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

Filed in Office of the Secretary of State of West Virginia 3-16-63
JOE F. BURDETT
SECRETARY OF STATE
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article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article six of said chapter be repealed and a new article six enacted in lieu thereof; and that sections three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:


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

1. “Administration fund” means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.
2. “Annual payroll” means the total amount of wages for employment paid by an employer during a twelve-month period ending with June thirty of any calendar year.
3. “Average annual payroll” means the average of the last three annual payrolls of an employer.
4. “Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year.
5. “Base period employer” means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.
"Base period wages" means wages paid to an individual during the base period by all his base period employers.

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

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

"Board" means board of review.

"Calendar quarter" means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty, or December thirty-one, or the equivalent thereof as the director may by regulation prescribe.
“Computation date” means June thirty of the year immediately preceding the January one on which an employer's contribution rate becomes effective.

“Director” means the employment security director.

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

“Employer” means:

(1) Any employing unit which for some portion of a day, not necessarily simultaneously, in each of twenty different calendar weeks, which weeks need not be consecutive, within either the current calendar year, or the preceding calendar year, has had in employment four or more individuals irrespective of whether the same individuals were or were not employed on each of such days;
Any employing unit which is or becomes a liable employer under any federal unemployment tax act;

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

Any employing unit which, after December 31, 1963, in any one calendar quarter, in any calendar year, has in employment four or more individuals and has paid wages for employment in the total sum of five thousand dollars or more, or which, after such date, has paid wages for employment in any calendar year in the sum total of twenty thousand dollars or more;

Any employing unit which, after December thirty-one, nineteen hundred sixty-three, in any three weeks period, in any calendar year, has in employment ten or more individuals.

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

Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.
(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if: (a) The service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

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

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

(5) Services performed by an individual for wages
shall be deemed to be employment subject to this chapter
unless and until it is shown to the satisfaction of the di-
rector that: (a) Such individual has been and will con-
tinue to be free from control or direction over the per-
formance of such services, both under his contract of
service and in fact; and (b) such service is either outside
the usual course of the business for which such service
is performed or that such service is performed outside
of all the places of business of the enterprise for which
such service is performed; and (c) such individual is
customarily engaged in an independently established
trade, occupation, profession or business.
(6) All service performed by an officer or member of the crew of an American vessel (as defined in section three hundred five of an act of Congress entitled "Social Security Act Amendment of nineteen hundred forty-six", approved August tenth, one thousand nine hundred forty-six) on or in connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within or within and without the United States is ordinarily and regularly supervised, managed, directed and controlled, is within this state.

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

The term "employment" shall not include:
(1) Services performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions.

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

(3) Service performed in the employ of the United States or an instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals, and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section one thousand six hundred three (c) of the Federal Internal Revenue Code, the payments re-
quired of such instrumentalities with respect to such year
shall be refunded by the director from the fund in the
same manner and within the same period as is provided
in section nineteen, article five of this chapter, with
respect to payments erroneously collected.
(4) Service performed after June thirty, one thousand
nine hundred thirty-nine, with respect to which unem-
ployment compensation is payable under the Railroad
Unemployment Insurance Act (52 Stat. 1094), and service
with respect to which unemployment benefits are pay-
able under an unemployment compensation system for
maritime employees established by an act of Congress.
The director may enter into agreements with the proper
agency established under such an act of Congress to pro-
vide reciprocal treatment to individuals who, after ac-
quiring potential rights to unemployment compensation
under an act of Congress, or who have, after acquiring
potential rights to unemployment compensation under
an act of Congress, acquired rights to benefit under this
chapter. Such agreements shall become effective ten days
after such publications as comply with the general rules of the department.

(5) Agricultural Labor—For the purposes of this chapter, the term “agricultural labor” includes all services performed—

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

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

In connection with the production or harvesting of maple syrup or maple sugar or any agricultural commodity, or in connection with the raising or harvesting
of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this definition, the term “farm” includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, greenhouses and nurseries,
or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodity, and orchards. The term greenhouses and nurseries shall not include greenhouses and nurseries employing more than fifteen full-time employees.

(6) Domestic service in a private home.

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

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

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

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

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

Notwithstanding the foregoing exclusions from the definition of “employment”, services, except agricultural labor and domestic service in a private home, shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

“Employment office” means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.
"Fund" means the unemployment compensation fund established by this chapter.

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

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

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

"Total and partial unemployment":

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

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

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-
poyer during such calendar year, except that for the pur-
poses of sections one, ten, eleven and thirteen of article six
of this chapter, all remuneration earned by an individual in
employment shall be credited to the individual and includ-
ed in his computation of base period wages: Provided, That
notwithstanding the foregoing provisions, on and after
January one, one thousand nine hundred sixty two, the
term "wages" shall not include:
That part of the remuneration which, after remuneration
equal to three thousand six hundred dollars has been paid
to an individual by an employer with respect to employ-
ment during any calendar year, is paid during any calendar
year after one thousand nine hundred sixty-one, except
that for the purposes of sections one, ten, eleven and thir-
ten of article six of this chapter, all remuneration earned
by an individual in employment shall be credited to the in-
dividual and included in his computation of base period
wages: And provided further, That the remuneration paid
to an individual by an employer with respect to employ-
ment in another state or other states upon which contribu-
tions were required of and paid by such employer under an
unemployment compensation law of such other state or
states shall be included as a part of the remuneration equal
to the amounts of three thousand dollars or three thousand
six hundred dollars herein referred to. In applying such lim-
itation on the amount of remuneration that is taxable an
employer shall be accorded the benefit of all or any portion
of such amount which may have been paid by its predeces-
sor or predecessors: Provided, however, That if the defini-
tion of the term "wages" as contained in section 3306 (b) of
the Internal Revenue Code of one thousand nine hundred
fifty-four is amended (a) effective prior to January one,
one thousand nine hundred sixty-two, to include remunera-
tion in excess of three thousand dollars, or (b) effective
on or after January one, one thousand nine hundred sixty-
two, to include remuneration in excess of three thousand
six hundred dollars, paid to an individual by an employer
under the Federal Unemployment Tax Act during any
calendar year, wages for the purposes of this definition
shall include remuneration paid in a calendar year to
an individual by an employer subject to this article or his
predecessor with respect to employment during any cal-
The amount of any payment made after December thirty-one, one thousand nine hundred fifty-two (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual in its employ, or any of his dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

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

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

(6) The payment by an employer (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under one thousand four hundred of the Federal Internal Revenue Code;

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

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

(9) Payments, not required under any contract of hire, made to an individual with respect to his period of training or service in the armed forces of the United States by
Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid by his employing unit, if accounted for and reported to such employing unit.

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

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

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

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

Section 4. Department of Employment Security.—There is created a department of employment security, composed of a division of unemployment compensation and
a division of employment service, and such other divisions
or units as the commissioner determines to be necessary.
Wherever, within this chapter, the term department is
used, it shall be taken to mean department of employment
security.

Article 5. Employer Coverage and Responsibility.

Section 7. Joint and Separate Accounts.—(1) The com-
mmissioner shall maintain a separate account for each em-
ployer, and shall credit his account with all contributions
paid by him prior to July first, one thousand nine hundred
sixty-one. On and after July first, one thousand nine hun-
dred sixty-one, the commissioner shall maintain a separate
account for each employer, and shall credit said employ-
er's account with all contributions of such employer in
excess of seven tenths of one per cent of taxable wages:
Provided, That any adjustment made in an employer's
account after the computation date shall not be used in
the computation of the credit balance of an employer
until the next following computation date: Provided fur-
ther, That nothing in this chapter shall be construed to
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
behalf and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such experiences. For the purpose of fixing such contribution rates for each calendar year, the books of the department shall be closed on July thirty-one of the preceding calendar year, and any contributions thereafter paid, as well as benefits thereafter paid with respect to compensable weeks ending on or before June thirty of the preceding calendar year, shall not be taken into account until the next annual date for fixing contribution rates: Provided, however, That if an employer has failed to furnish to the commissioner on or before July thirty-one of such preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate, such employer's rate shall be, if it is immediately prior to such July thirty-one, less than two and seven tenths per cent, increased to two and seven tenths per cent: Provided further, That any payment made or any information necessary for the computation of a reduced rate furnished on or before the termination of an extension of time for such payment or reporting of
such information granted pursuant to a regulation of the commissioner authorizing such extension, shall be taken into account for the purposes of fixing contribution rates:

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

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

Sec. 10-a. Modification or Suspension of Decreased Rates.—(1) As used in this section, unless the context clearly requires otherwise:

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

(2) The commissioner shall as of the due date for the payment of contributions for each calendar quarter determine the amount in the unemployment compensation fund, including the trust fund, the clearing account, and the benefit account; and if, at any such time or times the fund is below the sum of sixty million dollars, the commissioner shall, effective at the commencement of the next calendar quarter, increase each employer's rate one step, and if, at any time or times the fund is below the sum of fifty-five million dollars, the commissioner shall further increase each employer's rate one additional step; and if,
at any such time or times the fund is below the sum of fifty million dollars, the commissioner shall further increase each employer's rate one additional step; and if, at any such time or times the fund is below the sum of forty-five million dollars, the commissioner shall further increase each employer's rate one additional step.

Where the employer rates have been increased by virtue of the provisions of this section, they shall be correspondingly decreased in the same manner when the balance in the fund returns to the successive levels hereinafter set forth.

For the purposes of this subsection the term "one step" or "one additional step" shall mean two tenths of one per cent, except that for an employer whose rate is zero the term "one step" shall mean three tenths of one per cent:

Provided, however, That under no circumstances shall any employer's rate be increased above the maximum rate of two and seven tenths per cent.

(3) If, as of the due date for the payment of contributions for any calendar quarter, the unemployment compensation fund, including the trust fund, clearing account
and benefit account, is below the sum of forty million
dollars, the commissioner shall, effective at the commence-
ment of the next calendar quarter, suspend the decreased
rates as provided in this chapter, and all contributions of
employers due thereafter shall be paid at the rate of two
and seven tenths per cent: Provided, however, That for
the period through and including the second calendar
quarter of one thousand nine hundred fifty-nine such
suspending of decreased rates shall not be made until the
fund is below the sum of thirty-five million dollars.

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

Article 6. Employee Eligibility; Benefits.

Section 1. Eligibility Qualifications.—An unemployed individual shall be eligible to receive benefits only if the commissioner finds that:

1. He has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner.
2. He has made a claim for benefits in accordance with the provisions of article seven of this chapter.
3. He is able to work and is available for full time work for which he is fitted by prior training or experience.
4. He has been totally unemployed during his benefit year for a waiting period of one week prior to the week for which he claims benefits for total unemployment.
5. He has within his base period earned wages for employment equal to not less than seven hundred dollars.

Sec. 1-a. Seasonal Employment.—An individual working less than one hundred days during his base period in an industry recognized as seasonal, such as food pro-
cessing and canning, shall not be eligible for benefits unless he has earned wages during his base period in other covered employment equal to not less than one hundred dollars.

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

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

Sec. 3. Disqualification for Benefits.—Upon the determination of the facts by the commissioner, an individual shall be disqualified for benefits:

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

(2) For the week in which he was discharged from his most recent work for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate. However, if the claimant returns to work in covered employment for thirty days during his benefit year, whether or not such days are consecutive, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification; except that:

If he was discharged from his most recent work for one of the following reasons: Misconduct consisting of wilful
destruction of his employer's property; assault upon the
person of his employer or any employee of his employer,
if such assault is committed at such individual's place of
employment or in the course of employment; reporting to
work in an intoxicated condition, or being intoxicated
while at work; arson, theft, larceny, fraud or embezzle-
ment in connection with his work; or any other gross mis-
conduct; he shall be and remain disqualified for benefits
until he has thereafter worked for at least thirty days in
covered employment.

(3) For the week in which he failed without good cause
to apply for available suitable work, accept suitable work
when offered, or return to his customary self-employment
when directed to do so by the commissioner, and for the
four weeks which immediately follow and for such an
additional period as any officer of suitable work shall con-
tinue open for his acceptance, and his maximum benefit
amount shall be reduced by an amount equal to his weekly
benefit rate times the number of weeks of disqualification.

However, if the claimant returns to work in covered em-
ployment during his benefit year, the maximum benefit
amount shall be increased by the amount of the decrease imposed under the disqualification.

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

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

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

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

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs, and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

(7) For the week in which an individual:

(a) Voluntarily quit her employment because of pregnancy, whether or not upon a physician's advice, and until she returns to covered employment and has been employed therein at least thirty working days; except that such disqualification shall last no longer than six weeks.
subsequent to the birth of her child, provided such indi-
vidual furnishes to the department a certificate from a
physician that she is physically able to work;
(b) Was discharged or laid off from her employment
because of pregnancy and until she returns to covered em-
ployment and has been employed therein at least thirty
working days; except that such disqualification shall last
no longer than six weeks prior to and six weeks subse-
quent to the date of birth of the child, provided such in-
dividual furnishes to the department certificates from a
physician that she is physically able to work.
(8) For each week in which an individual is unem-
ployed because, having voluntarily left employment to
attend a school, college, university, or other educational
institution, he is attending such school, college, university,
or other educational institution, or is awaiting entrance
thereof, and until the individual returns to covered em-
ployment.
(9) For each week in which he is unemployed because
of his request, or that of his duly authorized agent, for a
vacation period at a specified time that would leave the
employer no other alternative but to suspend operations.
(10) For each week in which he is receiving or has re-
ceived remuneration in the form of an annuity, pension,
or other retirement pay, from an employer or from any
trust or fund contributed to by an employer. But if such
remuneration for any week is less than the benefits which
would otherwise be due him for such week under this
chapter, he shall be entitled to receive for such week, if
otherwise eligible, benefits reduced by the amount of such
remuneration: Provided, That if such amount of benefits
is not a multiple of one dollar, it shall be computed to the
next higher multiple of one dollar: Provided further, That
there shall be no disqualification if in the individual's
base period there are no wages which were paid by the
employer paying such remuneration, or by a fund into
which the employer has paid during said base period.
Claimant may be required to certify as to whether or not
he is receiving or has received remuneration in the form
of an annuity, pension, or other retirement pay from an
(11) For each week in which he knowingly made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact in order to obtain or increase a benefit under this article. For each such week of disqualification he shall be disqualified an additional five weeks and his maximum benefit amount shall be reduced by an amount equal to five times his weekly benefit rate. Such five weeks disqualification periods are to run consecutively beginning with the first week in which it is determined a fraudulent claim was filed: Provided, That an individual shall not be disqualified under this subsection for a period of more than fifty-two consecutive weeks: Provided further, That disqualification under this subsection shall not preclude prosecution under article ten, section seven.

(12) For the purposes of this section an employer's account shall not be charged under any of the following conditions: When benefits are paid for unemployment immediately after the expiration of a period of disqualifi-
cation for (a) leaving work voluntarily without good cause involving fault on the part of the employer, (b) discharge for any of the causes set forth in subparagraph (2) of this section, (c) failing without good cause to apply for available suitable work, accept suitable work, when offered, or return to his customary self-employment when directed to do so by the commissioner.

Sec. 4. Individual Not Disqualified by Receiving Vocational Training.—Notwithstanding any other provision in this act, no individual shall be disqualified from obtaining unemployment compensation benefits because of his receiving training as part of an area vocational program, or similar program, which has as its object the training of unemployed individuals in new occupational skills: Provided, That such individual’s training and training institution are approved by the commissioner, and provided such individual produces evidence of his continued attendance and satisfactory progress at such training institution when requested to do so by the commissioner.

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

3 (1) The degree of risk involved to the individual’s health, safety, and morals.
4 (2) The individual’s physical fitness and prior training.
5 (3) His experience and prior earnings.
6 (4) His length of unemployment.
7 (5) His prospects of securing local work in his customary occupation.
8 (6) The distance of the available work from his residence: Provided, however, That the distance from his new residence shall not be considered in determining suitable work if such distance from available work was created as the result of the individual voluntarily changing his residence to a locality other than that locality in which he resided at the time he voluntarily quit his last employment without good cause involving fault on the part of the employer.

Sec. 6. Suitable Work; Further Requirements.—Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied to an individual, otherwise eligible, for refusing
41  [Enr. Com. Sub. for S. B. No. 217]

to accept new work under any of the following conditions:

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

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

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

Sec. 7. Disqualification in Case of Labor Dispute; Exception.—In case separate branches of work commonly conducted as separate businesses are conducted in separate departments on the same premises, each department shall, for the purposes of subsection four, section four, be treated as a separate establishment.

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

Benefits shall be payable only with respect to unem-
Sec. 9. Place of Payment. — Benefits shall be paid through employment offices or, if the commissioner by rules so prescribes, through employment security offices, in accordance with such regulations as the director shall prescribe.

Sec. 10. Benefit Rate; Total Unemployment.—Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in column (C) in Table A in this paragraph, on the line on which in column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in column (B) in Table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such
wages. An individual who is totally unemployed but earns in excess of ten dollars as a result of odd-job or subsidiary work in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment. The provisions of this section shall apply to all benefit weeks occurring in benefit years beginning after the effective date of this act; for benefit weeks occurring in benefit years beginning prior thereto the provisions then in effect shall apply.

**TABLE A**

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

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period</th>
<th>Weekly Benefit Rate</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unemployment</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>2050.00-2199.99</td>
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<tr>
<td>12</td>
<td>2200.00-2349.99</td>
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<td>598.00</td>
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<td>2350.00-2499.99</td>
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<td>624.00</td>
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<td>14</td>
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</tr>
<tr>
<td>24</td>
<td>3650.00—and over</td>
<td>35.00</td>
<td>910.00</td>
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</tbody>
</table>

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

Sec. 12. Suspension of Partial Benefit Rights.—If at any
time the unemployment compensation fund, including the
trust fund, clearing account and benefit account, and
excluding therefrom an amount, estimated by the com-
misisoner, equal to the sum of the benefit liabilities then
accrued and unpaid, shall fall below the sum of five mil-
lion dollars, the commissioner, with the concurrence of a
majority of the advisory council, and with the consent and
approval of the governor, may suspend the right to receive
benefit for periods of partial unemployment not then com-
pleted, and no right to benefit for periods of partial unem-
ployment completed or occurring during the period of
such suspension shall then or thereafter accrue. At any
time subsequent to such suspension the commissioner,
with the concurrence of a majority of the advisory coun-
cil, and with the consent and approval of the governor, may rescind, and whenever the unemployment compensation fund, including the trust fund, clearing account and benefit account, and excluding therefrom an amount, estimated by the commissioner, equal to the sum of the benefit liabilities then accrued and unpaid, reaches the sum of ten million dollars, the commissioner shall rescind such suspension as to periods of partial unemployment not then completed.

Sec. 13. Computation of Wage Credits; Determination of Maximum Benefits.—The commissioner shall compute wage credits for each individual by crediting him with the wages paid to him for employment by employers during his base period. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the amount appearing in column (D) on line indicating individual’s wage class, of Table A, in this article hereinabove contained.

Sec. 14. Payment of Benefits upon Decease of Claimant.—Accrued benefits due and unpaid on claims filed prior to decease of a claimant may, in the discretion of the

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

commissioner, be paid, without letters of administration, to the surviving spouse, children, or parents of the deceased, in the order of priority enumerated.
shall not lapse at any time but shall be continuously available to the commissioner for expenditures consistent with this chapter: Provided, (1) That not more than fifty thousand dollars shall be expended from said fund in any fiscal year for purposes (a) and (b); (2) That at the beginning of each calendar quarter the commissioner shall estimate the amount that may be required in that quarter for refunds of interest erroneously collected; (3) That thereupon the excess, if any, over the amounts provided to be expended under this section shall be paid into the unemployment compensation trust fund.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1963, passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 16th day of March, 1963.

Governor