

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963

ENROLLED

COM. SUB. FOR  
SENATE BILL NO. 217

(By Mr.....)

PASSED March 9,.....1963

In Effect July 1, 1963 Passage



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JOE F. BURDETT  
SECRETARY OF STATE

# 217

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 217**

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AN ACT to repeal article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article six of said chapter and to enact in lieu thereof a new article six; and to amend and reenact sections three and four, article one, sections seven and ten-a, article five and section five-a, article nine of said chapter, all relating to unemployment compensation.

*Be it enacted by the Legislature of West Virginia:*

That article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article six of said chapter be repealed and a new article six enacted in lieu thereof; and that sections three

and four, article one, sections seven and ten-a, article five and section five-a, article nine of said chapter be amended and re-enacted 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  
10 last 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  
15 the base period for any benefit year paid wages to an  
16 individual who filed claim for unemployment compensa-  
17 tion 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  
22 filed a valid claim for benefits, and thereafter the one-  
23 year period beginning with the day on which such in-  
24 dividual next files a valid claim for benefits after the  
25 termination of his last preceding benefit year. An initial  
26 claim for benefits filed in accordance with the provisions  
27 of this chapter shall be deemed to be a valid claim within  
28 the purposes of this definition if the individual has been  
29 paid wages in his base period sufficient to make him eli-  
30 gible 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 pre-  
38 scribe.

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 or-  
44 ganization, 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 rep-  
48 resentative of a deceased person, which has on January  
49 first, one thousand nine hundred thirty-five, or subsequent  
50 thereto, had in its employ one or more individuals per-  
51 forming service within this state.

52 "Employer" means:

53 (1) Any employing unit which for some portion of a  
54 day, not necessarily simultaneously, in each of twenty  
55 different calendar weeks, which weeks need not be con-  
56 secutive, within either the current calendar year, or the  
57 preceding calendar year, has had in employment four or  
58 more individuals irrespective of whether the same indi-  
59 viduals were or were not employed on each of such days;

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

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

66 (4) Any employing unit which, after December 31,  
67 1963, in any one calendar quarter, in any calendar year,  
68 has in employment four or more individuals and has paid  
69 wages for employment in the total sum of five thousand  
70 dollars or more, or which, after such date, has paid wages  
71 for employment in any calendar year in the sum total of  
72 twenty thousand dollars or more;

73 (5) Any employing unit which, after December thirty-  
74 one, nineteen hundred sixty-three, in any three weeks  
75 period, in any calendar year, has in employment ten or  
76 more individuals.

77 "Employment" subject to the other provisions of this  
78 section, means:

79 (1) Service, including service in interstate commerce,  
80 performed for wages or under any contract of hire, writ-  
81 ten or oral, express or implied.

82 (2) The term "employment" shall include an indi-  
83 vidual's entire service, performed within or both within  
84 and without this state if: (a) The service is localized in  
85 this state; or (b) the service is not localized in any state  
86 but some of the service is performed in this state and (i)  
87 the base of operations, or, if there is no base of operations,  
88 then the place from which such service is directed or con-  
89 trolled, is in this state; or (ii) the base of operations or  
90 place from which such service is directed or controlled  
91 is not in any state in which some part of the service is  
92 performed but the individual's residence is in this state.

93 (3) Service not covered under paragraph two of this  
94 subsection and performed entirely without this state,  
95 with respect to no part of which contributions are re-  
96 quired and paid under an unemployment compensation  
97 law of any other state or of the federal government, shall  
98 be deemed to be employment subject to this chapter if  
99 the individual performing such services is a resident of  
100 this state and the director approves the election of the  
101 employing unit for whom such services are performed

102 that the entire service of such individual shall be deemed  
103 to be employment subject to this chapter.

104 (4) Service shall be deemed to be localized within a  
105 state, if: (a) The service is performed entirely within  
106 such state; or (b) the service is performed both within  
107 and without such state, but the service performed with-  
108 out such state is incidental to the individual's service  
109 within this state. For example, is temporary or transitory  
110 in nature or consists of isolated transactions.

111 (5) Services performed by an individual for wages  
112 shall be deemed to be employment subject to this chapter  
113 unless and until it is shown to the satisfaction of the di-  
114 rector that: (a) Such individual has been and will con-  
115 tinue to be free from control or direction over the per-  
116 formance of such services, both under his contract of  
117 service and in fact; and (b) such service is either outside  
118 the usual course of the business for which such service  
119 is performed or that such service is performed outside  
120 of all the places of business of the enterprise for which  
121 such service is performed; and (c) such individual is  
122 customarily engaged in an independently established  
123 trade, occupation, profession or business.



124 (6) All service performed by an officer or member of  
125 the crew of an American vessel (as defined in section three  
126 hundred five of an act of Congress entitled "Social Se-  
127 curity Act Amendment of nineteen hundred forty-six",  
128 approved August tenth, one thousand nine hundred forty-  
129 six) on or in connection with such vessel, provided that  
130 the operating office, from which the operations of such  
131 vessel operating on navigable waters within or within  
132 and without the United States is ordinarily and regularly  
133 supervised, managed, directed and controlled, is within  
134 this state.

135 Included and Excluded Service—If the services per-  
136 formed during one half or more of any pay period by an  
137 employee for the person employing him constitute employ-  
138 ment, all the services of such employee for such period  
139 shall be deemed to be employment; but if the services per-  
140 formed during more than one half of any such pay period  
141 by an employee for the person employing him do not con-  
142 stitute employment, then none of the services of such em-  
143 ployee for such period shall be deemed to be employment.

144 The term "employment" shall not include:

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

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

150 (3) Service performed in the employ of the United  
151 States or an instrumentality of the United States exempt  
152 under the constitution of the United States from the pay-  
153 ments imposed by this law, except that to the extent that  
154 the Congress of the United States shall permit states to  
155 require any instrumentalities of the United States to make  
156 payments into an unemployment fund under a state un-  
157 employment compensation law, all of the provisions of  
158 this law shall be applicable to such instrumentalities,  
159 and to service performed for such instrumentalities, in  
160 the same manner, to the same extent and on the same  
161 terms as to all other employers, employing units, indi-  
162 viduals, and services: *Provided*, That if this state shall  
163 not be certified for any year by the secretary of labor  
164 under section one thousand six hundred three (c) of  
165 the Federal Internal Revenue Code, the payments re-

166 quired of such instrumentalities with respect to such year  
167 shall be refunded by the director from the fund in the  
168 same manner and within the same period as is provided  
169 in section nineteen, article five of this chapter, with  
170 respect to payments erroneously collected.

171 (4) Service performed after June thirty, one thousand  
172 nine hundred thirty-nine, with respect to which unem-  
173 ployment compensation is payable under the Railroad  
174 Unemployment Insurance Act (52 Stat. 1094), and service  
175 with respect to which unemployment benefits are pay-  
176 able under an unemployment compensation system for  
177 maritime employees established by an act of Congress.  
178 The director may enter into agreements with the proper  
179 agency established under such an act of Congress to pro-  
180 vide reciprocal treatment to individuals who, after ac-  
181 quiring potential rights to unemployment compensation  
182 under an act of Congress, or who have, after acquiring  
183 potential rights to unemployment compensation under  
184 an act of Congress, acquired rights to benefit under this  
185 chapter. Such agreements shall become effective ten days

186 after such publications as comply with the general rules  
187 of the department.

188 (5) Agricultural Labor—For the purposes of this chap-  
189 ter, the term “agricultural labor” includes all services  
190 performed—

191 On a farm, in the employ of any person, in connection  
192 with cultivating the soil, or in connection with raising or  
193 harvesting any agricultural or horticultural commodity,  
194 including the raising, shearing, feeding, caring for, train-  
195 ing, and management of livestock, bees, poultry, and fur-  
196 bearing animals and wildlife;

197 In the employ of the owner or tenant or other operator  
198 of a farm, in connection with the operation, management,  
199 conservation, improvement, or maintenance of such farm  
200 and its tools and equipment, or in salvaging timber or  
201 clearing land of brush and other debris left by a hurri-  
202 cane, if the major part of such service is performed on  
203 a farm;

204 In connection with the production or harvesting of  
205 maple syrup or maple sugar or any agricultural com-  
206 modity, or in connection with the raising or harvesting

207 of mushrooms, or in connection with the hatching of poul-  
208 try, or in connection with the ginning of cotton, or in con-  
209 nection with the operation or maintenance of ditches,  
210 canals, reservoirs, or waterways used exclusively for sup-  
211 plying and storing water for farming purposes; or

212 In handling, planting, drying, packing, packaging, pro-  
213 cessing, freezing, grading, storing, or delivering to storage  
214 or to market or to a carrier for transportation to market,  
215 any agricultural or horticultural commodity; but only if  
216 such service is performed as an incident to ordinary farm-  
217 ing operations or, in the case of fruits and vegetables,  
218 as an incident to the preparation of such fruits or vege-  
219 tables for market. The provisions of this paragraph shall  
220 not be deemed to be applicable with respect to service  
221 performed in connection with commercial canning or  
222 commercial freezing or in connection with any agricul-  
223 tural or horticultural commodity after its delivery to a  
224 terminal market for distribution for consumption.

225 As used in this definition, the term "farm" includes  
226 stock, dairy, poultry, fruit, fur-bearing animal, and truck  
227 farms, plantations, ranches, greenhouses and nurseries,

228 or other similar land areas or structures used primarily  
229 for the raising of any agricultural or horticultural com-  
230 modity, and orchards. The term greenhouses and nurseries  
231 shall not include greenhouses and nurseries employing  
232 more than fifteen full-time employees.

233 (6) Domestic service in a private home.

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

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

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

244 (10) Service as an officer or member of a crew of an  
245 American vessel, performed on or in connection with  
246 such vessel, if the operating office, from which the opera-  
247 tions of the vessel operating on navigable water within  
248 or without the United States are ordinarily and regularly

249 supervised, managed, directed and controlled, is without  
250 this state.

251 (11) Services performed by agents of mutual fund  
252 broker-dealers or insurance companies, exclusive of in-  
253 dustrial insurance agents, or by agents of investment com-  
254 panies, who are compensated wholly on a commission  
255 basis.

256 Notwithstanding the foregoing exclusions from the defi-  
257 nition of "employment", services, except agricultural labor  
258 and domestic service in a private home, shall be deemed  
259 to be in employment if with respect to such services a tax  
260 is required to be paid under any federal law imposing a  
261 tax against which credit may be taken for contributions  
262 required to be paid into a state unemployment compen-  
263 sation fund.

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

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

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

275 "Separated from employment" means, for the purposes  
276 of this chapter, the total severance whether by quitting,  
277 discharge, or otherwise, of the employer-employee re-  
278 lationship.

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

281 "Total and partial unemployment":

282 (1) An individual shall be deemed totally unemployed  
283 in any week in which such individual is separated from  
284 employment for an employing unit and during which he  
285 performs no services and with respect to which no wages  
286 are payable to him.

287 (2) An individual who has not been separated from  
288 employment shall be deemed to be partially unemployed  
289 in any week in which due to lack of work he performs



290 no services and with respect to which no wages are pay-  
291 able to him, or in any week in which due to lack of full-  
292 time work wages payable to him are less than his weekly  
293 benefit amount plus ten dollars.

294 "Wages" means all remuneration for personal service,  
295 including commissions and bonuses and the cash value of  
296 all remuneration in any medium other than cash: *Pro-*  
297 *vided*, That the term "wages" shall not include:

298 (1) That part of the remuneration which, after remuner-  
299 ation equal to three thousand dollars has been paid to an in-  
300 dividual by an employer with respect to employment dur-  
301 ing any calendar year, is paid after December thirty-one,  
302 one thousand nine hundred thirty-nine, and prior to Janu-  
303 ary one, one thousand nine hundred forty-seven, to such in-  
304 dividual by such employer with respect to employment dur-  
305 ing such calendar year; or that part of the remuneration  
306 which, after remuneration equal to three thousand dollars  
307 with respect to employment after one thousand nine hun-  
308 dred thirty-eight has been paid to an individual by an em-  
309 ployer during any calendar year after one thousand nine  
310 hundred forty-six, is paid to such individual by such em-

311 ployer during such calendar year, except that for the pur-  
312 poses of sections one, ten, eleven and thirteen of article six  
313 of this chapter, all remuneration earned by an individual in  
314 employment shall be credited to the individual and includ-  
315 ed in his computation of base period wages: *Provided*, That  
316 notwithstanding the foregoing provisions, on and after  
317 January one, one thousand nine hundred sixty two, the  
318 term "wages" shall not include:

319 That part of the remuneration which, after remuneration  
320 equal to three thousand six hundred dollars has been paid  
321 to an individual by an employer with respect to employ-  
322 ment during any calendar year, is paid during any calendar  
323 year after one thousand nine hundred sixty-one, except  
324 that for the purposes of sections one, ten, eleven and thir-  
325 teen of article six of this chapter, all remuneration earned  
326 by an individual in employment shall be credited to the in-  
327 dividual and included in his computation of base period  
328 wages: *And provided further*, That the remuneration paid  
329 to an individual by an employer with respect to employ-  
330 ment in another state or other states upon which contribu-  
331 tions were required of and paid by such employer under an

332 unemployment compensation law of such other state or  
333 states shall be included as a part of the remuneration equal  
334 to the amounts of three thousand dollars or three thousand  
335 six hundred dollars herein referred to. In applying such lim-  
336 itation on the amount of remuneration that is taxable an  
337 employer shall be accorded the benefit of all or any portion  
338 of such amount which may have been paid by its predeces-  
339 sor or predecessors: *Provided, however,* That if the defini-  
340 tion of the term "wages" as contained in section 3306 (b) of  
341 the Internal Revenue Code of one thousand nine hundred  
342 fifty-four is amended (a) effective prior to January one,  
343 one thousand nine hundred sixty-two, to include remuner-  
344 ation in excess of three thousand dollars, or (b) effective  
345 on or after January one, one thousand nine hundred sixty-  
346 two, to include remuneration in excess of three thousand  
347 six hundred dollars, paid to an individual by an employer  
348 under the Federal Unemployment Tax Act during any  
349 calendar year, wages for the purposes of this definition  
350 shall include remuneration paid in a calendar year to  
351 an individual by an employer subject to this article or his  
352 predecessor with respect to employment during any cal-

353 endar year up to an amount equal to the amount of re-  
354 muneration taxable under the Federal Unemployment  
355 tax Act;

356 (2) The amount of any payment made after December  
357 thirty-one, one thousand nine hundred fifty-two (includ-  
358 ing any amount paid by an employer for insurance or  
359 annuities, or into a fund, to provide for any such pay-  
360 ment), to, or on behalf of, an individual in its employ,  
361 or any of his dependents, under a plan or system estab-  
362 lished by an employer which makes provision for indi-  
363 viduals in its employ generally (or for such individuals  
364 and their dependents), or for a class or classes of such  
365 individuals (or for a class or classes of such individuals  
366 and their dependents), on account of (A) retirement, or  
367 (B) sickness or accident disability, or (C) medical or hos-  
368 pitalization expenses in connection with sickness or acci-  
369 dent disability, or (D) death;

370 (3) Any payment made after December thirty-one, one  
371 thousand nine hundred fifty-two, by an employer to an  
372 individual in its employ (including any amount paid by  
373 an employer for insurance or annuities, or into a fund,

374 to provide for any such payment) on account of retire-  
375 ment;

376 (4) Any payment made after December thirty-one, one  
377 thousand nine hundred fifty-two, by an employer on ac-  
378 count of sickness or accident disability, or medical or hos-  
379 pitalization expenses in connection with sickness or acci-  
380 dent disability, to, or on behalf of, an individual in its  
381 employ after the expiration of six calendar months fol-  
382 lowing the last calendar month in which such individual  
383 worked for such employer;

384 (5) Any payment made after December thirty-one, one  
385 thousand nine hundred fifty-two, by an employer to, or  
386 on behalf of, an individual in its employ or his beneficiary  
387 (A) from or to a trust exempt from tax under section  
388 one hundred sixty-five (a) of the Federal Internal Reve-  
389 nue Code at the time of such payment unless such pay-  
390 ment is made to such individual as an employee of the  
391 trust as remuneration for services rendered by such indi-  
392 vidual and not as a beneficiary of the trust, or (B) under  
393 or to an annuity plan which, at the time of such payment,  
394 meets the requirements of section one hundred sixty-five

395 (a), (3), (4), (5) and (6) of the Federal Internal Revenue  
396 Code;

397 (6) The payment by an employer (without deduction  
398 from the remuneration of the individual in its employ) of  
399 the tax imposed upon an individual in its employ under  
400 one thousand four hundred of the Federal Internal Reve-  
401 nue Code;

402 (7) Remuneration paid by an employer after Decem-  
403 ber thirty-one, one thousand nine hundred fifty-two, in  
404 any medium other than cash to an individual in its employ  
405 for service not in the course of the employer's trade or  
406 business;

407 (8) Any payment (other than vacation or sick pay)  
408 made by an employer after December thirty-one, one  
409 thousand nine hundred fifty-two, to an individual in its  
410 employ after the month in which he attains the age of  
411 sixty-five, if he did not work for the employer in the  
412 period for which such payment is made;

413 (9) Payments, not required under any contract of hire,  
414 made to an individual with respect to his period of train-  
415 ing or service in the armed forces of the United States by

416 an employer by which such individual was formerly  
417 employed.

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

423 The reasonable cash value of remuneration in any  
424 medium other than cash shall be estimated and deter-  
425 mined in accordance with rules prescribed by the director.

426 "Week" means a calendar week, ending at midnight Sat-  
427 urday, or the equivalent thereof, as determined in ac-  
428 cordance with the regulations prescribed by the director.

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

432 "Year" means a calendar year or the equivalent there-  
433 of, as determined by the director.

**Section 4. Department of Employment Security.**—There  
2 is created a department of employment security, com-  
3 posed of a division of unemployment compensation and

4 a division of employment service, and such other divisions  
5 or units as the commissioner determines to be necessary.

6 Wherever, within this chapter, the term department is  
7 used, it shall be taken to mean department of employment  
8 security.

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

**Section 7. Joint and Separate Accounts.**—(1) The com-  
2 missioner shall maintain a separate account for each em-  
3 ployer, and shall credit his account with all contributions  
4 paid by him prior to July first, one thousand nine hundred  
5 sixty-one. On and after July first, one thousand nine hun-  
6 dred sixty-one, the commissioner shall maintain a separate  
7 account for each employer, and shall credit said employ-  
8 er's account with all contributions of such employer in  
9 excess of seven tenths of one per cent of taxable wages:  
10 *Provided*, That any adjustment made in an employer's  
11 account after the computation date shall not be used in  
12 the computation of the credit balance of an employer  
13 until the next following computation date: *Provided fur-*  
14 *ther*, That nothing in this chapter shall be construed to  
15 grant an employer or individual in his service prior



16 claims or rights to the amounts paid by him into the fund,  
17 either on his own behalf or on behalf of such individuals.  
18 The account of any employer which has been inactive for  
19 a period of four consecutive calendar years shall be  
20 terminated for all purposes.

21 (2) Benefits paid to an eligible individual for total un-  
22 employment 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  
28 non-covered employing unit in which he was employed  
29 as much as thirty days, whether or not such days are  
30 consecutive: *And provided further*, That benefits paid to  
31 an eligible individual for partial unemployment begin-  
32 ning after the effective date of this act shall be charged  
33 to the account of the claimant's current employer.

34 (3) The commissioner 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 commissioner on or before July thirty-  
49 one of such preceding calendar year the wage information  
50 for all past periods necessary for the computation of the  
51 contribution rate, such employer's rate shall be, if it is  
52 immediately prior to such July thirty-one, less than two  
53 and seven tenths per cent, increased to two and seven  
54 tenths per cent: *Provided further,* That any payment  
55 made or any information necessary for the computation  
56 of a reduced rate furnished on or before the termination  
57 of an extension of time for such payment or reporting of

58 such information granted pursuant to a regulation of the  
59 commissioner authorizing such extension, shall be taken  
60 into account for the purposes of fixing contribution rates:

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

73 (4) The commissioner may prescribe regulations for the  
74 establishment, maintenance, and dissolution of joint ac-  
75 counts by two or more employers, and shall, in accordance  
76 with such regulations and upon application by two or  
77 more employers to establish such an account, or to merge  
78 their several individual accounts in a joint account, main-

79 tain such joint account as if it constituted a single em-  
80 ployer's account.

**Sec. 10-a. Modification or Suspension of Decreased**

2 **Rates.**—(1) As used in this section, unless the context  
3 clearly requires otherwise:

4 “Due date” means the last day of the month next fol-  
5 lowing a calendar quarter. In determining the amount  
6 in the fund on any due date, contributions received, but  
7 not benefits paid, for such month next following the end  
8 of a calendar quarter shall be included.

9 (2) The commissioner shall as of the due date for the  
10 payment of contributions for each calendar quarter deter-  
11 mine the amount in the unemployment compensation  
12 fund, including the trust fund, the clearing account, and  
13 the benefit account; and if, at any such time or times the  
14 fund is below the sum of sixty million dollars, the com-  
15 missioner shall, effective at the commencement of the next  
16 calendar quarter, increase each employer's rate one step,  
17 and if, at any time or times the fund is below the sum of  
18 fifty-five million dollars, the commissioner shall further  
19 increase each employer's rate one additional step; and if,

20 at any such time or times the fund is below the sum of  
21 fifty million dollars, the commissioner shall further in-  
22 crease each employer's rate one additional step; and if, at  
23 any such time or times the fund is below the sum of forty-  
24 five million dollars, the commissioner shall further in-  
25 crease each employer's rate one additional step.

26 Where the employer rates have been increased by vir-  
27 tue of the provisions of this section, they shall be cor-  
28 respondingly decreased in the same manner when the  
29 balance in the fund returns to the successive levels here-  
30 inabove set forth.

31 For the purposes of this subsection the term "one step"  
32 or "one additional step" shall mean two tenths of one per  
33 cent, except that for an employer whose rate is zero the  
34 term "one step" shall mean three tenths of one per cent:  
35 *Provided, however,* That under no circumstances shall  
36 any employer's rate be increased above the maximum  
37 rate of two and seven tenths per cent.

38 (3) If, as of the due date for the payment of contribu-  
39 tions for any calendar quarter, the unemployment com-  
40 pensation fund, including the trust fund, clearing account

41 and benefit account, is below the sum of forty million  
42 dollars, the commissioner shall, effective at the commence-  
43 ment of the next calendar quarter, suspend the decreased  
44 rates as provided in this chapter, and all contributions of  
45 employers due thereafter shall be paid at the rate of two  
46 and seven tenths per cent: *Provided, however,* That for  
47 the period through and including the second calendar  
48 quarter of one thousand nine hundred fifty-nine such  
49 suspending of decreased rates shall not be made until the  
50 fund is below the sum of thirty-five million dollars.

51 (4) As of January first of the year next following the  
52 date on which the unemployment compensation fund,  
53 including the trust fund, clearing account and benefit ac-  
54 count, reaches and remains above the sum of forty-five  
55 million dollars, the commissioner shall supersede the sus-  
56 pension of the decreased rates as provided for in subsection  
57 three: *Provided, however,* That in the event such sus-  
58 pending of the decreased rates was made when the fund  
59 was below thirty-five million dollars as also provided in  
60 subsection three, then such superseding of the suspension

61 of the decreased rates shall occur when the fund reaches  
62 and remains above the sum of forty million dollars.

**Article 6. Employee Eligibility; Benefits.**

**Section 1. Eligibility Qualifications.**—An unemployed

2 individual shall be eligible to receive benefits only if the  
3 commissioner finds that:

4 (1) He has registered for work at and thereafter con-  
5 tinues to report at an employment office in accordance with  
6 the regulations of the commissioner.

7 (2) He has made a claim for benefits in accordance with  
8 the provisions of article seven of this chapter.

9 (3) He is able to work and is available for full time  
10 work for which he is fitted by prior training or experience.

11 (4) He has been totally unemployed during his benefit  
12 year for a waiting period of one week prior to the week  
13 for which he claims benefits for total unemployment.

14 (5) He has within his base period earned wages for  
15 employment equal to not less than seven hundred dollars.

**Sec. 1-a. Seasonal Employment.**—An individual work-

2 ing less than one hundred days during his base period  
3 in an industry recognized as seasonal, such as food pro-

4 cessing and canning, shall not be eligible for benefits  
5 unless he has earned wages during his base period in other  
6 covered employment equal to not less than one hundred  
7 dollars.

· **Sec. 2. Waiting Period Construed.**—If the benefit year  
2 ends during a period of total unemployment for any indi-  
3 vidual, such individual shall serve a new waiting period  
4 of one week before benefits accruing in the new benefit  
5 year shall be payable.

6 During the waiting period, the individual must be eligi-  
7 ble in all respects, except for the requirements of subsec-  
8 tion (2) of section one of this article. No week shall be  
9 counted as the waiting period week if benefits have been  
10 paid with respect to such week.

**Sec. 3. Disqualification for Benefits.**—Upon the de-  
2 termination of the facts by the commissioner, an individ-  
3 ual shall 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) For the week in which he was discharged from his  
18 most recent work for misconduct and the six weeks im-  
19 mediately following such week. Such disqualification shall  
20 carry a reduction in the maximum benefit amount equal  
21 to six times the individual's weekly benefit rate. However,  
22 if the claimant returns to work in covered employment for  
23 thirty days during his benefit year, whether or not such  
24 days are consecutive, the maximum benefit amount shall  
25 be increased by the amount of the decrease imposed under  
26 the disqualification; except that:

27 If he was discharged from his most recent work for one  
28 of the following reasons: Misconduct consisting of wilful

29 destruction of his employer's property; assault upon the  
30 person of his employer or any employee of his employer,  
31 if such assault is committed at such individual's place of  
32 employment or in the course of employment; reporting to  
33 work in an intoxicated condition, or being intoxicated  
34 while at work; arson, theft, larceny, fraud or embezzle-  
35 ment in connection with his work; or any other gross mis-  
36 conduct; he shall be and remain disqualified for benefits  
37 until he has thereafter worked for at least thirty days in  
38 covered employment.

39 (3) For the week in which he failed without good cause  
40 to apply for available suitable work, accept suitable work  
41 when offered, or return to his customary self-employment  
42 when directed to do so by the commissioner, and for the  
43 four weeks which immediately follow and for such an  
44 additional period as any officer of suitable work shall con-  
45 tinue open for his acceptance, and his maximum benefit  
46 amount shall be reduced by an amount equal to his weekly  
47 benefit rate times the number of weeks of disqualification.  
48 However, if the claimant returns to work in covered em-  
49 ployment during his benefit year, the maximum benefit

50 amount shall be increased by the amount of the decrease  
51 imposed under the disqualification.

52 (4) For a week in which his total or partial unemploy-  
53 ment is due to a stoppage of work which exists because of  
54 a labor dispute at the factory, establishment, or other  
55 premises at which he was last employed, unless the com-  
56 missioner is satisfied that he was not (one) participating,  
57 financing, or directly interested in such dispute, and (two)  
58 did not belong to a grade or class of workers who were  
59 participating, financing, or directly interested in the labor  
60 dispute which resulted in the stoppage of work. No dis-  
61 qualification under this subsection shall be imposed if the  
62 employees are required to accept wages, hours or condi-  
63 tions of employment substantially less favorable than  
64 those prevailing for similar work in the locality, or if em-  
65 ployees are denied the right of collective bargaining  
66 under generally prevailing conditions, or if an employer  
67 shuts down his plant or operation or dismisses his em-  
68 ployees in order to force wage reduction, changes in hours  
69 or working conditions.

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

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

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

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

79 (6) For the week in which an individual has volun-  
80 tarily quit employment to marry or to perform any mari-  
81 tal, parental or family duty, or to attend to his or her per-  
82 sonal business or affairs, and until the individual returns  
83 to covered employment and has been employed in covered  
84 employment at least thirty working days.

85 (7) For the week in which an individual:

86 (a) Voluntarily quit her employment because of preg-  
87 nancy, whether or not upon a physician's advice, and until  
88 she returns to covered employment and has been em-  
89 ployed therein at least thirty working days; except that  
90 such disqualification shall last no longer than six weeks

91 subsequent to the birth of her child, provided such indi-  
92 vidual furnishes to the department a certificate from a  
93 physician that she is physically able to work;

94 (b) Was discharged or laid off from her employment  
95 because of pregnancy and until she returns to covered em-  
96 ployment and has been employed therein at least thirty  
97 working days; except that such disqualification shall last  
98 no longer than six weeks prior to and six weeks subse-  
99 quent to the date of birth of the child, provided such in-  
100 dividual furnishes to the department certificates from a  
101 physician that she is physically able to work.

102 (8) For each week in which an individual is unem-  
103 ployed because, having voluntarily left employment to  
104 attend a school, college, university, or other educational  
105 institution, he is attending such school, college, university,  
106 or other educational institution, or is awaiting entrance  
107 thereto or is awaiting the starting of a new term or session  
108 thereof, and until the individual returns to covered em-  
109 ployment.

110 (9) For each week in which he is unemployed because  
111 of his request, or that of his duly authorized agent, for a

112 vacation period at a specified time that would leave the  
113 employer no other alternative but to suspend operations.

114 (10) For each week in which he is receiving or has re-  
115 ceived remuneration in the form of an annuity, pension,  
116 or other retirement pay, from an employer or from any  
117 trust or fund contributed to by an employer. But if such  
118 remuneration for any week is less than the benefits which  
119 would otherwise be due him for such week under this  
120 chapter, he shall be entitled to receive for such week, if  
121 otherwise eligible, benefits reduced by the amount of such  
122 remuneration: *Provided*, That if such amount of benefits  
123 is not a multiple of one dollar, it shall be computed to the  
124 next higher multiple of one dollar: *Provided further*, That  
125 there shall be no disqualification if in the individual's  
126 base period there are no wages which were paid by the  
127 employer paying such remuneration, or by a fund into  
128 which the employer has paid during said base period.  
129 Claimant may be required to certify as to whether or not  
130 he is receiving or has received remuneration in the form  
131 of an annuity, pension, or other retirement pay from an

132 employer or from a trust fund contributed to by an em-  
133 ployer:

134 (11) For each week in which he knowingly made a  
135 false statement or representation knowing it to be false  
136 or knowingly failed to disclose a material fact in order to  
137 obtain or increase a benefit under this article. For each  
138 such week of disqualification he shall be disqualified an  
139 additional five weeks and his maximum benefit amount  
140 shall be reduced by an amount equal to five times his  
141 weekly benefit rate. Such five weeks disqualification  
142 periods are to run consecutively beginning with the first  
143 week in which it is determined a fraudulent claim was  
144 filed: *Provided*, That an individual shall not be disquali-  
145 fied under this subsection for a period of more than fifty-  
146 two consecutive weeks: *Provided further*, That disquali-  
147 fication under this subsection shall not preclude prosecu-  
148 tion under article ten, section seven.

149 (12) For the purposes of this section an employer's ac-  
150 count shall not be charged under any of the following  
151 conditions: When benefits are paid for unemployment  
152 immediately after the expiration of a period of disqualifi-

153 cation for (a) leaving work voluntarily without good  
154 cause involving fault on the part of the employer, (b) dis-  
155 charge for any of the causes set forth in subparagraph (2)  
156 of this section, (c) failing without good cause to apply for  
157 available suitable work, accept suitable work, when  
158 offered, or return to his customary self-employment when  
159 directed to do so by the commissioner.

**Sec. 4. Individual Not Disqualified by Receiving Vocational Training.**—Notwithstanding any other provision in  
2 this act, no individual shall be disqualified from obtain-  
3 ing unemployment compensation benefits because of his  
4 receiving training as part of an area vocational program,  
5 or similar program, which has as its object the training  
6 of unemployed individuals in new occupational skills:  
7 *Provided*, That such individual's training and training  
8 institution are approved by the commissioner, and pro-  
9 vided such individual produces evidence of his continued  
10 attendance and satisfactory progress at such training in-  
11 stitution when requested to do so by the commissioner.

**Sec. 5. Suitable Work.**—In determining whether work is  
2 suitable for an individual, the commissioner shall consider:



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

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

6 (3) His experience and prior earnings.

7 (4) His length of unemployment.

8 (5) His prospects of securing local work in his cus-  
9 tomary occupation.

10 (6) The distance of the available work from his resi-  
11 dence: *Provided, however,* That the distance from his  
12 new residence shall not be considered in determining  
13 suitable work if such distance from available work was  
14 created as the result of the individual voluntarily chang-  
15 ing his residence to a locality other than that locality  
16 in which he resided at the time he voluntarily quit his  
17 last employment without good cause involving fault on  
18 the part of the employer.

**Sec. 6. Suitable Work; Further Requirements.**—Not-  
2 withstanding any other provisions of this chapter, no  
3 work shall be deemed suitable and benefits shall not be  
4 denied to an individual, otherwise eligible, for refusing

5 to accept new work under any of the following con-  
6 ditions:

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

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

12 (3) If as a condition of being employed the individual  
13 would be required to join a company union or to resign  
14 from or refrain from joining any bona fide labor organi-  
15 zation.

**Sec. 7. Disqualification in Case of Labor Dispute; Ex-**  
2 **ception.**—In case separate branches of work commonly  
3 conducted as separate businesses are conducted in sepa-  
4 rate departments on the same premises, each department  
5 shall, for the purposes of subsection four, section four,  
6 be treated as a separate establishment.

**Sec. 8. Payment of Benefits.**—Benefits shall become  
2 payable from the fund twenty-four months after the first  
3 day when payments first accrue.

4 Benefits shall be payable only with respect to unem-

5 ployment occurring after expiration of such twenty-four  
6 months.

**Sec. 9. Place of Payment.** — Benefits shall be paid  
2 through employment offices or, if the commissioner by  
3 rules so prescribes, through employment security offices,  
4 in accordance with such regulations as the director shall  
5 prescribe.

**Sec. 10. Benefit Rate; Total Unemployment.**—Each eli-  
2 gible individual who is totally unemployed in any week  
3 shall be paid benefits with respect to that week at the  
4 weekly rate appearing in column (C) in Table A in this  
5 paragraph, on the line on which in column (A) there is  
6 indicated the employee's wage class, except as otherwise  
7 provided under the term "total and partial unemploy-  
8 ment" in section three, article one of this chapter. The  
9 employee's wage class shall be determined by his base  
10 period wages as shown in column (B) in Table A. The  
11 right of an employee to receive benefits shall not be  
12 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 bene-  
 18 fits for such week in accordance with the provisions of  
 19 this chapter pertaining to benefits for partial unemploy-  
 20 ment. The provisions of this section shall apply to all  
 21 benefit weeks occurring in benefit years beginning after  
 22 the effective date of this act; for benefit weeks occurring  
 23 in benefit years beginning prior thereto the provisions  
 24 then in effect shall apply.

**TABLE A**

Wage Class	Wages in Base Period	Weekly Benefit Rate	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment
(Column A)	(Column B)	(Column C)	(Column D)
	Under \$700.00	Ineligible	-----
1	700.00- 799.99	\$12.00	\$312.00
2	800.00- 899.99	13.00	338.00
3	900.00- 999.99	14.00	364.00
4	1000.00-1149.99	15.00	390.00
5	1150.00-1299.99	16.00	416.00
6	1300.00-1499.99	17.00	442.00
7	1450.00-1599.99	18.00	468.00
8	1600.00-1749.99	19.00	494.00
9	1750.00-1899.99	20.00	520.00
10	1900.00-2049.99	21.00	546.00

Wage Class	Wages in Base Period	Weekly Benefit Rate	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment
11	2050.00-2199.99	22.00	572.00
12	2200.00-2349.99	23.00	598.00
13	2350.00-2499.99	24.00	624.00
14	2500.00-2599.99	25.00	650.00
15	2600.00-2699.99	26.00	676.00
16	2700.00-2799.99	27.00	702.00
17	2800.00-2899.99	28.00	728.00
18	2900.00-2999.99	29.00	754.00
19	3000.00-3099.99	30.00	780.00
20	3100.00-3199.99	31.00	806.00
21	3200.00-3349.99	32.00	832.00
22	3350.00-3499.99	33.00	858.00
23	3500.00-3649.99	34.00	884.00
24	3650.00—and over	35.00	910.00

**Sec. 11. Benefit Rate; Partial Unemployment.**—An eligible individual who is partially unemployed in any week shall, upon claim therefor filed within such time and in such manner as the commissioner may by regulation prescribe, be paid benefits for such partial unemployment in an amount equal to his weekly benefit rate, as determined in accordance with section ten of this article, less that part of wages from any source payable to him with respect to such week which is in excess of ten dollars: *Provided,*

10 That such amount of benefits if not a multiple of one  
11 dollar shall be computed to the next higher multiple of  
12 one dollar. Such partial benefits shall be paid to such in-  
13 dividual for the week for which he is claiming benefits  
14 without regard to the provisions of subsections one and  
15 four of section one of this article.

**Sec. 12. Suspension of Partial Benefit Rights.**—If at any  
2 time the unemployment compensation fund, including the  
3 trust fund, clearing account and benefit account, and  
4 excluding therefrom an amount, estimated by the com-  
5 missioner, equal to the sum of the benefit liabilities then  
6 accrued and unpaid, shall fall below the sum of five mil-  
7 lion dollars, the commissioner, with the concurrence of a  
8 majority of the advisory council, and with the consent and  
9 approval of the governor, may suspend the right to receive  
10 benefit for periods of partial unemployment not then com-  
11 pleted, and no right to benefit for periods of partial unem-  
12 ployment completed or occurring during the period of  
13 such suspension shall then or thereafter accrue. At any  
14 time subsequent to such suspension the commissioner,  
15 with the concurrence of a majority of the advisory coun-

16 cil, and with the consent and approval of the governor,  
17 may rescind, and whenever the unemployment compen-  
18 sation fund, including the trust fund, clearing account and  
19 benefit account, and excluding therefrom an amount,  
20 estimated by the commissioner, equal to the sum of the  
21 benefit liabilities then accrued and unpaid, reaches the  
22 sum of ten million dollars, the commissioner shall rescind  
23 such suspension as to periods of partial unemployment  
24 not then completed.

**Sec. 13. Computation of Wage Credits; Determination**

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

**Sec. 14. Payment of Benefits upon Decease of Claimant.**

2 —Accrued benefits due and unpaid on claims filed prior  
3 to decease of a claimant may, in the discretion of the

4 commissioner, be paid, without letters of administration,  
5 to the surviving spouse, children, or parents of the de-  
6 ceased, in the order of priority enumerated.

**Article 9. Employment Security Administration Fund.**

**Section 5-a. Special Administration Fund.**—There is  
2 hereby created in the state treasury a fund to be known  
3 as the employment security special administration fund,  
4 which shall consist of interest collected on delinquent  
5 payments pursuant to section seventeen of article five of  
6 this chapter. The moneys deposited with this fund are  
7 hereby appropriated and made available to the order of  
8 the commissioner for the purpose of (a) replacements in  
9 the employment security administration fund as provided  
10 in section eight of this article, (b) to meet special, extra-  
11 ordinary, and contingent expenses not provided for in the  
12 employment security administration fund, and (c) refunds  
13 pursuant to section nineteen of article five, of interest  
14 erroneously collected. This fund shall be administered  
15 and disbursed in the same manner and under the same  
16 conditions as other special funds of the state treasury.  
17 Balances to the credit of the special administration fund



18 shall not lapse at any time but shall be continuously avail-  
19 able to the commissioner for expenditures consistent with  
20 this chapter: *Provided*, (1) That not more than fifty thou-  
21 sand dollars shall be expended from said fund in any  
22 fiscal year for purposes (a) and (b); (2) That at the be-  
23 ginning of each calendar quarter the commissioner shall  
24 estimate the amount that may be required in that quarter  
25 for refunds of interest erroneously collected; (3) That  
26 thereupon the excess, if any, over the amounts provided  
27 to be expended under this section shall be paid into the  
28 unemployment compensation trust fund.

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

A. Ray Fisher  
Chairman Senate Committee

Ethel L. Crandall  
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1963 passage.

Howard Meyer  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

Howard W. Carson  
President of the Senate

Julius W. Sigler Jr.  
Speaker House of Delegates

The within approved this the 16<sup>th</sup>  
day of March, 1963.

W. W. Barron  
Governor

