.

A claimant, last employer, or other interested party may file an appeal to the board from the decision of an appeal tribunal within eight calendar days after notice of the decision has been delivered or mailed to the claimant and last employer. The commissioner shall be deemed an interested party. The decision of the appeal tribunal shall be final unless an appeal is filed within such time.

WV Legislature

§21A-7-10. Review by board.

The board may, on its own motion, after notice to the claimant, last employer, and the commissioner, eight days in advance of the date set for hearing, affirm, modify, or reverse and set aside a decision of an appeal tribunal. Any appeal from a decision of an appeal tribunal allowing benefits in a case relating to a labor dispute or to a disqualification under subdivision four, section three, article six of this chapter, shall be heard as expeditiously as possible and given priority over all other cases and shall be decided by the board within ten days after the hearing before the board.

WV Legislature

§21A-7-11. Benefits pending appeal.

(a) Benefits found payable by decision of a deputy, appeal tribunal, the board or court shall be immediately paid up to the week in which a subsequent appellate body renders a decision, by order, finding that benefits were not or are not payable.

(b) If, at any appeal stage, benefits are found to be payable which were found before the appeal stage to be not payable, the commissioner shall immediately reinstate the payment benefits. (c) If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him or her pursuant to a prior decision, the amount of benefits paid are considered overpaid.

(1) The commissioner shall recover such amount by civil action or in any manner provided in this code for the collection of past-due payment and shall withhold, in whole or in part, as determined by the commissioner, any future benefits payable to the individual and credit the amount against the overpayment until it is repaid in full.

(2) The commissioner may not bill an employer under section three-a, article five of this chapter for overpaid amounts of benefits paid to a claimant. In any instance where the commissioner has billed an employer, the employer has paid the billed amount and the amount is determined under this section to be an overpayment, the commissioner shall reimburse the employer for the amount of the overpayment paid by the employer from the Unemployment Compensation Trust Fund, if allowed by federal law, and if not from the Administrative Fund: Provided, That no employer shall be entitled to any payment under this subdivision unless such employer has filed all requested adequate separation information within the required time frame.

(d) If the final decision in any case determines that the claimant was not lawfully entitled to the benefits paid to him or her pursuant to a prior order any benefits paid pursuant to the prior order, are not chargeable to the employer's account.

(e) Whenever the commissioner finds that a claimant has received back pay at his or her customary wage rate from his or her employer the employee is liable to repay the benefits, if any, paid to the individual for the time he or she was unemployed.

(f) In any case in which, under this section, an employee is liable to repay benefits to the commissioner, the amount is collectible by civil action in the name of the commissioner.

(g) Whenever an employer subject to this chapter is required to make a payment of back pay to an individual who has received unemployment compensation benefits during the same period covered by the back pay award, the employer shall withhold an amount equal to the unemployment compensation benefits and shall repay the amount withheld to the Unemployment Compensation Trust Fund. If an employer fails to comply with this section, the commissioner may recover from the employer the amount of unemployment compensation benefits which should have been withheld by a civil action.

WVLegislature

§21A-7-12. Quorum.

All hearings before the board shall be before at least a quorum of its members.

WV Legislature

§21A-7-13. Board to establish regulations for procedure.

The board shall establish, and may from time to time modify and amend, rules and regulations for:

(1) The conduct and determination of benefit cases appealed to it, or to an appeal tribunal;

(2) The form of all papers and records thereof;

(3) The time, place, and manner of hearings;

(4) Determining the rights of the parties; and the rules need not conform to the common-law or statutory rules of evidence and procedure and may provide for the determination of questions of fact according to the predominance of the evidence.

WV Legislature

§21A-7-14. Records.

The board shall keep full and complete records of all proceedings concerning a disputed claim. All testimony upon a disputed claim shall be recorded but need not be transcribed unless the claim is appealed.

WV Legislature

§21A-7-15. Notice of decision.

The board shall, within fifteen days after the conclusion of the hearing, notify the claimant, last employer, and the commissioner of its findings and decision on an appeal.

WV Legislature

§21A-7-16. Interested parties not to decide disputed claims.

A person interested in the determination of any disputed claim arising under this chapter shall not participate on behalf of the commissioner or the board in the determination thereof.

WV Legislature

§21A-7-17. Finality of board's decision — Judicial review.

The decision of the board shall be final and benefits shall be paid or denied in accordance therewith, unless a claimant, last employer, or other interested party appeals to the Intermediate Court of Appeals within 30 days after mailing of notification of the board's decision: *Provided*, That, in cases relating to a disqualification under §21A-6-3(4) of this code, the decision of the board shall be final and benefits shall be paid or denied in accordance therewith, unless a claimant, last employer, or other interested party appeals to the Intermediate Court of Appeals within 20 days after mailing of notification of the board's decision.

Parties to the proceedings before the board shall be made defendants in any such appeal; and the commissioner shall be an interested party with the discretionary authority to appear in any such judicial review.

WV Legislature

§21A-7-18. Claim procedure costs.

Witness fees of subpoenaed witnesses shall be charged to the administration fund.

WV Legislature

§21A-7-19. Administrative procedure to be exhausted.

A person claiming an interest under the provisions of this article shall exhaust his remedies before the board before seeking judicial review.

WV Legislature

§21A-7-20. Board a necessary party to judicial action; legal counsel.

[Repealed.]

WV Legislature

§21A-7-21. Weight accorded board's findings of fact.

In a judicial proceeding to review a decision of the board, the findings of fact of the board shall have like weight to that accorded to the findings of fact of a trial chancellor or judge in equity procedure.

WV Legislature

§21A-7-22.

Repealed.

Acts, 1967 Reg. Sess., Ch. 200.

WV Legislature

§21A-7-23. Trial; preference on calendar.

Except as limited by section twenty-one of this article, a decision of the board taken to the circuit court of Kanawha county for judicial review shall be tried as any other civil action: Provided, That such actions shall have preference on the calendar of the court over all other civil actions, except cases arising under the workers' compensation law.

WV Legislature

§21A-7-24. Exceptions; appeal bond.

In any judicial proceeding arising under this chapter it shall not be necessary to enter exception to the rulings of the board and no bond shall be required for entering an appeal.

WV Legislature

§21A-7-25. Service of process.

Service in such action shall be upon the chairman of the board or such person as he may designate, and service upon him shall be treated as completed service upon all parties to the original dispute. With such service upon the board there shall be included a copy of the petition for review and as many additional copies as there are defendants, including the commissioner. The chairman of the board or such person as he may designate shall immediately upon receipt of service forward a copy of such service, including a copy of the petition for review, by registered mail to each defendant, including the commissioner.

WV Legislature

§21A-7-26. Certification and filing of record; certification of questions of law.

The board shall certify and file with the court all documents and papers and a transcript of all testimony taken in a disputed claim together with its findings of fact and decision thereon.

Upon its own motion the board may also certify to the court questions of law involved in any of the board's decisions.

WV Legislature

§21A-7-27. Appeal to Supreme Court of Appeals.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

WV Legislature

§21A-7-28. Effect of judicial decision.

Upon the final determination of such judicial proceeding the board shall enter an order in accordance with the court's determination.

WV Legislature

§21A-7-29. Supersedeas.

A petition for judicial review shall not act as supersedeas or stay unless the board shall so order.

WV Legislature

§21A-7-30. Appeals from administrative decisions relative to chargeability of benefits.

Appeals shall lie to the board of review, in the manner as provided in this article relating to appeal from an examiner's decision, and under such rules, regulations, and procedure as may be prescribed by the board, from an administrative decision of the commissioner relating to chargeability of benefits. Appeals shall lie from a final decision of the board of review in such case to the circuit court of Kanawha county and thence to the Supreme Court of Appeals of West Virginia within the times and in the manner as provided in this article.

WV Legislature

§21A-8-1. Establishment.

There is hereby established as a special fund, separate and apart from all public moneys or funds of the state, an Unemployment Compensation Fund. The fund shall consist of:

(1) All payments collected under this chapter.

(2) Interest earned upon money in the fund.

(3) Property or securities acquired through the use of the fund.

(4) Earnings of such property or securities.

(5) Amounts transferred from the Employment Security Special Administration Fund.

(6) Any moneys loaned to the fund pursuant to section sixteen of this article.

(7) Any moneys received from the federal unemployment account in the Unemployment Trust Fund in accordance with Title XII of the Social Security Act, as amended.

All money in the funds shall be mingled and undivided.

Any interest required to be paid on advances under Title XII of the Social Security Act, as amended, shall be paid by the date on which such interest is due. No interest shall be paid directly or indirectly from amounts in the Unemployment Compensation Trust Fund.

WV Legislature

§21A-8-2. Administration.

The commissioner shall be the custodian of the fund and shall administer it exclusively for the purposes of this chapter.

WV Legislature

§21A-8-3. Commissioner's bond.

The commissioner shall give a separate surety bond in the sum of $50,000 for the faithful management of the fund. The bond shall be in a form prescribed by the Attorney General and approved by the Governor. The premiums upon the bond shall be paid out of the administration fund.

The bond shall be filed with the Secretary of State.

WV Legislature

§21A-8-4. Accounts in fund.

The commissioner shall maintain in the fund three separate accounts:

(1) A clearing account.

(2) An unemployment trust fund account.

(3) A benefit account.

WV Legislature

§21A-8-5. Clearing account.

Upon the receipt of payments and other moneys payable into the fund under this chapter, the commissioner shall immediately deposit them in the clearing account. Refunds payable under section nineteen, article five, of payments erroneously collected, shall be made from the clearing account. Such refunds shall be made upon warrants issued by the commissioner. Interest collected on delinquent payments shall be paid out of the clearing account, upon warrants issued by the commissioner, into the State Treasury to be credited to the employment security special administration fund.

WV Legislature

§21A-8-6. Unemployment trust fund account.

The unemployment trust fund account shall consist of money deposited with the secretary of the treasury of the United States to the credit of this state in the unemployment trust fund.

WV Legislature

§21A-8-7. Deposit with federal government.

Except as otherwise provided in section five of this article, after clearance, moneys in the clearing account shall be deposited immediately with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established under section nine hundred four of the Social Security Act. The deposit of these funds shall not be conditioned by the requirements imposed upon public funds of this state.

WV Legislature

§21A-8-8. Benefit account.

The benefit account shall consist of moneys requisitioned from this state's account in the unemployment trust fund.

WV Legislature

§21A-8-9. Deposit of funds.

Except as otherwise provided in this article money in the clearing and benefit accounts shall be deposited by the commissioner, with the consent of the Governor, in any bank or public depository in which public funds of the state may be deposited. No public deposit insurance charge or premium shall be paid out of the unemployment compensation fund.

WV Legislature

§21A-8-10. Withdrawals.

Except as provided in section thirteen of this article, money shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits and repayment of any loans outstanding from the Revenue Shortfall Reserve Fund, created in section twenty, article two, chapter eleven-b of this code, as provided in section sixteen of this article. The commissioner may requisition from the Unemployment Trust Fund such amounts, not exceeding the amount of the account, as the commissioner determines to be necessary for the payment of benefits for a reasonable future period or to repay a loan outstanding from the Revenue Shortfall Reserve Fund as provided in section sixteen of this article.

Upon receipt of the money the commissioner shall deposit it in the benefit account.

WV Legislature

§21A-8-11. Issuance and signing of warrants; forgery; penalty.

The commissioner shall issue his warrants for the payment of benefits solely from the benefit account. Expenditures of money in the benefit account and refunds from the clearing account shall not be subject to limitations imposed upon the release of public funds in the custody of state officers. All warrants when issued by the commissioner shall bear his signature, personally signed by him or by such employees as are, in writing, authorized by him to make his signature thereto, or bear a facsimile of the commissioner's signature. Such signature of the commissioner may be made, however, by means of such mechanical or electrical device as the commissioner may select, after the same shall have been approved by the Governor and the Attorney General; any such mechanical or electrical device, as so selected, to be safely kept in the office of the commissioner so that no one shall have access thereto except the commissioner and such of his employees, as may be authorized to sign warrants as hereinabove provided. If any person, other than the commissioner, or his employees duly and respectively authorized by him so to do, as above provided, shall sign the name of the commissioner by the use of any mechanical or electrical device, or otherwise, or use the facsimile of the signature of the commissioner on any warrant, or utter or attempt to employ as true such forged warrant, knowing the same to be forged, he shall be guilty of a felony and, upon conviction shall be confined in the penitentiary not less than two nor more than ten years.

WV Legislature

§21A-8-12. Unclaimed amounts.

Amounts unclaimed or unpaid at the expiration of the period for which sums have been requisitioned, shall be deducted from the estimates for succeeding periods, or in the discretion of the commissioner may be redeposited with the secretary of the treasury of the United States in the unemployment trust fund.

WV Legislature

§21A-8-13. Termination of state act.

In case Title IX of the Federal Social Security Act is declared unconstitutional by the supreme court of the United States or is repealed by Congress or amended with the result that no portion of the contributions required by this chapter may be credited against the federal excise tax levied by Title IX of such act, the provisions of this chapter by virtue of that fact shall become inoperative.

All assets standing to the credit of the state in the unemployment trust fund in the United States treasury shall be requisitioned promptly by the commissioner. The assets of the state's account in the trust fund shall be placed in the unemployment compensation fund and together with the assets in that fund shall be refunded pro rata to the contributors.

Money in the administration fund received from the federal government shall be dealt with by the State Treasurer pursuant to the conditions of the grant thereof to the State of West Virginia, and any assets therein which have been appropriated thereto out of the general treasury of the state by the Legislature shall revert to such general fund in the State Treasury.

Corresponding action shall be taken with respect to assets in the unemployment compensation fund, the unemployment trust fund, and the administration fund, in the event that this chapter shall be repealed by the Legislature, or declared invalid under the state Constitution by the Supreme Court of Appeals of West Virginia or invalid under the United States Constitution by the supreme court of the United States.

The commissioner is hereby granted continuing authority for the purposes of action provided for by this section in case any of the above contingencies occur.

WV Legislature

§21A-8-14. Transfer of funds to railroad unemployment insurance account.

Notwithstanding any requirements of the foregoing sections of this article, the commissioner shall, prior to whichever is the later of (1) thirty days after the close of this session of the Legislature and (2) July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in the unemployment trust fund, established and maintained pursuant to section nine hundred four of the Social Security Act, as amended, to the railroad unemployment insurance account, established and maintained pursuant to section ten of the Railroad Unemployment Insurance Act, an amount hereinafter referred to as the preliminary amount; and shall, prior to whichever is the later of (1) thirty days after the close of this session of the Legislature and (2) January 1, 1940, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account, an additional amount, hereinafter referred to as the liquidating amount. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term "employer" is defined in section one-a of the Railroad Unemployment Insurance Act) and credited to the unemployment compensation fund bears to all contributions theretofore collected under this chapter and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" (as the term "employer" is defined in section one-a of the Railroad Unemployment Insurance Act) pursuant to the provisions of this chapter during the period July 1, 1939 to December 31,1939, inclusive.

WV Legislature

§21A-8-15. Administrative use of money credited to account of State in Unemployment Trust Fund pursuant to § 903 of Social Security Act.

Money credited to the account of this State in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to section nine hundred three of the Social Security Act, as amended, may not be requisitioned from this State's account or used except for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to section ten [§§ 21A-8-10 et seq.] of this article for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the Legislature and only if the expenses are incurred and the money requisitioned after the enactment of an appropriation law which specifies the purposes for which such money is appropriated and the amounts appropriated therefor. Such appropriation is subject to the following conditions:

(1) The period within which such money may be obligated is limited to a period ending not more than two years after the effective date of the appropriation law; and

(2) The amount which may be obligated is limited to an amount which does not exceed the amount by which (A) the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds, (B) the aggregate of the amounts used by this State pursuant to this chapter and charged against the amounts transferred to the account of this State.

(b) For purposes of subdivision (2) of subsection (a), amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into. The appropriation, obligation, and expenditure or other disposition of money appropriated under subdivision (2) shall be accounted for in accordance with standards established by the United States Secretary of Labor.

(c) Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the Employment Security Administration Fund, but, until expended, shall remain a part of the Unemployment Compensation Fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the Secretary of the Treasury of the United States for credit to this State's account in the Unemployment Trust Fund.

WV Legislature

§21A-8-16. Loans to Unemployment Compensation Fund from Revenue Shortfall Reserve Fund.

(a) Notwithstanding any provision of this code to the contrary and subject to the provisions of this section, the Governor may, by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue Shortfall Reserve Fund created in section twenty, article two, chapter eleven-b of this code for deposit into the Unemployment Compensation Fund, created in section one of this article, to be expended in accordance with this code. The amount of funds borrowed and outstanding under this section may not exceed $50 million at any one time, or the amount the Governor determines is necessary to adequately sustain the balance in the Unemployment Compensation Fund at a minimum of $50 million, whichever is less.

(b) Notwithstanding the provisions of subsection (a) of this section, the Governor may not borrow funds from the Revenue Shortfall Reserve Fund unless the Executive Director of Workforce West Virginia has projected that the balance in the state's Unemployment Compensation Fund will be less than $50 million at any time during the next thirty days.

(c) Any funds borrowed pursuant to this section shall be used to pay benefits only.

(d) Any funds borrowed pursuant to this subsection shall be repaid from funds on deposit in the Unemployment Trust Fund in excess of $50 million or from other funds legally available for such purpose, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within one hundred eighty days of their withdrawal.

(e) No amounts may be borrowed pursuant to the provisions of this section after September 1, 2018.

WV Legislature

§21A-8A-1. Commissioner of department of employment security authorized to borrow money to repay funds advanced by the federal government; employment security debt fund established.

(a) For the single purpose of financing the repayment of funds advanced to the department of employment security by the federal government under the provisions of Section 1201 of the Social Security Act, 42 U.S.C.A. §1321, for such advances which were made prior to July 1, 1987, the commissioner of the department of employment security is authorized on behalf of the department of employment security, as provided in this article:

(1) To borrow money, as contractual indebtedness, not bonded, and issue notes as evidence of such borrowing; and

(2) To borrow money and issue revenue bonds as evidence of such borrowing.

(b) Regardless of whether the repayment of funds advanced by the federal government is to be accomplished solely by issuing notes in accordance with the provisions of subdivision (1), subsection (a) of this section, solely by the issuance of bonds in accordance with the provisions of subdivision (2) of such subsection, or by a combination of such notes and bonds, the commissioner shall provide for the issuance of such notes or bonds in such principal amounts and upon such terms as shall be necessary to provide sufficient money for repaying, in whole, such funds advanced by the federal government.

(c) The commissioner may borrow money as provided for in subdivision (1), subsection (a) of this section, from the consolidated fund and the consolidated pension fund established under the provisions of section eight, article six, chapter twelve of this code, or may borrow money from any private financial institution or institutions, or may borrow from both such funds and such institution or institutions, or may borrow money as provided for in subdivision (2), subsection (a) of this section, by issuing revenue bonds. Prior to financing the repayment of funds advanced by the federal government, the commissioner shall ascertain which option or combination of options presents the terms most economically favorable to the commissioner and the employers and employees of this state, and shall proceed to refinance the repayment in accordance with such terms.

(d) The principal of and interest on such bonds and notes shall be payable solely from the special nonrevolving funds created under the provisions of section two of this article.

WV Legislature

§21A-8A-2. Employment security debt note fund created; employment security debt bond fund created; pledge of funds for sinking fund.

(a) There is hereby created in the State Treasury a special nonrevolving revenue fund to be known as "the employment security debt note fund," into which shall be paid a portion of all funds derived from the assessments hereinafter set forth in this article. The portion of such assessments payable to the fund shall be an amount directly proportional to the ratio which the principal and interest on notes issued under this article bears to the total amount of principal and interest to be paid on indebtedness incurred under the provisions of this article. This fund may also receive funds from any other source, either state or federal.

(b) There is hereby created in the State Treasury a special nonrevolving revenue fund to be known as "the employment security debt bond fund," into which shall be paid a portion of all funds derived from the assessments hereinafter set forth in this article. The portion of such assessments payable to the fund shall be an amount directly proportional to the ratio which the principal and interest on bonds issued under this article bears to the total amount of principal and interest to be paid on indebtedness incurred under the provisions of this article. This fund may also receive funds from any other source, either state or federal.

(c) The commissioner shall have authority to pledge all of the revenue paid into a fund created by this section to meet the requirements of any sinking fund established pursuant to section five of this article in connection with any revenue bond issue or notes authorized by this article, including a reserve fund for the payment of the principal of and interest on such revenue bond issue or notes when other moneys in the sinking fund are insufficient therefor; and may provide in the resolution authorizing any issue of such bonds or notes, and in any trust agreement made in connection therewith, for such priorities on the revenues paid into the special revenue fund as may be necessary for the protection of the prior rights of the holders of bonds or notes issued at different times under the provisions of this article.

WV Legislature

§21A-8A-3. Issuance of revenue bonds or notes.

The issuance of bonds or notes under the provisions of this article shall be authorized by a resolution of the commissioner, which shall provide for the issuance of bonds or notes in an amount sufficient to provide moneys sufficient to repay the federal government for all advances and interest thereon made to the West Virginia department of employment security pursuant to Title 42 U.S.C.A. §1321, which such advances were made prior to July 1, 1987: Provided, That competitive sealed bids shall be used to determine the bond issuance agent. Such resolution shall prescribe the rights and duties of the bondholders or noteholders and the commissioner, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds or notes shall be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be payable at such times and intervals, be in such denominations, be in such form, either coupon or fully registered without coupons, or book entry, carrying such registration exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of such redemption prices, and be entitled to such priorities on the revenues paid into the special revenue fund as may be provided in the resolution authorizing the issuance of the bonds or notes or in any trust agreement made in connection therewith. The bonds or notes shall be signed by the Governor and by the commissioner, under the great seal of the state, attested by the Secretary of State, and the coupons attached thereto, if any, shall bear the facsimile signature of the commissioner. In case any of the officers whose signatures appear on the bonds or notes or coupons cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if such officers had remained in office until such delivery.

Such bonds or notes shall be sold in such manner as the commissioner may determine to be for the best interests of the state, taking into consideration the financial responsibility of the purchaser. The proceeds of such bonds or notes shall be used solely for the repayment of advances and interest under the provisions of Title 42 U.S.C.A. §1321.

The bonds or notes issued under the provisions of this article shall be and have all the qualities of negotiable instruments under the law merchant and the Uniform Commercial Code of this state.

Bonds or notes issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of the State of West Virginia and for business development corporations organized pursuant to article fourteen, chapter thirty-one of the Code of West Virginia.

WV Legislature

§21A-8A-4. Trust agreement for holders of bonds or notes.

The commissioner may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, either within or outside the state, as trustee for the holders of bonds or notes issued hereunder, setting forth therein such duties of the commissioner in respect to the payment of the bonds or notes, the conservation and application of all moneys, the security for moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds or notes, as may be agreed upon with the original purchasers of such bonds or notes, except that competitive bids shall be used to determine such trust company; and including therein provisions restricting the individual right of action of bondholders or noteholders as is customary in trust agreements respecting bonds or notes and debentures of corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders or noteholders.

WV Legislature

§21A-8A-5. Municipal bond commission for payment of bonds or notes.

From the special revenue funds established in accordance with the provisions of section two of this article, the commissioner shall make periodic payments to the state Municipal Bond Commission in an amount sufficient to meet the requirements of any issue of bonds or notes sold under the provisions of this article, as specified in the resolution of the commissioner authorizing the issue and in any trust agreement entered into in connection therewith. The payment so made shall be placed by the commissioner in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds or notes of such issue and the interest thereon, and to the redemption or repurchase of such bonds or notes, such sinking fund to be a fund for all bonds or notes of such issue without distinction or priority of one over another. The moneys in the special sinking fund, less such reserve for payment of principal and interest as may be required by the resolution of the commissioner authorizing the issue and any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds or notes payable from such fund which by their terms are then redeemable, or for the purchase of bonds or notes at the market price; but not exceeding the price, if any, at which such bonds or notes shall in the same year be redeemable; and all bonds or notes redeemed or purchased shall forthwith be canceled and shall not again be issued.

WV Legislature

§21A-8A-6. Credit of state not pledged.

No provisions of this article shall be construed to authorize the commissioner at any time or in any manner to pledge the credit or taxing power of the state, nor shall any of the obligations or debts created by the commissioner under the authority herein granted be deemed to be obligations of the state.

The bonds and notes authorized hereby shall contain on their face a statement to the effect that: (1) Neither the State of West Virginia nor any agency, political corporation or political subdivision of the State of West Virginia is obligated to pay the principal of or interest on the bonds or notes except as provided in this article; and (2) neither the faith and credit nor the taxing power of the State of West Virginia or any agency, political corporation or political subdivision of the State of West Virginia is pledged to the payment of the principal of or interest on the bonds or notes except as provided by this article.

WV Legislature

§21A-8A-7. Bonds or notes exempt from taxation.

All bonds or notes issued by the commissioner under the provisions of this article and the income therefrom shall be exempt from taxation by the State of West Virginia, or by any county, school district or municipality thereof, except inheritance, estate and transfer taxes.

WV Legislature

§21A-8A-8. Assessments; dedication of assessments; commissioner's authority to adjust assessments.

(a) On and after July 1, 1987, every employer, contributing and reimbursable, subject to this chapter, shall be required to withhold from all persons in his employment an assessment which shall be in an amount not to exceed thirty-five one hundredths (35/100) of one percent of said employee's gross wages, which amount, together with an assessment contributed by the employer in an amount as determined in accordance with the provisions of subsection (b) of this section, except for reimbursable employers who shall not be assessed, shall be paid to the division of employment security on a form prescribed by the commissioner, at the same time and under the same conditions as the quarterly contribution payments required under the provisions of section seven, article five, chapter twenty-one-a of this code. The commissioner shall have the right to collect any delinquent assessments under this section in the same manner as provided for in section sixteen, article five, chapter twenty-one-a of this code; and in addition, any delinquency hereunder shall bear interest as set forth in section seventeen, article five, chapter twenty-one-a of this code.

(b) The commissioner shall establish the exact amounts of the employers' and employees' assessments at a level sufficient to generate the revenues needed to retire the bonds or notes issued pursuant to this article and to pay deferred interest owed to the federal government when due, subject only to the limitation established in the preceding subsection (a) of this section. After determining the level of assessment on the gross wages of employees, the commissioner shall determine a rate of assessment to be imposed upon employers, except reimbursable employers, which rate shall be expressed as a percentage of wages, as defined in section three, article one of this chapter, except that for purposes of this section such wages shall include all of that part of the remuneration paid to an employee that is less than $21,000 during any calendar year, and which is sufficient to cause the total statewide assessment on such employers to equal the total statewide assessment imposed upon employees.

(c) The proceeds derived from the assessments provided for in this section shall be placed in the special nonrevolving revenue funds established pursuant to the provisions of section two of this article to be held by the commissioner separate and apart from all other funds and accounts created under this chapter and the funds, together with the interest derived therefrom, shall be pledged and utilized only for the repayment of bonds or notes issued under the provisions of this article and the payment of deferred interest owed to the federal government as the same becomes due. At such time as there are no longer any bonds, notes or other evidences of indebtedness outstanding which are payable from the special nonrevolving revenue funds, any remaining balance in these special accounts shall be paid into the unemployment compensation trust fund. The commissioner may establish additional special accounts and subaccounts with the employment security administration fund for the purpose of identifying more precisely the sources of payments into and disbursements from the employment security administration fund.

(d) Prior to the beginning of any quarter during which bonds or notes authorized by this

WV Legislature

article will be outstanding, the commissioner may adjust the amount of the assessment set forth in subsection (a) of this section; however, the amount is never to exceed thirty-five one hundredths (35/100) of one percent of each said employee's gross wages. The assessment shall cease when all the bonds or notes are repaid.

(e) Any employer or corporate officer if employer is a corporation, who fails to remit to the division of employment security the assessments provided for under this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than $5,000 nor more than $10,000, or by imprisonment of not less than one year, or both.

WV Legislature

§21A-8A-9. West Virginia Board of Investments to act as Board of Investments for purposes of this article; powers.

The West Virginia state Board of Investments as heretofore created and constituted under the provisions of article six, chapter twelve of this code, shall be ex officio a Board of Investments for funds of the special investment funds designated as the consolidated fund and the consolidated pension fund as they are made available for investment in accordance with the provisions of this article, and as such, the Board of Investments may exercise all of the powers and functions granted to it pursuant to the provisions of said article six of chapter twelve in carrying out the duties assigned to it under the provisions of this article.

WV Legislature

§21A-8A-10. Authority of the Board of Investments.

Upon application by the commissioner of the department of employment security, the Board of Investments shall invest moneys, securities, and other assets of the consolidated fund and the consolidated pension fund established under the provisions of section eight, article six, chapter twelve of this code, in the form of interest-bearing loans to the department of employment security to finance the repayment of funds advanced to the department of employment security by the federal government under the provisions of Section 1201 of the Social Security Act, 42 U.S.C.A. §1321. Such loan shall be made, if at the time of the commitment to make the loan, the Board of Investments determines that there exists a plan for the repayment of such loan which is satisfactory to the Board of Investments and which can be carried out by the department of employment security, that the loan is needed to assist the department of employment security to repay advances made from the federal unemployment account in the unemployment trust fund in accordance with the provisions of Title 42 U.S.C.A. §1321. The board shall also determine that all of the proceeds of a loan made under the provisions of this article will be used to repay advances made to the department of employment security from the federal unemployment account in the unemployment trust fund in accordance with the provisions of Title 42 U.S.C.A. §1321, which advances were made prior to July 1, 1987. Any loss to the principal of the consolidated fund or the consolidated pension fund that occurs because of any loan authorized by this article shall be deducted only from the state government moneys in such funds.

WV Legislature

§21A-8A-11. Requirements of loan.

(a) A loan made by the Board of Investments from the consolidated fund or the consolidated pension fund under the provisions of this article will bear interest at a rate determined by the Board of Investments not to exceed seven percent per annum. At the discretion of the Board of Investments, a loan made under the provisions of this article may be renewed if prevailing economic and financial conditions in the marketplace would permit such renewal to be prudently made: Provided, That any such renewal notes shall not be issued by the commissioner which would mature after the date on which the original notes would have otherwise matured.

(b) The date of maturity of notes issued by the commissioner shall, in all cases, be determined by the Board of Investments, consistent with its fiduciary responsibilities.

WV Legislature

§21A-8A-12. Limitations on loan authority.

The authority of the Board of Investments to make loans under the provisions of this article shall not at any time exceed $260 million in the aggregate principal amount outstanding.

WV Legislature

§21A-8A-13. Reports to the Legislature.

The Board of Investments shall submit to the Legislature annually a full report of its activities under this article so long as any loan made by the board under the provisions of this article is outstanding.

WV Legislature

§21A-8A-14. Termination.

The authority of the Board of Investments to make loans under this article expires on December 31, 1987.

WV Legislature

§21A-9-1. Creation; use of federal moneys.

There is hereby created in the State Treasury a special fund to be known as the employment security administration fund. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in section seven of this article shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

WV Legislature

§21A-9-2. Appropriation.

The moneys deposited with this fund are hereby appropriated and made available to the order of the commissioner.

WV Legislature

§21A-9-3. Contents of fund.

The fund shall consist of:

(1) Moneys appropriated by the state.

(2) Moneys received from the United States or any agency thereof, for the administration of this article.

(3) Moneys received from any other source.

WV Legislature

§21A-9-4. Disbursements.

This fund shall be administered and disbursed in the same manner and under the same conditions as other special funds of the State Treasury.

WV Legislature

§21A-9-5. Balances not to lapse.

Balances to the credit of the administration fund shall not lapse at any time, but shall be continuously available to the commissioner for expenditure consistent with this chapter.

WV Legislature

§21A-9-5a. Special administration fund.

There is hereby created in the State Treasury a fund to be known as the employment security special administration fund, which shall consist of interest collected on delinquent payments pursuant to section seventeen, article five of this chapter. The moneys deposited with this fund are hereby appropriated and made available to the order of the commissioner for the purpose of (a) replacements in the employment security administration fund as provided in section eight of this article, (b) to meet special, extraordinary, and contingent expenses not provided for in the employment security administration fund, (c) refunds pursuant to section nineteen of article five, of interest erroneously collected, and (d) cover expenditures for which federal funds have been authorized but not yet received, subject to repayment to the fund. This fund shall be administered and disbursed in the same manner and under the same conditions as other special funds of the State Treasury. Balances to the credit of the special administration fund shall not lapse at any time but shall be continuously available to the commissioner for expenditures consistent with this chapter: Provided, That (1) not more than $750,000 shall be expended from said fund in any fiscal year; (2) that at the beginning of each calendar quarter the commissioner shall estimate the amount that may be required in that quarter for refunds of interest erroneously collected; (3) that thereupon the excess, if any, over the amounts provided to be expended under this section shall be paid into the unemployment compensation trust fund.

WV Legislature

§21A-9-6. Treasurer's bond.

The treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties with regard to the administration fund. The bond shall be in the amount of $15,000 and in the form prescribed by the Attorney General and approved by the Governor. Premiums on the bond shall be a charge on the administration fund.

WV Legislature

§21A-9-7. Employment service account.

For the purpose of maintaining the employment offices established by this chapter and for the purpose of cooperating with the United States employment service, a special employment service account shall be maintained as a part of the administration fund.

WV Legislature

§21A-9-8. Reimbursement of fund.

If any moneys received after June 30, 1941, pursuant to Title III of the Social Security Act, or any unencumbered balances in the employment security administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the secretary of labor, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the General Funds of this state to the employment security administration fund for expenditure as provided by the Unemployment Compensation Law. Upon receipt of notice of such a finding by the secretary of labor, the commissioner shall promptly report the amount required for such replacement to the Governor and the Governor shall, at the earliest opportunity, submit to the Legislature a request for the appropriation of such amount. This article shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

WV Legislature

§21A-9-9. Reed Act appropriations.

(a) Pursuant to 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, funds may become available to the state. The provisions of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, impose certain requirements that affect the state's use of the funds. It is the purpose of this section to ensure that the state meets each requirement imposed by the provisions of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, to enable the state to expend the funds for the purposes intended by federal law.

(b) The Bureau of Employment Programs is designated as the state agency authorized to receive funds made available pursuant to 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended.

(c) Expenditure of any funds made available to the state pursuant to 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, shall be for the specific purposes and in the amounts authorized under 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and are to be made only in accordance with appropriation by the Legislature.

(d) The specific purpose and amount of an appropriation of funds received under 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, is, by operation of this section, the specific purpose and amount stated in the act of the Legislature appropriating the funds. Where the specific purpose or amount stated in the act of this Legislature appropriating the funds is not consistent with the provisions of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, the provisions of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, shall control and the specific purpose or amount authorized by those provisions are hereby incorporated into the appropriations act and, by the operation of this section, shall be the specific purpose or amount of the appropriation as if fully set forth in the appropriations act.

(e) Any restriction, limitation or obligation imposed by 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, upon the use of funds made available to the state or upon the purposes for which they may be expended is hereby incorporated and made a part of this subsection as if fully set forth herein, and is hereby incorporated into the act of the Legislature appropriating the funds and, by the operation of this section, the appropriations act shall impose each and every restriction, limitation or obligation imposed by 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, upon the use of the funds as if fully set forth in the appropriations act.

(f) Notwithstanding any other provision of this section to the contrary, moneys credited to the state under Section 903 of the Social Security Act, as codified in 42 U.S.C. §1103, with respect to federal fiscal years 1999, 2000 and 2001 are authorized to be used only for the administration of the state's unemployment compensation program.

(g) The effective date of the use of any funds made available to the state under the provisions of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the

WV Legislature

effective date of any restriction, limitation or obligation imposed by those provisions on the use of those funds, shall be the effective date of the appropriations act of the Legislature appropriating the funds, and the use of the funds shall not extend beyond the conclusion of any time limitation imposed by 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, for the expenditure of the funds.

(h) Notwithstanding any provision of article eleven, chapter four of this code to the contrary, the Governor may not authorize the expenditure of funds received under 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, pursuant to the provisions of section five, article eleven, chapter four of this code unless otherwise permitted under federal law.

WV Legislature

§21A-9-9a.

Repealed.

Acts, 1996 Reg. Sess., Ch. 252.

WV Legislature

§21A-9-10. Unemployment Automation and Administration Fund.

(a) Definitions. — For purposes of this section:

"Employer contribution" means the employer contribution to the Unemployment Compensation Fund required by §21A-5-5 of this code.

"Fiscal year" means the 12-month period beginning on July 1 and ending on June 30 of each year.

"Unemployment Compensation Fund" means the Unemployment Compensation Fund established by §21A-8-1 of this code.

(b) Creation of fund. — There is hereby created a special trust fund which shall be designated and known as the Unemployment Automation and Administration Fund, to be administered by the Commissioner of WorkForce West Virginia. The Unemployment Automation

and Administration Fund shall be treated by the Auditor and Treasurer as a special revenue fund, and not as part of the general revenues of the state. Any funds remaining in the Unemployment Automation and Administration Fund at the end of the fiscal year shall not revert to the General Revenue Fund.

(c) Source of funding. — The fund shall consist of the following:

(1) Effective July 1, 2026, each employer liable for contributions under this chapter, except employers with a contribution rate equal to zero, shall pay an annual unemployment automation and administration fee equal to seven percent of the employer's total taxable wages for the twelve-month period ending the preceding June 30. The Commissioner of Workforce West Virginia may reduce this percentage to ensure that the total amount of fee collected from all employers does not exceed $18 million annually. Each employer liable for the fee shall be notified of the amount due by March 31 of each year, and such amount shall be considered delinquent 30 days thereafter. Delinquent unemployment automation and administration fee amounts may be collected in the manner provided under §21A-5-16 and §21A-5-17 of this code. All funds collected under this subsection shall be deposited in the Unemployment Compensation Automation and Administration Fund.

(2) The fund may also consist of all income earned on moneys held in the fund, or from any investments related thereto.

(3) Upon the earlier of the date that the aggregate amount of collections paid into the Unemployment Automation and Administration Fund reaches $60 million or July 1, 2031, no further unemployment automation and administration fees may be collected and the Commissioner shall reimpose the applicable unemployment contribution rate for each employer liable for contributions under this chapter as are otherwise required by this chapter.

WV Legislature

(d) Limitations on fund contributions. —

(1) In the event that the Unemployment Automation and Administration Fund is allocated $18 million or more from employer contributions in a given fiscal year, no further employer contribution deposits to the fund shall be made for the remainder of that fiscal year, and any funds due to the Unemployment Automation and Administration Fund pursuant to the provisions of this section and of §21A-5-5 of this code will instead be deposited in the Unemployment Compensation Fund.

(2) If at any time the balance in the Unemployment Compensation Fund falls below $300 million, then any funds due to the Unemployment Automation and Administration Fund pursuant to the provisions of this section and of §21A-5-5 of this code will instead be deposited into the Unemployment Compensation Fund until the Unemployment Compensation Fund has maintained a minimum balance of $300 million for two consecutive quarters, or until the end of a given fiscal year, whichever comes later.

(e) Disbursements from the fund. – The Commissioner of WorkForce West Virginia is authorized to disburse funds from the Unemployment Automation and Administration Fund, at his or her discretion, for any of the following purposes:

(1) Modernizing the unemployment compensation system, including new technology and infrastructure, which may lead to faster processing times for claims, address vulnerabilities to fraud, integrate real-time data analytics to ensure more accurate benefit distribution, or otherwise adapt to economic shifts or policy changes;

(2) Upgrading the job search system by allowing mobile optimization, more advanced job recommendations, seamless integration with training programs, personalized career coaching tools, virtual job fairs, or partnerships with other platforms to broaden reach and improve match quality;

(3) Covering essential administrative costs, including, but not limited to, staff training, technological maintenance, or operational audits; and

(4) Engaging in additional initiatives designed to bolster workforce development initiatives, including expanded training programs, removal of barriers to entering the workforce, targeting outreach campaigns, or partnering with employers.

(f) Rulemaking. — The Commissioner of WorkForce West Virginia is authorized to promulgate legislative rules, emergency legislative rules, and procedural rules pursuant to the requirements of §29A-3-1 *et seq*. of this code.

(g) Federal compliance. — Nothing in this section shall be interpreted to allow the reduction of the maximum tax rate below the federally required levels and no transfer of funds set forth in this section shall take place if such transfers would be deemed to be out of compliance with relevant federal requirements.

WV Legislature

(h) Effective date. —The provisions of this section shall be effective July 1, 2026.

WV Legislature

§21A-10-1. Agreements to waive rights or pay employer's contribution invalid.

An agreement to waive, release or commute rights to benefits, or other rights, accruing under this chapter shall be invalid.

An agreement by an individual to pay all or any portion of an employer's payments shall be invalid.

WV Legislature

§21A-10-2. Assignment of benefits invalid; exemption from process; exception.

(a) An assignment, pledge or encumbrance of any benefit due or payable under this chapter is invalid. Right to benefits is exempt from levy, execution, attachment or other processes for the collection of debt. Benefits received by an individual so long as they are not mingled with other funds of the recipient, are exempt from process for the collection of a debt. The waiver of any exemption provided in this section is void.

(b) The provisions of subsection (a) of this section do not apply to:

(1) The assignment or collection of child support payments under the provisions of section sixteen, article six of this chapter;

(2) A levy by the internal revenue service authorized by 26 U.S.C. §6331 subsection (h); or

(3) Collection of debts incurred for necessaries furnished to an individual, the individual's spouse or dependents, during a period of unemployment.

WV Legislature

§21A-10-3. Limitation of fees.

No fee shall be charged an individual in any proceeding under this chapter by the department or its representatives.

WV Legislature

§21A-10-4. Records and reports; preservation; copies; admissibility; destruction.

(1) An employing unit shall keep true and accurate work records containing such information as the commissioner may prescribe. The record shall be open to inspection and be subject to being copied by the commissioner or his authorized representatives at any reasonable time.

(2) The commissioner may cause to be made such summaries, compilations, photographs, duplication, or reproduction of any records, reports, or transcripts thereof as he may deem advisable for the effective and economical preservation of information contained therein, and such summaries, compilations, photographs, duplication, or reproductions duly authenticated, shall be admissible in any proceeding under this chapter if the original record or records would have been admissible therein and are unavailable.

(3) The commissioner, with the concurrence of the majority of the advisory council, may provide regulations for the destruction or disposition, after reasonable periods, of any records, reports, transcripts, or reproductions thereof, or other papers in his custody, the preservation of which is considered no longer necessary for the establishment of contribution liability or benefit rights, or for any purpose necessary to the proper administration of this chapter, including any audit required.

WV Legislature

§21A-10-5. Right to representation by counsel or agent; fees.

An individual may be represented by counsel or authorized agent before the board of review, an appeal tribunal, or examiner, or a court; but the amount of the fee for such service shall be subject to the regulation of the board.

A person who charges or accepts a fee for such service in an amount unapproved by the board shall be guilty of a misdemeanor. Charging an unapproved amount shall constitute grounds for disbarment.

WV Legislature

§21A-10-6. Self-incrimination; perjury.

A person shall not be excused from attending and testifying or producing books, papers, correspondence, memoranda, or other records before the commissioner or the board or in obedience to the subpoena of the board or the commissioner, or a duly authorized representative of the board or the commissioner, in any proceeding brought under this chapter on the ground that the testimony or evidence may tend to incriminate him or subject him to a penalty or forfeiture. An individual shall not be prosecuted or subjected to penalty or forfeiture on account of testimony given, or evidence produced subject to such subpoena, if prior to giving such testimony or producing such evidence he has claimed his privilege against self-incrimination.

This section shall not exempt an individual from prosecution and punishment for perjury.

WV Legislature

§21A-10-7. False representations; penalties.

(a) A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or attempt to obtain or increase a benefit, either for himself, herself or another, under this chapter, or under an employment security law of any other state or of the federal government for either of which jurisdictions this state is acting as an agent, is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than $100 nor more than $1,000, or by confinement in jail for not longer than thirty days, or both, and by full repayment of all benefits obtained fraudulently. Each false statement or representation, or failure to disclose a material fact, is a separate offense.

(b) After July 1, 2012, a penalty of twenty percent of the amount of the erroneous payment attaches to the amount of the liability to be repaid by the benefit recipient for any payment of benefits determined to be obtained by the recipient's fraudulent statements or actions. The first seventy-five percent of the penalty collected from the benefit recipient shall be deposited in the state's Unemployment Trust Fund with the remaining twenty-five percent of the penalty collected to be deposited in a special administrative account to be used for increased integrity activities to identify and recover erroneous payments of benefits created by fraudulent activities of benefit recipients. Penalty amounts established due to fraudulent activities of benefit recipients may not be used to offset future benefits payable to benefit recipients.

WV Legislature

§21A-10-8. Recovery of benefits paid on misrepresentation; limitations.

A person who, by reason of nondisclosure or misrepresentation, either by himself or another (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent), has received a sum as a benefit under this chapter, shall either have such sum deducted from a future benefit payable to him or shall repay to the commissioner the amount which he has received. Collection shall be made in the same manner as collection of past-due payments against employers as set forth in section sixteen of article five of this chapter, which specifically includes the institution of civil action and collection procedures thereon enumerated in said section: Provided, That such collection or deduction of benefits shall be barred after the expiration of five years, except for known or fraudulent nondisclosure or misrepresentation which shall be barred after the expiration of ten years, from the date of the filing of the claim in connection with which such nondisclosure or misrepresentation occurred.

WV Legislature

§21A-10-9. Penalty for deducting employer's contribution or requiring waiver of right.

An employer who directly or indirectly:

(1) Makes or accepts a deduction from an individual's wage for the purpose of financing an employer's payment, or

(2) Requires or accepts a waiver of a right given an individual by this chapter, shall be guilty of a misdemeanor and, upon conviction shall be fined not less than $100 nor more than $1,000.

WV Legislature

§21A-10-10. General penalty.

A person who wilfully violates a provision of this chapter or rule or regulation thereunder for which a specific penalty has not been imposed shall be guilty of a misdemeanor and, upon conviction shall be fined not less than $20 nor more than $200, or be imprisoned for not longer than thirty days, or both. Each day such violation continues shall be a separate offense.

WV Legislature

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

(a) Each employer, including labor organizations as defined in subsection (i) of this section, shall, quarterly, submit certified reports on or before the last day of the month next following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall contain:

(1) The employer's assigned unemployment compensation registration number, the employer's name, and the address at which the employer's payroll records are maintained;

(2) Each employee's Social Security account number, name, and the gross wages paid to each employee, including any remunerations below and above the threshold wage described by §21A-1A-28 of this code;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, including any remunerations below and above the threshold wage described by §21A-1A-28 of this code;

(4) Each employee's job title and the county in which the majority of the employee's job duties are performed; and

(5) Other information that is reasonably connected with the administration of this chapter.

(b) Information obtained may not be published or be open to public inspection to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States Department of Agriculture;

(2) The state agency responsible for enforcement of the Medicaid program under Title XIX of the Social Security Act;

(3) The United States Department of Health and Human Services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; early childhood, primary, secondary, postsecondary, and vocational education; the West Virginia P-20 longitudinal data system established pursuant to §18B-1D-10 of this code; and vocational rehabilitation, employment, and training, including, but not limited to, the administration of the Perkins Act and the Workforce Innovation and Opportunity Act;

WV Legislature

(5) The Tax Division, but only for the purposes of collection and enforcement;

(6) The Division of Labor for purposes of enforcing the wage bond pursuant to the provisions of §21-5-14 of this code;

(7) The contractors licensing board for the purpose of enforcing the contractors licensing provisions pursuant to §30-42-1 *et seq*. of this code;

(8) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(9) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(10) The Insurance Commissioner for purposes of its Workers Compensation regulatory duties.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential as not to reveal the identity of the employing unit or the individual consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse WorkForce West Virginia for any cost associated for furnishing the information.

(f) The commissioner may refuse to provide any information requested under this section if the agency or organization making the request does not certify that it will comply with the state and federal law protecting the confidentiality of the information.

(g) A person who violates the confidentiality provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $20 nor more than $200 or confined in a county or regional jail not longer than 90 days, or both.

(h) An action for slander or libel, either criminal or civil, may not be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. It includes any entity, also known as a hiring hall, which is used by the organization and an employer to carry out requirements described in 29 U. S. C. §158(f)(3) of an agreement between the organization and the employer.

WV Legislature

§21A-10-12. Representation of state in civil actions.

The commissioner, through his attorney, may represent the interest of the state in any civil action to enforce the provisions of this chapter.

WV Legislature

§21A-10-13. Prosecution and jurisdiction of criminal actions.

Criminal actions to enforce the provisions of this chapter, or rules or regulations issued thereunder, shall be prosecuted by the Attorney General, or at his request by the prosecuting attorney of any county in which the defendant resides, or by an attorney of the department.

The commissioner may cause complaints to be made and proceedings to be instituted and prosecuted against any person violating any provisions of this chapter, and in all such cases no security for costs shall be required of the commissioner.

Justices of the peace shall have concurrent jurisdiction with the circuit or other criminal courts of all misdemeanors arising under this chapter.

WV Legislature

§21A-10-14. Liability of state for benefits limited to unemployment compensation fund.

Benefits under this chapter shall be due and payable only to the extent that moneys are available to the credit of the unemployment compensation fund. Neither the state nor the commissioner shall be liable for any claim in excess of the credit of the fund.

WV Legislature

§21A-10-15. Severability.

The provisions of this chapter shall be construed as severable, and should any provision be held unconstitutional, or for any other reason invalid, the remaining provisions shall not be affected thereby.

WV Legislature

§21A-10-16. Inconsistent acts repealed.

Acts or parts of acts in conflict with or superseded by the provisions of this chapter are hereby repealed.

WV Legislature

§21A-10-17. Right to amend or repeal chapter; application of certain provisions.

The Legislature reserves the right to amend or repeal all or any part of this chapter and no private rights shall vest against any legislative amendment or change or repeal. All rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this chapter at any time.

WV Legislature

§21A-10-18. Change of federal payroll tax.

Whenever legislation enacted by the Congress of the United States providing for a federal payroll tax against which the contribution required by this chapter may be credited, is repealed, amended, interpreted, affected, or otherwise changed in such manner that no portions of the contributions required by this chapter may be thus credited, then upon the date of such change the provisions of this chapter requiring contributions and providing for payment of benefits shall cease to be operative. If thereafter such credit be allowed, the terms of this chapter shall as of the date of such allowance of credit, again become operative and collections of contributions and payment of benefits shall be resumed.

WV Legislature

§21A-10-19. Disclosure of information to child support agencies.

(a) The Bureau of Employment Programs shall disclose, upon request, to officers or employees of any state or local child support enforcement agency, and to employees of the federal secretary of health and human services, any wage and benefit information with respect to individuals which is contained in its records.

The term "state or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan described in section 453, 453a or 454 of the Social Security Act, as codified in 42 U.S.C. §§653, 653a and 654 which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act, as codified in 42 U.S.C. §§651 through 669b.

(b) The requesting agency shall agree that the information is to be used only for the purpose of establishing and collecting child support obligations from, and locating, individuals owing the obligations which are being enforced pursuant to a plan described in section 453, 453a or 454 of the Social Security Act, as codified in 42 U.S.C. §§653, 653a and 654 respectively, which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act, as codified in 42 U.S.C. §§651 through 669b, or as otherwise authorized in 42 U.S.C. §653 (i)(1), (i)(3) and (j).

(c) The information may not be released unless the requesting agency agrees to reimburse the costs involved for furnishing the information.

(d) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed on improper disclosure shall apply to the use of the information by officers, and employees of child support enforcement agencies. A state or local child support enforcement agency may disclose to any agent of the agency that is under contract with the agency to carry out the purposes described in subsection (b) of this section, wage information that is disclosed to an officer or employee of the agency under subsection (a) of this section. Any agent of a state or local child support agency that receives wage information under this paragraph shall comply with the safeguards established to keep the information confidential and is subject to the criminal provisions of subsection (g), section eleven of this article.

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§21A-10-20. Disclosure of information to food stamp agencies.

(1) The Bureau of Employment Programs shall disclose, upon request, to officers and employees of the United States Department of Agriculture and any state food stamp agency, with respect to an identified individual, any of the following information which is contained in its records:

(a) Wage information;

(b) Whether the individual is receiving, has received, or has made application for unemployment compensation and the amount of any compensation being received or to be received by such individual;

(c) The current or most recent home address of the individual; and

(d) Whether the individual has refused an offer of employment and if so, a description of the employment offered and the terms, conditions and rate of pay therefor.

(2) The term "state food stamp agency" means any agency described in section (3) (n) (1) of the Food Stamp Act of 1977 which administers the food stamp program established under such act.

(3) The requesting agency shall agree that such information shall be used only for purposes of determining the applicant's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977.

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed for improper disclosure of information obtained in the administration of this article shall apply to the use of such information by the officers and employees of any food stamp agency or the United States Department of Agriculture.

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§21A-10-21. Recovery of benefits paid through error; limitation.

A person who, by reason of error, irrespective of the nature of said error, has received a sum as a benefit under this chapter, shall either have such sum deducted from a future benefit payable to him or shall repay to the commissioner the amount which he has received. Collection shall be made in the same manner as collection of past due payment: Provided, That such collection or deduction of benefits shall be barred after the expiration of two years.

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§21A-10-22. Disclosure of information to department of housing and urban development.

(1) The Bureau of Employment Programs shall disclose, upon request, to officers and employees of the department of housing and urban development and to representatives of public housing agencies, any wage and benefit information with respect to an identified individual which is contained in its records. The term "public housing agencies" means any agency described in section 3 (b) (6) of the United States Housing Act of 1937.

(2) The requesting agency shall agree that such information is to be used only for the purpose of determining an individual's eligibility for benefits, or the amount of benefits under any housing assistance program of the department of housing and urban development.

(3) The information shall not be released unless the requesting agency agrees to reimburse the costs involved for furnishing such information.

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed on improper disclosure shall apply to the use of such information by officers and employees of any public housing agency or the department of housing and urban development.

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§21A-10-23. Creation of Unemployment Compensation Insurance Fraud Unit; purpose; duties; and personnel qualifications.

(a) There is hereby established the West Virginia Unemployment Compensation Insurance Fraud Unit within the offices of the commissioner. The commissioner may employ full-time supervisory, legal, and investigative personnel for the unit who shall be qualified by training and experience in the areas of detection, investigation, or prosecution of fraud within and against the unemployment compensation system. The director of the unit is a full-time position and shall be appointed by the commissioner and serve at his or her will and pleasure. The director shall be a certified fraud investigator with experience in computer technology. The commissioner shall provide office space, equipment, and supplies, and shall employ and train personnel, including legal counsel, investigators, auditors, and clerical staff necessary for the unit to carry out its duties and responsibilities under this article as the commissioner determines is necessary.

(b) The unit shall:

(1) Initiate inquiries and conduct investigations when the unit has reasonable cause to believe violations of any provisions of §21A-1-1 *et seq*. of this code, West Virginia Unemployment Compensation Insurance Law are occurring, or have occurred;

(2) Review reports or complaints of alleged fraud related to the business of unemployment compensation insurance activities from federal, state, and local law-enforcement and regulatory agencies, persons engaged in the business of insurance, and the general public to determine whether the reports require further investigation;

(3) Conduct independent examinations of alleged fraudulent activity related to the business of unemployment compensation insurance and undertake independent studies to determine the extent of fraudulent insurance acts; and

(4) Perform any other duties related to the purposes of this article assigned to it by the commissioner.

(c) The unit may:

(1) Inspect, copy, or collect records and evidence;

(2) Serve subpoenas issued pursuant to §21A-2-21 of this code;

(3) Administer oaths and affirmations;

(4) Share records and evidence with federal, state, or local law-enforcement or regulatory agencies, and enter into interagency agreements. For purposes of carrying out investigations under this article, the unit shall be considered a criminal justice agency under all federal and state laws, regulations, and rules and as such shall have access to any information that is available to other criminal justice agencies concerning violations of the

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unemployment compensation insurance laws of West Virginia or related criminal laws;

(5) Make criminal referrals to the county prosecutors; and

(6) Conduct investigations outside this state. If the information the unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the unit to examine at the place where the information is located. The unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the unit, and may respond to similar requests from officials of other states.

(d) Specific personnel of the unit designated by the commissioner may operate vehicles owned or leased for the state displaying Class A registration plates.

(e) Notwithstanding any provision of this code to the contrary, specific personnel of the unit designated by the commissioner may carry firearms in the course of their official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency, and Correction, which shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police: *Provided*, That nothing in this subsection shall be construed to include any person designated by the commissioner as a law-enforcement officer as that term is defined by the provisions of §30-29-1 of this code.

(f) The unit is not subject to the provisions of §6-9A-1 *et seq*. of this code, and the investigations conducted by the unit and the materials placed in the files of the unit as a result of any investigation are exempt from public disclosure under the provisions of §29B-1-1 *et seq*. of this code.

(g) Neither the state, a political subdivision, an agency, nor an employee of the state acting in an official capacity may be held personally liable for an act of an investigator employed by the unit if the act or omission was done in good faith while the investigator was performing official duties on behalf of the unit.

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§21A-10-24. List of services and support available to individuals who are qualified to receive federal, federal-state, or state assistance.

(a) In conjunction with the Higher Education Policy Commission and the Bureau for Family Assistance, Workforce West Virginia must compile and maintain a list of those services available to assist and support individuals who are qualified to receive federal, federal-state, or state assistance and who want to obtain a degree, secure workforce training, or reenter the workforce. This document must be maintained on Workforce West Virginia's website, and any hard copy requested for this document must be supplied to the person requesting the information via first-class mail.

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§21A-11-1. Expiration of certain provisions upon certain contingencies.

If United States Public Law 94-566, as enacted by the Congress of the United States or the federal acts it amends, should be adjudged unconstitutional or invalid in its or their application or stayed pendente lite as to state or local employees by a court of competent jurisdiction, then the coverage of those employees under this act is automatically stayed or repealed to the extent of the adjudged unconstitutionality, invalidity or inapplicability. The repeal shall be effective from the date of final disposition upon appeal or from the date of expiration of the right of appeal and shall apply to relevant matters pending at that time. If United States Public Law 94-566, as enacted by the Congress of the United States or those provisions thereof relating to coverage of state and local employees, should at any time be repealed by the Congress of the United States, then the provisions of this chapter relating to coverage of state and local employees shall be automatically repealed and of no further force and effect.

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