WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1961

ENROLLED

SENATE BILL NO. 211

(By Mr. President)

PASSED March 30th, 1961
In Effect July 1st, 1961
Passage

Filed in Office of the Secretary of State of West Virginia MAR 17 1961
JOE F. BURDETT
SECRETARY OF STATE
ENROLLED

Senate Bill No. 211

(By Mr. Carson, Mr. President)

[Passed March 10, 1961; in effect July 1, 1961.]

AN ACT to repeal section twenty-one, article six, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section three, article one; sections two, seven, ten and sixteen, article five; sections four, ten and eleven, article six; and section eight, article seven, all of said chapter twenty-one-a and to further amend article six of said chapter by adding thereto a new section designated section four-a, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article six, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be repealed; that section three, article one; sections two, seven, ten and sixteen, article five; sections four, ten and eleven, article six; and section eight, article seven, all of said chapter twenty-one-a be amended and reenacted; and to further amend article six of said chapter by adding thereto a new section designated section four-a, all to read as follows:


Section 3. Definitions.—As used in this chapter, unless the context clearly requires otherwise:

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

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

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

4 "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.

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

"Base period wages" means wages paid to an individual during the base period by all his base period employers. 

"Benefit year" with respect to an individual means the one year period beginning with the day on which he filed a valid claim for benefits, and thereafter the one year period beginning with the day on which such individual next files a valid claim for benefits after the termination of his last preceding benefit year. An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

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

"Board" means board of review.

"Calendar quarter" means the period of three consecutive calendar months ending on March thirty-one, June
thirty, September thirty, or December thirty-one, or the
equivalent thereof as the director may by regulation
prescribe.

“Computation date” means June thirty of the year im-
mediately preceding the January one on which an em-
ployer's contribution rate becomes effective.

“Director” means the employment security director.

“Employing unit” means an individual, or type of
organization, including any partnership, association, trust,
estate, joint stock company, insurance company corpora-
tion (domestic or foreign), or the receiver, trustee in
bankruptcy, trustee or successor thereof, or the legal
representative of a deceased person, which has on Janu-
ary first one thousand nine hundred thirty-five, or subse-
quently thereto, had in its employ one or more individuals
performing service within this state.

“Employer” means an employing unit which for some
portion of a day, not necessarily simultaneously, in each
of twenty different calendar weeks, which weeks need
not be consecutive, within either the current calendar
year, or the preceding calendar year, has had in employ-
ment four or more individuals irrespective of whether
the same individuals were or were not employed on each
of such days, or who or which is or becomes a liable
employer under any federal unemployment tax act, or
who or which has acquired the organization, trade or
business, or substantially all the assets thereof, of an em-
ploying unit which at the time of such acquisition was
an employer subject to this act.

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

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

(2) The term “employment” shall include an indi-
vidual’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 opera-
tions, then the place from which such service is directed
or controlled, is in this state; or (ii) the base of operations
or place from which such 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.
(3) Service not covered under paragraph two of this
subsection and performed entirely without this state,
with respect to no part of which contributions are re-
quired and paid under an unemployment compensation
law of any other state or of the federal government, shall
be deemed to be employment subject to this chapter if
the individual performing such services is a resident of
this state and the director approves the election of the
employing unit for whom such services are performed
that the entire service of such individual shall be deemed
to be employment subject to this chapter.
(4) Service shall be deemed to be localized within a
state, if: (a) The service is performed entirely within
such state; or (b) the service is performed both within
or without such state, but the service performed without
such state is incidental to the individual's service within
this state. For example, is temporary or transitory in
nature or consists of isolated transactions.
(5) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the director that: (a) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and (b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) All service performed by an officer or member of the crew of an American vessel (as defined in section three hundred five of an act of Congress entitled “Social Security Act Amendment of 1946,” approved August tenth, one thousand nine hundred forty-six) on or in connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within or within and without the
120 United States is ordinarily and regularly supervised, managed, directed and controlled, is within this state.

122 Included and Excluded Service. If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment.

132 The term "employment" shall not include:

133 (1) Services performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions.

136 (2) Service performed directly in the employ of another state, or its political subdivisions.

138 (3) Service performed in the employ of the United States or an instrumentality of the United States exempt under the Constitution of the United States from the pay-
ments imposed by this law, except that to the extent that
the Congress of the United States, shall permit states to
require any instrumentalities of the United States to make
payments into an unemployment fund under a state un-
employment compensation law, all of the provisions of
this law shall be applicable to such instrumentalities, and
to service performed for such instrumentalities, in 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 shall not be certi-
fi ed for any year by the secretary of labor under section
one thousand six hundred three (c) of the Federal In-
ternal Revenue Code, the payments required of such
instrumentalities with respect to such year shall be re-
funded by the director from the fund in the same manner
and within the same period as is provided in section
nineteen of article five of this chapter with respect to
payments erroneously collected.

(4) Service performed after June thirty, one thou-
sand nine hundred thirty-nine, with respect to which
unemployment compensation is payable under the Rail-
162 road Unemployment Insurance Act (52 Stat. 1094), and
163 service with respect to which unemployment benefits are
164 payable under an unemployment compensation system
165 for maritime employees established by an act of Congress.
166 The director may enter into agreements with the proper
167 agency established under such an act of Congress to pro-
168 vide reciprocal treatment to individuals who, after ac-
169 quiring potential rights to unemployment compensation
170 under an act of Congress, or who have, after acquiring
171 potential rights to unemployment compensation under an
172 act of Congress, acquired rights to benefit under this
173 chapter. Such agreements shall become effective ten days
174 after such publications as comply with the general rules
175 of the department.
176 (5) Agricultural labor. For the purposes of this chap-
177 ter, the term “agricultural labor” includes all services
178 performed—
179 On a farm, in the employ of any person, in connection
180 with cultivating the soil, or in connection with raising or
181 harvesting any agricultural or horticultural commodity,
182 including the raising, shearing, feeding, caring for, train-
183 ing, and management of livestock, bees, poultry, and fur-
184 bearing animals and wildlife;
185 In the employ of the owner or tenant or other operator
186 of a farm, in connection with the operation, management,
187 conservation, improvement, or maintenance of such farm
188 and its tools and equipment, or in salvaging timber or
189 clearing land of brush and other debris left by a hurri-
190 cane, if the major part of such service is performed, on
191 a farm;
192 In connection with the production or harvesting of
193 maple syrup or maple sugar or any agricultural com-
194 modity, or in connection with the raising or harvesting of
195 mushrooms, or in connection with the hatching of poultry,
196 or in connection with the beginning of cotton, or in connect-
197 ion with the operation or maintenance of ditches, canals,
198 reservoirs, or waterways used exclusively for supplying
199 and storing water for farming purposes; or
200 In handling, planting, drying, packing, packaging,
201 processing, freezing, grading, storing, or delivering to
202 storage or to market or to a carrier for transportation to
203 market, any agricultural or horticultural commodity; but
only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be 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.

As used in this definition, the term “farm” includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farm, plantations, ranches, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodity, and orchards, but the term “farm” does not include greenhouses and nurseries.

(6) Domestic service in a private home.

(7) Service performed by an individual in the employ of his son, daughter, or spouse.

(8) Service performed by a child under the age of twenty-one years in the employ of his father or mother.

(9) Service performed in the employ of an employing
unit organized and operated exclusively for religious,
charitable, scientific, literary, or educational purposes or
for prevention of cruelty to children or animals, no part
of the net earnings of which inure to the benefit of any
private shareholder or individual.

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

Notwithstanding the foregoing exclusions from the def-
inition of “employment,” services, except agricultural
labor and domestic service in a private home, shall be
deemed to be in employment if with respect to such serv-
ices 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 unemploy-
ment compensation fund.

“Employment office” means a free employment office
or branch thereof, operated by this state, or any free pub-
lic employment office maintained as a part of a state con-
trolled system of public employment offices in any other
state.

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

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

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

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

"Total and partial unemployment":

(1) An individual shall be deemed totally unemployed
in any week in which such individual is separated from
employment for an employing unit and during which he
performs no services and with respect to which no wages
are payable to him.
(2) An individual who has not been separated from employment shall be deemed to be partially unemployed in any week in which due to lack of work he performs no services and with respect to which no wages are payable to him, or in any week in which due to lack of full-time work wages payable to him are less than his weekly benefit amount plus ten dollars.

“Wages” means all remuneration for personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash: Provided, That the term “wages” shall not include:

(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after
one thousand nine hundred thirty-eight has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven, and thirteen of article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That notwithstanding the foregoing provisions, on and after January one, one thousand nine hundred sixty-two, the term “wages” shall not include:

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one, except that for the purposes of sections one, ten, eleven, and thirteen of article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his
computation of base period wages; and Provided further,
That the remuneration paid to an individual by an em-
ployer 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 three thousand dollars or three thousand six
hundred dollars herein referred to. In applying such
limitation on the amount of remuneration that is taxable
an employer shall be accorded the benefit of all or any
portion of such amount which may have been paid by its
predecessor or predecessors: Provided, however, That if
the definition of the term “wages” as contained in sec-
tion 3306 (b) of the Internal Revenue Code of 1954 is
amended (a) effective prior to January one, one thousand
nine hundred sixty-two, to include remuneration in excess
of three thousand dollars, or (b) effective on or after
January one, one thousand nine hundred sixty-two, to
include remuneration in excess of three thousand six
hundred dollars, 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 article or his
predecessor with respect to employment during any cal-
endar year up to an amount equal to the amount of re-
muneration taxable under the Federal Unemployment
Tax Act;

(2) The amount of any payment made after December
thirty-one, one thousand nine hundred fifty-two, (includ-
ing any amount paid by an employer for insurance or
annuities, or into a fund, to provide for any such pay-
ment) to, or on behalf of, an individual in its employ, or
any of his dependents, under a plan or system established
by an employer which makes provision for individuals in
its employ generally (or for such individuals and their
dependents), or for a class or classes of such individuals
(or for a class or classes of such individuals and their de-
pendents), on account of (A) retirement, or (B) sick-
ness or accident disability, or (C) medical or hospitali-
zation expenses in connection with sickness or accident
disability, or (D) death;
(3) Any payment made after December thirty-one,
one thousand nine hundred fifty-two, 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 retire-
ment;
(4) Any payment made after December thirty-one,
one thousand nine hundred fifty-two, 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 indi-
vidual worked for such employer;
(5) Any payment made after December thirty-one,
one thousand nine hundred fifty-two, by an employer to,
or on behalf of, an individual in its employ or his bene-
ficiary (A) from or to a trust exempt from tax under
section 165 (a) of the Federal Internal Revenue Code at
the time of such payment unless such payment is made to
such individual as an employee of the trust as remunera-
tion 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, meets the re-
quirements of section 165 (a) (3), (4), (5), and (6) of
the Federal Internal Revenue Code;
(6) The payment by an employer (without deduction
from the remuneration of the individual in its employ)
of the tax imposed upon an individual in its employ
under section 1400 of the Federal Internal Revenue Code;
(7) Remuneration paid by an employer after Decem-
ber thirty-one, one thousand nine hundred fifty-two, in
any medium other than cash to an individual in its em-
ploy 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 after December thirty-one, one
thousand nine hundred fifty-two, to an individual in its
employ after the month in which he attains the age of
sixty-five, if he 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 period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed.

Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid by his employing unit, if accounted for and reported to such employing unit.

The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the director.

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

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

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

Article 5. Employer Coverage and Responsibility.

Section 2. Duration.—Except as otherwise provided in section three of this article, an employing unit 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 director 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 director 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, however, That the director 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.

Sec. 7. Joint and Separate Accounts.—(1) The director
shall maintain a separate account for each employer, and shall credit his account with all contributions paid by him prior to July first, one thousand nine hundred sixty-one. On and after July first, one thousand nine hundred sixty-one, the director shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of seven-tenths of one per cent of taxable wages. Provided, That any adjustment made in an employer's account after the computation date shall not be used in the computation of the credit balance of an employer until the next following computation date: Provided further, that nothing in this chapter shall be construed to grant an employer or individual in his service prior claims or rights to the amounts paid by him into the fund, either on his own behalf or on behalf of such individuals. The account of any employer which has been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

Benefits paid to an eligible individual for total unemployment beginning after the effective date of this Act
shall be charged to the account of the last employer with whom he has been employed as much as thirty working days, whether or not such days are consecutive: Provided, That no employer’s account shall be charged with benefits paid to any individual who has been separated from a non-covered employing unit in which he was employed as much as thirty days, whether or not such days are consecutive: And provided further, That benefits paid to an eligible individual for partial unemployment beginning after the effective date of this act shall be charged to the account of the claimant’s current employer.

(3) The director shall, for each calendar year hereafter, 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 such contribution rates as will reflect such experiences. For the purpose of fixing such contribution rates for each calendar year, the books of the department shall be closed on July thirty-one of the preceding calendar year, and any contributions thereafter paid, as well as benefits thereafter paid with respect
to compensable weeks ending on or before June thirty
of the preceding calendar year, shall not be taken into
account until the next annual date for fixing contribution
rates: Provided, however, That if an employer has failed
to furnish to the director on or before July thirty-one of
such preceding calendar year the wage information for
all past periods necessary for the computation of the con-
tribution rate, such employer's rate shall be, if it is imme-
diately prior to such July thirty-one, less than two and
seven-tenths per cent, increased to two and seven-tenths
per cent, and if such employer's rate immediately prior
to such July thirty-one is more than two and seven-tenths
per cent and he fails to furnish such wage information,
his rate shall be increased to three and three-tenths per
cent: Provided, further, That any payment made or any
information necessary for the computation of a reduced
rate furnished on or before the termination of an exten-
sion of time for such payment or reporting of such infor-
mation granted pursuant to a regulation of the director
authorizing such extension, shall be taken into account
for the purposes of fixing contribution rates: Provided,
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 shall be deemed to be the next succeeding business day: Provided, further, that whenever through mistake or inadvertence erroneous credits or charges are found to have been made to or against the reserve account of any employer, the rate shall be adjusted as of January one of the calendar year in which such mistake or inadvertence is discovered; but payments made under any rate assigned prior to January one of such year shall not be deemed to be erroneously collected.

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

Sec. 10. Experience Ratings; Decreased Rates.—On and
after January one, one thousand nine hundred fifty-four,

after the requirements of section nine have been complied

with, an employer's payment shall remain two and seven-

tenths per cent until:

(1) There have elapsed thirty-six consecutive months

immediately preceding the computation date throughout

which an employer's account was chargeable with bene-

fits.

(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 per cent of his average an-

nual pay roll as shown in column B of table I. His rate

shall be the amount appearing in column C of table I on

line with the percentage in column B.

The director shall determine an employer's compliance

with these requirements.

<table>
<thead>
<tr>
<th>Col. A.</th>
<th>Col. B.</th>
<th>Col. C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate Class</td>
<td>Per Cent of Average Annual Pay Roll by Which Credits Exceed Charges</td>
<td>Employer's Rate</td>
</tr>
<tr>
<td>19 (1)</td>
<td>5.5</td>
<td>2.5</td>
</tr>
<tr>
<td>20 (2)</td>
<td>6.5</td>
<td>2.3</td>
</tr>
</tbody>
</table>
After the director is satisfied that an employer has complied with these requirements he shall decrease the employer's rate to the next lower rate if the fund, including the trust fund, clearing account, and benefit account, is as much as eighty million dollars on the computation date, and shall decrease the employer's rate one additional step if the fund is as much as ninety million dollars on the computation date, and shall decrease the employer's rate one additional step for each five million dollars that the fund is above ninety million dollars up to and including
one hundred fifteen million dollars on the computation
date: *Provided*, That an employer's rate shall not be re-
duced below 0.3 per cent until the credits to his account
for all past years exceed the benefits charged to his ac-
count by an amount equal to at least twelve per cent of
his average annual pay roll: *Provided further*, That all
required contributions paid on or before July thirty-one
immediately following the computation date shall be
used in determining the amount in the trust fund and
clearing account as of the computation date: *Provided*,
That on and after January one, one thousand nine hundred
sixty-two, the foregoing provisions of this subsection (2)
of section ten, article five, including Table I, shall be void
and of no effect, and the following provisions, including
Table II, shall, on and after said January one, one thou-
sand nine hundred sixty-two, become effective.

(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 per cent of his average an-
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.
The director shall determine an employer's compliance with these requirements.

### TABLE II

<table>
<thead>
<tr>
<th>Col. A.</th>
<th>Col. B.</th>
<th>Col. C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate Class</td>
<td>Per Cent of Average Annual Pay Roll by Which Credits Exceed Charges</td>
<td>Employer's Rate</td>
</tr>
<tr>
<td>67 (1)</td>
<td>6.0</td>
<td>2.5</td>
</tr>
<tr>
<td>68 (2)</td>
<td>7.0</td>
<td>2.3</td>
</tr>
<tr>
<td>69 (3)</td>
<td>8.0</td>
<td>2.1</td>
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<tr>
<td>70 (4)</td>
<td>9.0</td>
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<td>71 (5)</td>
<td>10.0</td>
<td>1.7</td>
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<td>72 (6)</td>
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<td>73 (7)</td>
<td>11.0</td>
<td>1.3</td>
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<td>74 (8)</td>
<td>11.5</td>
<td>1.1</td>
</tr>
<tr>
<td>75 (9)</td>
<td>12.0</td>
<td>0.9</td>
</tr>
<tr>
<td>76 (10)</td>
<td>12.5</td>
<td>0.7</td>
</tr>
<tr>
<td>77 (11)</td>
<td>13.0</td>
<td>0.5</td>
</tr>
<tr>
<td>78 (12)</td>
<td>14.0</td>
<td>0.3</td>
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<td>79 (13)</td>
<td>16.0</td>
<td>0.1</td>
</tr>
<tr>
<td>80 (14)</td>
<td>18.0 and over</td>
<td>0.0</td>
</tr>
</tbody>
</table>

Sec. 16. Collection of Payments—(1) The director in the name of the state shall commence a civil action
against an employer who, after due notice, defaults in any payment or interest thereon. If judgment is against the employer he shall pay the costs of the action. 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 workmen’s compensation law.

(2) A payment and interest thereon due and unpaid under this chapter shall be a debt due the state in favor of the director. It shall be a personal obligation of the employer and shall, in addition thereto, be a lien, enforceable by suit in equity, upon all the property of the employer: Provided, however, That no such lien shall be 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 chapter ninety-nine of the acts of the legislature, regular session, one thousand nine hundred forty-three.

(3) In addition to all other civil remedies prescribed herein the director may in the name of the state distrain
upon any personal property, including intangibles, of any
employer delinquent for any payment and interest there-
on. If the director 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 he may
likewise distrain in the name of the state before such de-
linquency occurs. For such purpose the director may re-
quire the services of a sheriff of any county in the state
in levying such distress in the county in which such sheriff
is an officer and in which such personal property is situ-
ated. A sheriff so collecting any payments and interest
thereon shall be entitled to such compensation as is pro-
vided by law for his services in the levy and enforcement
of executions.

(4) In case a business subject to the payments and in-
terest thereon imposed under this chapter shall be op-
erated in connection with a receivership or insolvency
proceeding in any state court in this state, the court un-
der whose direction such business is operated shall, by the
entry of a proper order or decree in the cause, make pro-
visions, so far as the assets in administration will permit,
for the regular payment of such payments as the same become due.

(5) 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 director that all payments and interest thereon against any such corporation which is an employer under this chapter have been paid or that provision satisfactory to the director has been made for payment.

(6) In any case where an employer defaults in payments, or interest thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains delinquent after due notice, and the director has been unable to collect such payments by any of the other civil remedies prescribed herein, the director may bring action in the circuit court of Kanawha county to enjoin such employer from continuing to carry on the business in which such liability was incurred: Provided, however, That the director may as an alternative to this action re-
quire such delinquent employer to file a bond in the form
prescribed by the director with satisfactory surety in an
amount not less than fifty per cent more than the tax due.
(7) 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 with-
hold payment in the final settlement of such contracts
until the receipt of a certificate from the director to the
effect that all payments and interest thereon accrued
against the contractor under this chapter have been paid
or that provisions satisfactory to the director have been
made for payment. Any official violating this section
shall be guilty of a misdemeanor and, on conviction there-
of, shall be fined not more than one thousand dollars or
imprisoned not exceeding one year in the county jail, or
shall be subject to both such fine and imprisonment, in the
discretion of the court.

Sec. 4. Disqualification for Benefits—Upon the deter-
mination of the facts by the director, an individual shall
be disqualified for benefits:
(1) For the week in which he left his most recent work
voluntarily without good cause involving fault on the part of the employer and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate. However, if the claimant returns to work in covered employment during his benefit year, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification. For the purpose of this subsection, the term "work" means employment with the last employing unit with whom such individual was employed as much as thirty days, whether or not such days are consecutive.

(2) If he were discharged by his last employing unit for misconduct, and such disqualification shall continue until the individual thereafter has worked for at least thirty days in covered employment: Provided, however, That notwithstanding any other provision in this chapter, the account of the employer who discharges an individual for misconduct shall not be charged with benefits paid to said individual after such discharge.

(3) For the week in which he failed without good
cause, to apply for available suitable work, accept suitable work when offered, or return to his customary self-employment when directed to do so by the director, and for the four weeks which immediately follow and for such an additional period as any offer of suitable work shall continue open for his acceptance, and his maximum benefit amount shall be reduced by an amount equal to his weekly benefit rate times the number of weeks of disqualification. However, if the claimant returns to work in covered employment during his benefit year the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification.

(4) For a week in which his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he was last employed, unless the director is satisfied that he was not (one) participating, financing, or directly interested in such dispute, and (two) did not belong to a grade or class of workers who were participating, financing, or directly interested in the labor dispute which resulted in the stoppage of work. No dis-
qualification under this subsection shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his plant or operation or dismisses his employees in order to force wage reduction, changes in hours or working conditions.

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

(a) Wages in lieu of notice or payments under any form of a separation wage plan.

(b) Compensation for temporary total disability under the workmen’s compensation law of any state or under a similar law of the United States.

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual is not employed because of pregnancy, or has voluntarily quit employment to marry or to perform any marital, parental or
family duty, or to attend to his or her personal business or affairs, and until the individual returns to covered employment and has been employed in covered employment at least thirty working days; notwithstanding the foregoing provisions, in case of pregnancy, the disqualification shall last no longer than six weeks prior to and six weeks subsequent to the date of birth of the child, provided that the individual furnishes the employer a certificate from a physician that she is physically able to work.

(7) 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 is attending such school, college, university, or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(8) For each week in which he is unemployed because of his request, or that of his duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.
(9) For each week in which he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay, from an employer or from any trust or fund contributed to by an employer. But if such remuneration for any week is less than the benefits which would otherwise be due him for such week under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: Provided further, That there shall be no disqualification if in the individual's base period there are no wages which were paid by the employer paying such remuneration, or by a fund into which the employer has paid during said base period. Claimant may be required to certify as to whether or not he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay from an employer or from a trust fund contributed to by an employer.

(10) For each week in which he knowingly made a
false statement or representation knowing it to be false or knowingly failed to disclose a material fact in order to obtain or increase a benefit under this article. For each such week of disqualification he shall be disqualified an additional five weeks and his maximum benefit amount shall be reduced by an amount equal to five times his weekly benefit rate. Such five weeks disqualification periods are to run consecutively beginning with the first week in which it is determined a fraudulent claim was filed: Provided, That an individual shall not be disqualified under this subsection for a period of more than fifty-two consecutive weeks: Provided further, That disqualification under this subsection shall not preclude prosecution under this subsection shall not preclude prosecution under this subsection shall not preclude prosecution under article ten, section seven.

(11) For the purposes of this section an employer's account shall not be charged under any of the following conditions: When benefits are paid for unemployment immediately after the expiration of a period of disqualification for (a) leaving work voluntarily without good cause involving fault on the part of the employer, (b) failing without good cause to apply for available suitable
work, accept suitable work, when offered, or return to his
customary self-employment when directed to do so by
the director.

Sec. 4-a. Individual Not Disqualified.—Notwithstanding
any other provision in this Act, no individual shall be
disqualified from obtaining unemployment compensation
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.

Sec. 10. Benefit Rate; Total Unemployment.—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 table A in
this paragraph, on the line on which in column (A) there
is indicated the employee's wage class, except as other-
wise provided under the term “total and partial unem-
ployment” in section three, article one of this chapter.
The employee's wage class shall be determined by his
base period wages as shown in column (B) in table A.
The right of an employee to receive benefits shall not
be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of ten dollars as a result of odd-job or subsidiary work in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.

The provisions of this section shall apply to all benefit weeks in benefit years beginning after the effective date of this Act; for benefit weeks occurring in benefit years beginning prior thereto the provisions then in effect shall apply.

TABLE A

<table>
<thead>
<tr>
<th>Wage Class (Col. A)</th>
<th>Wages in Base Period (Col. B)</th>
<th>Weekly Benefit Rate (Col. C)</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unempl. (Col. D)</th>
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<td>Under $ 500.00</td>
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Sec. 11. **Benefit Rate; Partial Unemployment.**—An eligible individual who is partially unemployed in any
week shall upon claim thereof filed within such time and
in such manner as the director may by regulation pre-
scribe, be paid benefits for such partial unemployment in
an amount equal to his weekly benefit rate, as deter-
mined in accordance with section ten of this article, less
that part of wages from any source payable to him with
respect to such week which is in excess of ten dollars:

Provided, That such amount of benefits if not a multiple
of one dollar shall be computed to the next higher multiple
of one dollar. Such partial benefits shall be paid to such
individual for the week for which he is claiming bene-
fits without regard to the provisions of subsections one
and four of section one of this article.

Article 7. Claim Procedure.

Sec. 8. Appeal from Deputy's Decision.—A claimant,
last employer, or other interested party, may file an ap-
peal from the decision of the deputy within eight calendar
days after notice of the decision has been delivered or
mailed by certified mail to the claimant and last em-
ployer 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 director, 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 director of its findings and decision.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect July 16, 1961

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 17th day of March, 1961.

Governor

Filed in Office of the Secretary of State of West Virginia MAR 17 1961

JOSEPH F. BURDETT
SECRETARY OF STATE