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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961

ENROLLED

SENATE BILL NO. 211

(By Mr. \_\_\_\_\_)

*Carson, Mr. President*

PASSED March 10th 1961

In Effect July 1st. 1961 Passage

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JOE F. BURDETT  
SECRETARY OF STATE

**ENROLLED**

**Senate Bill No. 211**

(By MR. CARSON, MR. PRESIDENT)

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

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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one, as amended, be repealed; that section three, article one; sections two, seven, ten and sixteen, article five; sections four, ten and eleven, article six; and section eight, article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:

**Article 1. Department of Employment Security.**

Section 3. *Definitions.*—As used in this chapter, unless

2 the context clearly requires otherwise:

3 “Administration fund” means the employment security  
4 administration fund, from which the administrative ex-  
5 penses under this chapter shall be paid.

6 “Annual payroll” means the total amount of wages for  
7 employment paid by an employer during a twelve month  
8 period ending with June thirty of any calendar year.

9 “Average annual payroll” means the average of the last  
10 three annual payrolls of an employer.

11 “Base period” means the first four out of the last five  
12 completed calendar quarters immediately preceding the  
13 first day of the individual’s benefit year.

14 “Base period employer” means any employer who in the

15 base period for any benefit year paid wages to an indi-  
16 vidual who filed claim for unemployment compensation  
17 within such benefit year.

18 “Base period wages” means wages paid to an individual  
19 during the base period by all his base period employers.

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

31 “Benefits” means the money payable to an individual  
32 with respect to his unemployment.

33 “Board” means board of review.

34 “Calendar quarter” means the period of three consecu-  
35 tive calendar months ending on March thirty-one, **June**

36 thirty, September thirty, or December thirty-one, or the  
37 equivalent thereof as the director may by regulation  
38 prescribe.

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

42 “Director” means the employment security director.

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

52 “Employer” means an employing unit which for some  
53 portion of a day, not necessarily simultaneously, in each  
54 of twenty different calendar weeks, which weeks need  
55 not be consecutive, within either the current calendar  
56 year, or the preceding calendar year, has had in employ-

57 ment four or more individuals irrespective of whether  
58 the same individuals were or were not employed on each  
59 of such days, or who or which is or becomes a liable  
60 employer under any federal unemployment tax act, or  
61 who or which has acquired the organization, trade or  
62 business, or substantially all the assets thereof, of an em-  
63 ploying unit which at the time of such acquisition was  
64 an employer subject to this act.

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

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

70 (2) The term “employment” shall include an indi-  
71 vidual’s entire service, performed within or both within  
72 and without this state if: (a) The service is localized in  
73 this state; or (b) the service is not localized in any state  
74 but some of the service is performed in this state and  
75 (i) the base of operations, or, if there is no base of opera-  
76 tions, then the place from which such service is directed  
77 or controlled, is in this state; or (ii) the base of operations

78 or place from which such service is directed or controlled  
79 is not in any state in which some part of the service is  
80 performed but the individual's residence is in this state.

81 (3) Service not covered under paragraph two of this  
82 subsection and performed entirely without this state,  
83 with respect to no part of which contributions are re-  
84 quired and paid under an unemployment compensation  
85 law of any other state or of the federal government, shall  
86 be deemed to be employment subject to this chapter if  
87 the individual performing such services is a resident of  
88 this state and the director approves the election of the  
89 employing unit for whom such services are performed  
90 that the entire service of such individual shall be deemed  
91 to be employment subject to this chapter.

92 (4) Service shall be deemed to be localized within a  
93 state, if: (a) The service is performed entirely within  
94 such state; or (b) the service is performed both within  
95 or without such state, but the service performed without  
96 such state is incidental to the individual's service within  
97 this state. For example, is temporary or transitory in  
98 nature or consists of isolated transactions.

99       (5) Services performed by an individual for wages  
100 shall be deemed to be employment subject to this chapter  
101 unless and until it is shown to the satisfaction of the di-  
102 rector that: (a) Such individual has been and will con-  
103 tinue to be free from control or direction over the per-  
104 formance of such services, both under his contract of  
105 service and in fact; and (b) such service is either outside  
106 the usual course of the business for which such service is  
107 performed or that such service is performed outside of  
108 all the places of business of the enterprise for which such  
109 service is performed; and (c) such individual is custom-  
110 arily engaged in an independently established trade,  
111 occupation, profession or business.

112       (6) All service performed by an officer or member of  
113 the crew of an American vessel (as defined in section  
114 three hundred five of an act of Congress entitled "Social  
115 Security Act Amendment of 1946," approved August  
116 tenth, one thousand nine hundred forty-six) on or in  
117 connection with such vessel, provided that the operating  
118 office, from which the operations of such vessel operating  
119 on navigable waters within or within and without the



120 United States is ordinarily and regularly supervised,  
121 managed, directed and controlled, is within this state.

122 Included and Excluded Service. If the services per-  
123 formed during one-half or more of any pay period by an  
124 employee for the person employing him constitute em-  
125 ployment, all the services of such employee for such  
126 period shall be deemed to be employment; but if the  
127 services performed during more than one-half of any  
128 such pay period by an employee for the person employing  
129 him do not constitute employment, then none of the  
130 services of such employee for such period shall be deemed  
131 to be employment.

132 The term "employment" shall not include:

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

136 (2) Service performed directly in the employ of an-  
137 other state, or its political subdivisions.

138 (3) Service performed in the employ of the United  
139 States or an instrumentality of the United States exempt  
140 under the Constitution of the United States from the pay-

141 ments imposed by this law, except that to the extent that  
142 the Congress of the United States, shall permit states to  
143 require any instrumentalities of the United States to make  
144 payments into an unemployment fund under a state un-  
145 employment compensation law, all of the provisions of  
146 this law shall be applicable to such instrumentalities, and  
147 to service performed for such instrumentalities, in same  
148 manner, to the same extent and on the same terms as to  
149 all other employers, employing units, individuals, and  
150 services: *Provided*, That if this state shall not be certi-  
151 fied for any year by the secretary of labor under section  
152 one thousand six hundred three (c) of the Federal In-  
153 ternal Revenue Code, the payments required of such  
154 instrumentalities with respect to such year shall be re-  
155 funded by the director from the fund in the same manner  
156 and within the same period as is provided in section  
157 nineteen of article five of this chapter with respect to  
158 payments erroneously collected.

159 (4) Service performed after June thirty, one thou-  
160 sand nine hundred thirty-nine, with respect to which  
161 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 connec-  
197 tion 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

204 only if such service is performed as an incident to ordinary  
205 farming operations or, in the case of fruits and vegetables,  
206 as an incident to the preparation of such fruits or vege-  
207 tables for market. The provisions of this paragraph shall  
208 not be deemed to be applicable with respect to service  
209 performed in connection with commercial canning or  
210 commercial freezing or in connection with any agricul-  
211 tural or horticultural commodity after its delivery to a  
212 terminal market for distribution for consumption.

213 As used in this definition, the term "farm" includes  
214 stock, dairy, poultry, fruit, fur-bearing animal, and truck  
215 farm, plantations, ranches, or other similar land areas or  
216 structures used primarily for the raising of any agricultu-  
217 ral or horticultural commodity, and orchards, but the term  
218 "farm" does not include greenhouses and nurseries.

219 (6) Domestic service in a private home.

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

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

224 (9) Service performed in the employ of an employing

225 unit organized and operated exclusively for religious,  
226 charitable, scientific, literary, or educational purposes or  
227 for prevention of cruelty to children or animals, no part  
228 of the net earnings of which inure to the benefit of any  
229 private shareholder or individual.

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

236 Notwithstanding the foregoing exclusions from the def-  
237 inition of "employment," services, except agricultural  
238 labor and domestic service in a private home, shall be  
239 deemed to be in employment if with respect to such serv-  
240 ices a tax is required to be paid under any federal law  
241 imposing a tax against which credit may be taken for  
242 contributions required to be paid into a state unemploy-  
243 ment compensation fund.

244 "Employment office" means a free employment office  
245 or branch thereof, operated by this state, or any free pub-

246   lic employment office maintained as a part of a state con-  
247   trolled system of public employment offices in any other  
248   state.

249    “Fund” means the unemployment compensation fund  
250   established by this chapter.

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

255    “Separated from employment” means for the purposes  
256   of this chapter, the total severance whether by quitting,  
257   discharge, or otherwise, of the employer-employee re-  
258   lationship.

259    “State” includes, in addition to the states of the United  
260   States, Puerto Rico and the District of Columbia.

261    “Total and partial unemployment”:

262       (1) An individual shall be deemed totally unemployed  
263   in any week in which such individual is separated from  
264   employment for an employing unit and during which he  
265   performs no services and with respect to which no wages  
266   are payable to him.

267     (2) An individual who has not been separated from  
268 employment shall be deemed to be partially unemployed  
269 in any week in which due to lack of work he performs no  
270 services and with respect to which no wages are payable  
271 to him, or in any week in which due to lack of full-time  
272 work wages payable to him are less than his weekly bene-  
273 fit amount plus ten dollars.

274     “Wages” means all remuneration for personal service,  
275 including commissions and bonuses and the cash value  
276 of all remuneration in any medium other than cash: Pro-  
277 vided, That the term “wages” shall not include:

278     (1) That part of the remuneration which, after re-  
279 muneration equal to three thousand dollars has been paid  
280 to an individual by an employer with respect to employ-  
281 ment during any calendar year, is paid after December  
282 thirty-one, one thousand nine hundred thirty-nine, and  
283 prior to January one, one thousand nine hundred forty-  
284 seven, to such individual by such employer with respect  
285 to employment during such calendar year; or that part  
286 of the remuneration which, after remuneration equal to  
287 three thousand dollars with respect to employment after



288 one thousand nine hundred thirty-eight has been paid  
289 to an individual by an employer during any calendar year  
290 after one thousand nine hundred forty-six, is paid to such  
291 individual by such employer during such calendar year,  
292 except that for the purposes of sections one, ten, eleven,  
293 and thirteen of article six of this chapter, all remuner-  
294 ation earned by an individual in employment shall be  
295 credited to the individual and included in his computa-  
296 tion of base period wages: *Provided*, That notwithstand-  
297 ing the foregoing provisions, on and after January one,  
298 one thousand nine hundred sixty-two, the term "wages"  
299 shall not include:

300 That part of the remuneration which, after remuner-  
301 ation equal to three thousand six hundred dollars has  
302 been paid to an individual by an employer with respect  
303 to employment during any calendar year, is paid during  
304 any calendar year after one thousand nine hundred sixty-  
305 one, except that for the purposes of sections one, ten,  
306 eleven, and thirteen of article six of this chapter, all  
307 remuneration earned by an individual in employment  
308 shall be credited to the individual and included in his

309 computation of base period wages; and *Provided further*,  
310 That the remuneration paid to an individual by an em-  
311 ployer with respect to employment in another state or  
312 other states upon which contributions were required of  
313 and paid by such employer under an unemployment  
314 compensation law of such other state or states shall be  
315 included as a part of the remuneration equal to the  
316 amounts of three thousand dollars or three thousand six  
317 hundred dollars herein referred to. In applying such  
318 limitation on the amount of remuneration that is taxable  
319 an employer shall be accorded the benefit of all or any  
320 portion of such amount which may have been paid by its  
321 predecessor or predecessors: *Provided, however*, That if  
322 the definition of the term "wages" as contained in sec-  
323 tion 3306 (b) of the Internal Revenue Code of 1954 is  
324 amended (a) effective prior to January one, one thousand  
325 nine hundred sixty-two, to include remuneration in excess  
326 of three thousand dollars, or (b) effective on or after  
327 January one, one thousand nine hundred sixty-two, to  
328 include remuneration in excess of three thousand six  
329 hundred dollars, paid to an individual by an employer

330 under the Federal Unemployment Tax Act during any  
331 calendar year, wages for the purposes of this definition  
332 shall include remuneration paid in a calendar year to an  
333 individual by an employer subject to this article or his  
334 predecessor with respect to employment during any cal-  
335 endar year up to an amount equal to the amount of re-  
336 muneration taxable under the Federal Unemployment  
337 Tax Act;

338     (2) The amount of any payment made after December  
339 thirty-one, one thousand nine hundred fifty-two, (includ-  
340 ing any amount paid by an employer for insurance or  
341 annuities, or into a fund, to provide for any such pay-  
342 ment) to, or on behalf of, an individual in its employ, or  
343 any of his dependents, under a plan or system established  
344 by an employer which makes provision for individuals in  
345 its employ generally (or for such individuals and their  
346 dependents), or for a class or classes of such individuals  
347 (or for a class or classes of such individuals and their de-  
348 pendents), on account of (A) retirement, or (B) sick-  
349 ness or accident disability, or (C) medical or hospitali-

350 zation expenses in connection with sickness or accident  
351 disability, or (D) death;

352 (3) Any payment made after December thirty-one,  
353 one thousand nine hundred fifty-two, by an employer to  
354 an individual in its employ (including any amount paid  
355 by an employer for insurance or annuities, or into a fund,  
356 to provide for any such payment) on account of retire-  
357 ment;

358 (4) Any payment made after December thirty-one,  
359 one thousand nine hundred fifty-two, by an employer on  
360 account of sickness or accident disability, or medical or  
361 hospitalization expenses in connection with sickness or  
362 accident disability, to, or on behalf of, an individual in  
363 its employ after the expiration of six calendar months  
364 following the last calendar month in which such indi-  
365 vidual worked for such employer;

366 (5) Any payment made after December thirty-one,  
367 one thousand nine hundred fifty-two, by an employer to,  
368 or on behalf of, an individual in its employ or his bene-  
369 ficiary (A) from or to a trust exempt from tax under  
370 section 165 (a) of the Federal Internal Revenue Code at

371 the time of such payment unless such payment is made to  
372 such individual as an employee of the trust as remuner-  
373 ation for services rendered by such individual and not  
374 as a beneficiary of the trust, or (B) under or to an annuity  
375 plan which, at the time of such payment, meets the re-  
376 quirements of section 165 (a) (3), (4), (5), and (6) of  
377 the Federal Internal Revenue Code;

378 (6) The payment by an employer (without deduction  
379 from the remuneration of the individual in its employ)  
380 of the tax imposed upon an individual in its employ  
381 under section 1400 of the Federal Internal Revenue Code;

382 (7) Remuneration paid by an employer after Decem-  
383 ber thirty-one, one thousand nine hundred fifty-two, in  
384 any medium other than cash to an individual in its em-  
385 ploy for service not in the course of the employer's trade  
386 or business;

387 (8) Any payment (other than vacation or sick pay)  
388 made by an employer after December thirty-one, one  
389 thousand nine hundred fifty-two, to an individual in its  
390 employ after the month in which he attains the age of

391 sixty-five, if he did not work for the employer in the  
392 period for which such payment is made;

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

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

403 The reasonable cash value of remuneration in any  
404 medium other than cash shall be estimated and de-  
405 termined in accordance with rules prescribed by the  
406 director.

407 "Week" means a calendar week, ending at midnight  
408 Saturday, or the equivalent thereof, as determined in ac-  
409 cordance with the regulations prescribed by the director.

410 "Weekly benefit rate" means the maximum amount of

411 benefit an eligible individual will receive for one week of  
412 total unemployment.

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

**Article 5. Employer Coverage and Responsibility.**

Section 2. *Duration.*—Except as otherwise provided in  
2 section three of this article, an employing unit shall cease  
3 to be an employer subject to this chapter only as of the  
4 first day of any calendar year and only if it files with the  
5 director not later than January thirty-first of such year,  
6 a written application for termination of coverage, as of  
7 such first day of January, and the director finds that there  
8 were no twenty different days, each day being in a differ-  
9 ent calendar week within the preceding calendar year,  
10 within which such employing unit had four or more indi-  
11 viduals in employment subject to this chapter: *Provided,*  
12 *however,* That the director may for good cause extend the  
13 time for filing application for termination of coverage,  
14 effective as of the first day of the next succeeding quarter  
15 after the application is approved.

Sec. 7. *Joint and Separate Accounts.*—(1) The director

2 shall maintain a separate account for each employer, and  
3 shall credit his account with all contributions paid by  
4 him prior to July first, one thousand nine hundred sixty-  
5 one. On and after July first, one thousand nine hundred  
6 sixty-one, the director shall maintain a separate account  
7 for each employer, and shall credit said employer's ac-  
8 count with all contributions of such employer in excess  
9 of seven-tenths of one per cent of taxable wages. *Pro-*  
10 *vided*, That any adjustment made in an employer's ac-  
11 count after the computation date shall not be used in the  
12 computation of the credit balance of an employer until  
13 the next following computation date: *Provided further*,  
14 That nothing in this chapter shall be construed to grant  
15 an employer or individual in his service prior claims or  
16 rights to the amounts paid by him into the fund, either  
17 on his own behalf or on behalf of such individuals. The  
18 account of any employer which has been inactive for a  
19 period of four consecutive calendar years shall be termi-  
20 nated for all purposes.

21 Benefits paid to an eligible individual for total unem-  
22 ployment beginning after the effective date of this Act



23 shall be charged to the account of the last employer with  
24 whom he has been employed as much as thirty working  
25 days, whether or not such days are consecutive: *Provided*,  
26 That no employer's account shall be charged with benefits  
27 paid to any individual who has been separated from a non-  
28 covered employing unit in which he was employed as  
29 much as thirty days, whether or not such days are con-  
30 secutive: *And provided further*, That benefits paid to an  
31 eligible individual for partial unemployment beginning  
32 after the effective date of this act shall be charged to the  
33 account of the claimant's current employer.

34 (3) The director shall, for each calendar year here-  
35 after, classify employers in accordance with their actual  
36 experience in the payment of contributions on their own  
37 behalf and with respect to benefits charged against their  
38 accounts, with a view of fixing such contribution rates as  
39 will reflect such experiences. For the purpose of fixing  
40 such contribution rates for each calendar year, the books  
41 of the department shall be closed on July thirty-one of  
42 the preceding calendar year, and any contributions there-  
43 after paid, as well as benefits thereafter paid with respect

44 to compensable weeks ending on or before June thirty  
45 of the preceding calendar year, shall not be taken into  
46 account until the next annual date for fixing contribution  
47 rates: *Provided, however,* That if an employer has failed  
48 to furnish to the director on or before July thirty-one of  
49 such preceding calendar year the wage information for  
50 all past periods necessary for the computation of the con-  
51 tribution rate, such employer's rate shall be, if it is imme-  
52 diately prior to such July thirty-one, less than two and  
53 seven-tenths per cent, increased to two and seven-tenths  
54 per cent, and if such employer's rate immediately prior  
55 to such July thirty-one is more than two and seven-tenths  
56 per cent and he fails to furnish such wage information,  
57 his rate shall be increased to three and three-tenths per  
58 cent: *Provided, further,* That any payment made or any  
59 information necessary for the computation of a reduced  
60 rate furnished on or before the termination of an exten-  
61 sion of time for such payment or reporting of such infor-  
62 mation granted pursuant to a regulation of the director  
63 authorizing such extension, shall be taken into account  
64 for the purposes of fixing contribution rates: *Provided,*

65 *further*, That when the time for filing any report or mak-  
66 ing any payment required hereunder falls on Saturday,  
67 Sunday, or a legal holiday, the due date shall be deemed  
68 to be the next succeeding business day: *Provided, further*,  
69 That whenever through mistake or inadvertence erroneous  
70 credits or charges are found to have been made to or  
71 against the reserve account of any employer, the rate  
72 shall be adjusted as of January one of the calendar year  
73 in which such mistake or inadvertence is discovered; but  
74 payments made under any rate assigned prior to January  
75 one of such year shall not be deemed to be erroneously  
76 collected.

77 (4) The director may prescribe regulations for the  
78 establishment, maintenance, and dissolution of joint ac-  
79 counts by two or more employers, and shall, in accord-  
80 ance with such regulations and upon application by two  
81 or more employers to establish such an account, or to  
82 merge their several individual accounts in a joint account,  
83 maintain such joint account as if it constituted a single  
84 employer's account.

Sec. 10. *Experience Ratings; Decreased Rates.*—On and

2 after January one, one thousand nine hundred fifty-four,  
3 after the requirements of section nine have been complied  
4 with, an employer's payment shall remain two and seven-  
5 tenths per cent until:

6 (1) There have elapsed thirty-six consecutive months  
7 immediately preceding the computation date throughout  
8 which an employer's account was chargeable with bene-  
9 fits.

10 (2) His payments credited to his account for all past  
11 years exceed the benefits charged to his account by an  
12 amount equal to at least the per cent of his average an-  
13 nual pay roll as shown in column B of table I. His rate  
14 shall be the amount appearing in column C of table I on  
15 line with the percentage in column B.

16 The director shall determine an employer's compliance  
17 with these requirements.

18 **TABLE I**

Col. A. Rate Class	Col. B. Per Cent of Average Annual Pay Roll by Which Credits Exceed Charges	Col. C. Employer's Rate
19 ( 1)	5.5	2.5
20 ( 2)	6.5	2.3

21	( 3)	7.0	2.1
22	( 4)	7.5	1.9
23	( 5)	8.0	1.7
24	( 6)	8.5	1.5
25	( 7)	9.0	1.3
26	( 8)	9.5	1.1
27	( 9)	10.0	0.9
28	(10)	10.5	0.7
29	(11)	11.0	0.5
30	(12)	11.5	0.3
31	(13)	12 and over	0.0

32 After the director is satisfied that an employer has com-  
33 plied with these requirements he shall decrease the em-  
34 ployer's rate to the next lower rate if the fund, including  
35 the trust fund, clearing account, and benefit account, is as  
36 much as eighty million dollars on the computation date,  
37 and shall decrease the employer's rate one additional step  
38 if the fund is as much as ninety million dollars on the  
39 computation date, and shall decrease the employer's rate  
40 one additional step for each five million dollars that the  
41 fund is above ninety million dollars up to and including

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42 one hundred fifteen million dollars on the computation  
43 date: *Provided*, That an employer's rate shall not be re-  
44 duced below 0.3 per cent until the credits to his account  
45 for all past years exceed the benefits charged to his ac-  
46 count by an amount equal to at least twelve per cent of  
47 his average annual pay roll: *Provided further*, That all  
48 required contributions paid on or before July thirty-one  
49 immediately following the computation date shall be  
50 used in determining the amount in the trust fund and  
51 clearing account as of the computation date: *Provided*,  
52 That on and after January one, one thousand nine hundred  
53 sixty-two, the foregoing provisions of this subsection (2)  
54 of section ten, article five, including Table I, shall be void  
55 and of no effect, and the following provisions, including  
56 Table II, shall, on and after said January one, one thou-  
57 sand nine hundred sixty-two, become effective.

58 (2) His payments credited to his account for all past  
59 years exceed the benefits charged to his account by an  
60 amount equal to at least the per cent of his average an-  
61 nual payroll as shown in column B of table II. His rate  
62 shall be the amount appearing in column C of table II on  
63 line with the percentage in column B.

64 The director shall determine an employer's compli-  
 65 ance with these requirements.

66 TABLE II

Col. A. Rate Class	Col. B. Per Cent of Average Annual Pay Roll by Which Credits Exceed Charges	Col. C. Employer's Rate
67 ( 1)	6.0	2.5
68 ( 2)	7.0	2.3
69 ( 3)	8.0	2.1
70 ( 4)	9.0	1.9
71 ( 5)	10.0	1.7
72 ( 6)	10.5	1.5
73 ( 7)	11.0	1.3
74 ( 8)	11.5	1.1
75 ( 9)	12.0	0.9
76 (10)	12.5	0.7
77 (11)	13.0	0.5
78 (12)	14.0	0.3
79 (13)	16.0	0.1
80 (14)	18.0 and over	0.0

Sec. 16. *Collection of Payments*—(1) The director in  
 2 the name of the state shall commence a civil action

3 against an employer who, after due notice, defaults in  
4 any payment or interest thereon. If judgment is against  
5 the employer he shall pay the costs of the action. Civil  
6 actions under this section shall be given preference on the  
7 calendar of the court over all other civil actions except  
8 petitions for judicial review under article seven of this  
9 chapter and cases arising under the workmen's compen-  
10 sation law.

11 (2) A payment and interest thereon due and unpaid  
12 under this chapter shall be a debt due the state in favor  
13 of the director. It shall be a personal obligation of the  
14 employer and shall, in addition thereto, be a lien, enforce-  
15 able by suit in equity, upon all the property of the em-  
16 ployer: *Provided, however,* That no such lien shall be  
17 enforceable as against a purchaser (including lien cred-  
18 itor) of real estate or personal property for a valuable  
19 consideration, without notice, unless docketed as provided  
20 in chapter ninety-nine of the acts of the legislature, reg-  
21 ular session, one thousand nine hundred forty-three.

22 (3) In addition to all other civil remedies prescribed  
23 herein the director may in the name of the state distrain



24 upon any personal property, including intangibles, of any  
25 employer delinquent for any payment and interest there-  
26 on. If the director has good reason to believe that such  
27 property or a substantial portion thereof is about to be  
28 removed from the county in which it is situated he may  
29 likewise distrain in the name of the state before such de-  
30 linquency occurs. For such purpose the director may re-  
31 quire the services of a sheriff of any county in the state  
32 in levying such distress in the county in which such sheriff  
33 is an officer and in which such personal property is situ-  
34 ated. A sheriff so collecting any payments and interest  
35 thereon shall be entitled to such compensation as is pro-  
36 vided by law for his services in the levy and enforcement  
37 of executions.

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

45 for the regular payment of such payments as the same be-  
46 come due.

47 (5) The secretary of state of this state shall withhold  
48 the issuance of any certificate of dissolution or withdrawal  
49 in the case of any corporation organized under the laws  
50 of this state, or organized under the laws of another state  
51 and admitted to do business in this state, until notified by  
52 the director that all payments and interest thereon against  
53 any such corporation which is an employer under this  
54 chapter have been paid or that provision satisfactory to  
55 the director has been made for payment.

56 (6) In any case where an employer defaults in pay-  
57 ments, or interest thereon, for as many as two calendar  
58 quarters, which quarters need not be consecutive, and  
59 remains delinquent after due notice, and the director has  
60 been unable to collect such payments by any of the other  
61 civil remedies prescribed herein, the director may bring  
62 action in the circuit court of Kanawha county to enjoin  
63 such employer from continuing to carry on the business  
64 in which such liability was incurred: *Provided, however,*  
65 That the director may as an alternative to this action re-

66 quire such delinquent employer to file a bond in the form  
67 prescribed by the director with satisfactory surety in an  
68 amount not less than fifty per cent more than the tax due.

69 (7) All state, county, district and municipal officers  
70 and agents making contracts on behalf of the state of West  
71 Virginia or any political subdivision thereof shall with-  
72 hold payment in the final settlement of such contracts  
73 until the receipt of a certificate from the director to the  
74 effect that all payments and interest thereon accrued  
75 against the contractor under this chapter have been paid  
76 or that provisions satisfactory to the director have been  
77 made for payment. Any official violating this section  
78 shall be guilty of a misdemeanor and, on conviction there-  
79 of, shall be fined not more than one thousand dollars or  
80 imprisoned not exceeding one year in the county jail, or  
81 shall be subject to both such fine and imprisonment, in the  
82 discretion of the court.

Sec. 4. *Disqualification for Benefits*—Upon the deter-  
2 mination of the facts by the director, an individual shall  
3 be disqualified for benefits:

4 (1) For the week in which he left his most recent work

5 voluntarily without good cause involving fault on the part  
6 of the employer and the six weeks immediately following  
7 such week. Such disqualification shall carry a reduction  
8 in the maximum benefit amount equal to six times the  
9 individual's weekly benefit rate. However, if the claimant  
10 returns to work in covered employment during his benefit  
11 year, the maximum benefit amount shall be increased by  
12 the amount of the decrease imposed under the disqualifica-  
13 tion. For the purpose of this subsection, the term "work"  
14 means employment with the last employing unit with  
15 whom such individual was employed as much as thirty  
16 days, whether or not such days are consecutive.

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

25 (3) For the week in which he failed without good

26 cause, to apply for available suitable work, accept suit-  
27 able work when offered, or return to his customary self-  
28 employment when directed to do so by the director, and  
29 for the four weeks which immediately follow and for such  
30 an additional period as any offer of suitable work shall  
31 continue open for his acceptance, and his maximum bene-  
32 fit amount shall be reduced by an amount equal to his  
33 weekly benefit rate times the number of weeks of dis-  
34 qualification. However, if the claimant returns to work  
35 in covered employment during his benefit year the maxi-  
36 mum benefit amount shall be increased by the amount of  
37 the decrease imposed under the disqualification.

38 (4) For a week in which his total or partial unemploy-  
39 ment is due to a stoppage of work which exists because of  
40 a labor dispute at the factory, establishment, or other  
41 premises at which he was last employed, unless the di-  
42 rector is satisfied that he was not (one) participating,  
43 financing, or directly interested in such dispute, and (two)  
44 did not belong to a grade or class of workers who were  
45 participating, financing, or directly interested in the labor  
46 dispute which resulted in the stoppage of work. No dis-

47 qualification under this subsection shall be imposed if the  
48 employees are required to accept wages, hours or condi-  
49 tions of employment substantially less favorable than  
50 those prevailing for similar work in the locality, or if em-  
51 ployees are denied the right of collective bargaining under  
52 generally prevailing conditions, or if an employer shuts  
53 down his plant or operation or dismisses his employees in  
54 order to force wage reduction, changes in hours or work-  
55 ing conditions.

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

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

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

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

65 (6) For the week in which an individual is not em-  
66 ployed because of pregnancy, or has voluntarily quit em-  
67 ployment to marry or to perform any marital, parental or

68 family duty, or to attend to his or her personal business or  
69 affairs, and until the individual returns to covered employ-  
70 ment and has been employed in covered employment at  
71 least thirty working days; notwithstanding the foregoing  
72 provisions, in case of pregnancy, the disqualification shall  
73 last no longer than six weeks prior to and six weeks sub-  
74 sequent to the date of birth of the child, provided that  
75 the individual furnishes the employer a certificate from  
76 a physician that she is physically able to work.

77 (7) For each week in which an individual is unem-  
78 ployed because, having voluntarily left employment to  
79 attend a school, college, university, or other educational  
80 institution, he is attending such school, college, university,  
81 or other educational institution, or is awaiting entrance  
82 thereto or is awaiting the starting of a new term or ses-  
83 sion thereof, and until the individual returns to covered  
84 employment.

85 (8) For each week in which he is unemployed because  
86 of his request, or that of his duly authorized agent, for a  
87 vacation period at a specified time that would leave the  
88 employer no other alternative but to suspend operations.

89       (9) For each week in which he is receiving or has re-  
90       ceived remuneration in the form of an annuity, pension,  
91       or other retirement pay, from an employer or from any  
92       trust or fund contributed to by an employer. But if such  
93       remuneration for any week is less than the benefits which  
94       would otherwise be due him for such week under this  
95       chapter, he shall be entitled to receive for such week, if  
96       otherwise eligible, benefits reduced by the amount of  
97       such remuneration: *Provided*, That if such amount of  
98       benefits is not a multiple of one dollar, it shall be com-  
99       puted to the next higher multiple of one dollar: *Pro-*  
100      *vided further*, That there shall be no disqualification if  
101      in the individual's base period there are no wages which  
102      were paid by the employer paying such remuneration,  
103      or by a fund into which the employer has paid during  
104      said base period. Claimant may be required to certify  
105      as to whether or not he is receiving or has received re-  
106      muneration in the form of an annuity, pension, or other  
107      retirement pay from an employer or from a trust fund  
108      contributed to by an employer.

109      (10) For each week in which he knowingly made a



110 false statement or representation knowing it to be false  
111 or knowingly failed to disclose a material fact in order  
112 to obtain or increase a benefit under this article. For  
113 each such week of disqualification he shall be disquali-  
114 fied an additional five weeks and his maximum benefit  
115 amount shall be reduced by an amount equal to five times  
116 his weekly benefit rate. Such five weeks disqualification  
117 periods are to run consecutively beginning with the first  
118 week in which it is determined a fraudulent claim was  
119 filed: *Provided*, That an individual shall not be disquali-  
120 fied under this subsection for a period of more than fifty-  
121 two consecutive weeks: *Provided further*, That disquali-  
122 fication under this subsection shall not preclude prosecu-  
123 tion under article ten, section seven.

124 (11) For the purposes of this section an employer's  
125 account shall not be charged under any of the following  
126 conditions: When benefits are paid for unemployment  
127 immediately after the expiration of a period of disquali-  
128 fication for (a) leaving work voluntarily without good  
129 cause involving fault on the part of the employer, (b)  
130 failing without good cause to apply for available suitable

131 work, accept suitable work, when offered, or return to his  
132 customary self-employment when directed to do so by  
133 the director.

Sec. 4-a. *Individual Not Disqualified*.—Notwithstanding  
2 any other provision in this Act, no individual shall be  
3 disqualified from obtaining unemployment compensation  
4 benefits because of his receiving training as part of an  
5 area vocational program, or similar program, which has  
6 as its object the training of unemployed individuals in  
7 new occupational skills.

Sec. 10. *Benefit Rate; Total Unemployment*.—Each  
2 eligible individual who is totally unemployed in any  
3 week shall be paid benefits with respect to that week at  
4 the weekly rate appearing in column (C) in table A in  
5 this paragraph, on the line on which in column (A) there  
6 is indicated the employee's wage class, except as other-  
7 wise provided under the term "total and partial unem-  
8 ployment" in section three, article one of this chapter.  
9 The employee's wage class shall be determined by his  
10 base period wages as shown in column (B) in table A.  
11 The right of an employee to receive benefits shall not

12 be prejudiced nor the amount thereof be diminished by  
13 reason of failure by an employer to pay either the wages  
14 earned by the employee or the contribution due on such  
15 wages. An individual who is totally unemployed but  
16 earns in excess of ten dollars as a result of odd-job or  
17 subsidiary work in any benefit week shall be paid benefits  
18 for such week in accordance with the provisions of this  
19 chapter pertaining to benefits for partial unemployment.  
20 The provisions of this section shall apply to all benefit  
21 weeks in benefit years beginning after the effective date  
22 of this Act; for benefit weeks occurring in benefit years  
23 beginning prior thereto the provisions then in effect shall  
24 apply.

25 TABLE A

Wage Class (Col. A)		Wages in Base Period (Col. B)	Weekly Benefit Rate (Col. C)	Maximum Benefit in Benefit Year for Total and/or Partial Unempl. (Col. D)
26		Under \$ 500.00	Ineligible	
27	1	\$500.00- 599.99	\$ 10.00	\$260.00
28	2	600.00- 699.99	11.00	286.00
29	3	700.00- 799.99	12.00	312.00
30	4	800.00- 899.99	13.00	338.00

31	5	900.00- 999.99	14.00	364.00
32	6	1000.00- 1149.99	15.00	390.00
33	7	1150.00- 1299.99	16.00	416.00
34	8	1300.00- 1449.99	17.00	442.00
35	9	1450.00- 1599.99	18.00	468.00
36	10	1600.00- 1749.99	19.00	494.00
37	11	1750.00- 1899.99	20.00	520.00
38	12	1900.00- 2049.99	21.00	546.00
39	13	2050.00- 2199.99	22.00	572.00
40	14	2200.00- 2349.99	23.00	598.00
41	15	2350.00- 2499.99	24.00	624.00
42	16	2500.00- 2599.99	25.00	650.00
43	17	2600.00- 2699.99	26.00	676.00
44	18	2700.00- 2799.99	27.00	702.00
45	19	2800.00- 2899.99	28.00	728.00
46	20	2900.00- 2999.99	29.00	754.00
47	21	3000.00- 3099.99	30.00	780.00
48	22	3100.00- 3199.99	31.00	806.00
49	23	3200.00 and over	32.00	832.00

Sec. 11. *Benefit Rate; Partial Unemployment.*—An

2 eligible individual who is partially unemployed in any

3 week shall upon claim therefor filed within such time and  
4 in such manner as the director may by regulation pre-  
5 scribe, be paid benefits for such partial unemployment in  
6 an amount equal to his weekly benefit rate, as deter-  
7 mined in accordance with section ten of this article, less  
8 that part of wages from any source payable to him with  
9 respect to such week which is in excess of ten dollars:  
10 *Provided*, That such amount of benefits if not a multiple  
11 of one dollar shall be computed to the next higher multiple  
12 of one dollar. Such partial benefits shall be paid to such  
13 individual for the week for which he is claiming bene-  
14 fits without regard to the provisions of subsections one  
15 and four of section one of this article.

**Article 7. Claim Procedure.**

Sec. 8. *Appeal from Deputy's Decision.*—A claimant,  
2 last employer, or other interested party, may file an ap-  
3 peal from the decision of the deputy within eight calendar  
4 days after notice of the decision has been delivered or  
5 mailed by certified mail to the claimant and last em-  
6 ployer as provided in section four of this article. The

7 period within which an appeal from the decision of the  
8 deputy may be filed shall be stated in such notice. The  
9 decision of the deputy shall be final and benefits shall be  
10 paid or denied in accordance therewith unless an appeal  
11 is filed within such time.

12 Upon appeal from the determination of a deputy, an  
13 individual shall be entitled to a fair hearing and reason-  
14 able opportunity to be heard before an appeal tribunal  
15 as provided in section seven of this article.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Thomas Davis, Jr.*  
Chairman Senate Committee

*Mrs. H. H. Withrow*  
Chairman House Committee

Originated in the Senate.

Takes effect

passage.

*J. H. M. Meyer*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Harvard Pearson*  
President of the Senate

*Julius W. Singleton Sr.*  
Speaker House of Delegates

The within

approved this the

day of

17<sup>th</sup>  
March, 1961.

*W. W. Barron*  
Governor



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

JOE F. BURDETT  
SECRETARY OF STATE