WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

Com. Sub. For

HOUSE BILL No.

(BY MR. SPEAKER, MR. WALTER AND MR. KOPP)

PASSED March 11, 1967

In Effect April 1, 1967

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-20-67

# 762
AN ACT to repeal section twenty-two, article seven, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section five, article two; section seven, article three; section five, article four; section five, section seven, section ten, and section ten-a, article five; section three and section ten, article six; section eleven and section seventeen, article seven, all of said chapter twenty-one-a, and to further amend article six of said chapter by adding thereto a new section, designated section one-b, all relating to unemployment compensation.
Be it enacted by the Legislature of West Virginia:

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article seven, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section five, article two; section seven, article three; section five, article four; section five, section seven, section ten and section ten-a, article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

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.

§21A-2-5. Compensation; traveling expenses.

Notwithstanding the provisions of section two-a, article seven, chapter six of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, the commissioner of employment security shall receive a yearly salary of sixteen thousand dollars and the necessary traveling expenses incident to the performance of his duties. Requisition for traveling expenses shall be ac-
compounded by a sworn itemized statement which shall be filed with the auditor and preserved as a public record.

ARTICLE 3. ADVISORY COUNCIL.

§21A-3-7. Honorarium and traveling expenses.

Each member of the council shall receive an honorarium of thirty-five dollars for each day actually served in attendance at meetings of the council and such traveling expenses as are incurred in the performance of his duties under the provisions of this chapter. Requisition for traveling expenses shall be accompanied by a sworn and itemized statement which shall be filed with the auditor and permanently preserved as a public record.

Members shall not be compensated for more than thirty days’ service in any year.

ARTICLE 4. BOARD OF REVIEW.

§21A-4-5. Compensation.

Notwithstanding the provisions of section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, each member of the board shall receive an annual salary of nine thou-
sand dollars and the necessary traveling expenses in-
curred in the performance of his duties.

Requisition for traveling expenses shall be accom-
panied by a sworn and itemized statement which shall
be filed with the auditor and permanently preserved as
a public record.

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-5. Rate of contribution.

On and after January first, one thousand nine hundred
forty-one, an employer shall make payments to the unem-
ployment compensation fund equal to two and seven-
tenths per cent of wages paid by him with respect to
employment during each calendar year beginning with
the calendar year one thousand nine hundred forty-one,
subject, however, to other provisions of this article.


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

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

(3) The commissioner shall, for each calendar year hereafter, classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such experiences. For the purpose of fixing such contribution rates for each calendar year, the books of the department shall be closed on July thirty-one of the preceding calendar year, and any contributions thereafter paid, as well as benefits thereafter paid with respect to compensable weeks ending on or
before June thirty of the preceding calendar year, shall
not be taken into account until the next annual date
for fixing contribution rates: Provided, however, That
if an employer has failed to furnish to the 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 em-
ployer's rate shall be, if it is immediately prior to such
July thirty-one, less than three and three-tenths per cent,
increased to three and three tenths per cent: Provided
further, That any payment made or any information
necessary for the computation of a reduced rate furnished
on or before the termination of an 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 Satur-
day, Sunday, or a legal holiday, the due date shall be
deemed to be the next succeeding business day: And
provided further, That whenever through mistake or inadvertence erroneous credits or charges are found to have been made to or against the 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, maintain such joint account as if it constituted a single employer's account.

§21A-5-10. Experience ratings; decreased rates.

1 On and after January one, one thousand nine hundred fifty-four, after the requirements of section nine have been complied with, an employer's payment shall remain two and seven-tenths per cent until:
(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits.

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

The commissioner shall determine an employer's compliance with these requirements.

TABLE II

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Rate</td>
<td>Annual Pay Roll by Which Credits Exceed Charges</td>
<td>Employer's Rate</td>
</tr>
<tr>
<td>Class</td>
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<td>6.0</td>
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<td></td>
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<td>7.0</td>
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<td></td>
<td>(3)</td>
<td>8.0</td>
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<tr>
<td></td>
<td>(4)</td>
<td>9.0</td>
</tr>
</tbody>
</table>
(3) All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June thirty, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-eight, and notwithstanding the provisions of subsection one of section seven of article five relating to the non-crediting of em-
payers' accounts with the first seven-tenths of one per
cent of contributions paid; for the purpose of determin-
ing whether or not an employer shall pay contributions
at a rate in excess of two and seven-tenths per cent as
hereinafter set forth, but not for the purpose of deter-
mining such rate, the department shall, only for the
purpose set forth herein and not as a credit to such
account, add to the accounts of all employers having a
debit balance, contribution payments made by such em-
ployers on and after July one, one thousand nine hun-
dred sixty-seven, which payments are not credited to
employers' accounts by reason of the provisions con-
tained in subsection one of section seven of article five.
If, after such contribution payments have been added
to such employers' accounts, such accounts continue to
show a debit balance, such employers shall make pay-
ments at a rate in excess of two and seven-tenths per
cent. If, after such contribution payments have been
added to such employer accounts, such accounts show
a credit balance, such employers shall make payments at
the rate of two and seven-tenths per cent. If, under the
conditions set forth in this paragraph, it is determined
that an employer shall pay contributions at a rate in
excess of two and seven-tenths per cent, the rate in
excess of two and seven-tenths per cent at which an
employer shall pay contributions shall then be deter-
mined solely under the conditions set forth in the follow-
ing paragraphs of this subsection. The provisions con-
tained in this paragraph shall in no way be considered
as providing for the crediting to an employer's account,
of amounts of employer contribution payments which are
expressly not credited to employers' accounts in sub-
section one of section seven of article five.

Effective on and after the computation date of June
thirty, one thousand nine hundred sixty-seven, all em-
ployers with a debit balance account in which the bene-
fits charged to their account for all past years exceed
the payments credited to their account for such past
years by an amount up to and including ten per cent
of their average annual payroll, shall make payments to
the unemployment compensation fund at the rate of
three per cent of wages paid by them with respect to employment.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount in excess of ten per cent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three and three-tenths per cent of wages paid by them with respect to employment.

"Debit Balance Account" for the purposes of this subsection means an account in which the benefits charged for all past years exceed the payments credited for such past years.

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

Once a debit balance account rate is established for
an employer's account for a year, it shall apply for the entire year notwithstanding the provisions of section ten-a of this article.

§21A-5-10a. Modification or suspension of decreased rates.

1 (1) As used in this section, unless the context clearly requires otherwise:

2 "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.

3 (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-five 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 sixty 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-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 hereinabove set forth.

For purposes of this subsection the term "one step" or "one additional step" shall mean four-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 an employer's rate be increased above two and seven-tenths per cent if such employer's contribution rate, as computed by the commissioner in compliance with subsection three, section seven, article five, this chapter is two and seven-tenths per cent or less: Provided further,

That if the contribution rate of such employer as com-
computed by the commissioner in compliance with subsection three, section seven, article five, this chapter, is three per cent or higher, then such employer's rate shall not be increased above three and three-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 fifty million dollars, the commissioner shall, effective at the commencement of the next calendar quarter suspend the decreased rates as provided in this chapter, and all contributions of employers due thereafter whose contribution rate as computed by the commissioner in compliance with subsection three, section seven of this article, is two and seven-tenths per cent or less, shall be paid at the rate of two and seven-tenths per cent; and all contributions of employers due thereafter whose contribution rate as computed by the commissioner in compliance with subsection three, section ten of this article, is over two and seven-tenths per cent, shall remain and be paid at said rate over two and seven-tenths per cent.
(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 account, reaches and remains above the sum of fifty-five million dollars, the commissioner shall supersede the suspension of the decreased rates as provided for in subsection three.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

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

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

§21A-6-3. 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. However, if the claimant returns to work in covered employment for thirty days during his benefit year, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification.
year, whether or not such days are consecutive, the 
maximum benefit amount shall be increased by the 
amount of the decrease imposed under the disqualifica-
tion; except that:

If he were discharged from his most recent work 
for one of the following reasons: Misconduct consist-
ing of wilful destruction of his employer's property; 
assault upon the person of his employer or any em-
ployee 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 embezzlement in connection 
with his work; or any other gross misconduct; 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 suit-
able work when offered, or return to his customary 
self-employment when directed to do so by the com-
missioner, and for the four weeks which immediately follow and for such an additional period as any offer of suitable work shall continue open for his acceptance, and his maximum benefit amount shall be reduced by an amount equal to his weekly benefit rate times the number of weeks of disqualification. However, if the claimant returns to work in covered employment during his benefit year, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification.

(4) For a week in which his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he was last employed, unless the 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.

For the purposes of this subsection, if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there shall be a rebuttable presumption that that part of the stoppage of work which exists after said period of four weeks after the termination of said labor dispute, did not exist because of said labor dispute; and in such event the burden shall be upon the employer or other interested party to show otherwise.

(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 individual 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 employment 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 subsequent to the date of birth of the child, provided such individual furnishes to the department certificates from a physician that she is physically able to work.

(8) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university, or other educational institution, he is attending such school, college, university, or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(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 received remuneration in the form of an annuity, pension, or other retirement pay, from an employer or from any trust or fund contributed to by an employer. But if such remuneration for any week is less than the benefits which would otherwise be due him for such week under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: Provided further, That there shall be no disqualification if in the individual's base period there are no wages which were paid by the employer paying such remuneration, or by a fund into which the employer has paid during said base period. Claimant may be required to certify as to whether or not he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay from an employer or from a trust fund contributed to by an employer.
(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 disqualification for (a) leaving work voluntarily without good cause involving fault on the part of the em-
ployer, (b) discharge for any of the causes set forth in subsection (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.

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

1. 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>
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<tbody>
<tr>
<td>1 (Column A)</td>
<td>(Column B)</td>
<td>(Column C)</td>
<td>(Column D)</td>
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<tr>
<td>Under $700.00 Ineligible</td>
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<td>3650.00-3799.99</td>
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</table>

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred sixty-seven, the maximum weekly benefit rate shall be forty per cent of the average weekly wage in West Virginia.
The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the above formula, shall establish as many additional wage classes as are required, increasing the amount of base period wages required for each class by one hundred fifty dollars, the weekly benefit rate for each class by one dollar, and the maximum benefit by twenty-six dollars.

After he has established such additional wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before June one following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.
The computation and determination of rates as afore-
said shall be completed annually before July one, and
any such new wage class, with its corresponding wages
in base period, weekly benefit rate, and maximum bene-
fit in a benefit year established by the commissioner in
the foregoing manner effective on a July one, shall ap-
ply only to a new claim established by a claimant on and
after said July one, and shall not apply to continued
claims of a claimant based on his new claim established
before said July one.

ARTICLE 7. CLAIM PROCEDURE.


1 If an appeal is filed, benefits for the period prior to
2 final determination of the board shall be paid only after
3 such determination. If benefits are allowed by the deci-
4 sion of the board on appeal from the decision of the ap-
5 peal tribunal the benefits shall be paid whether such
6 decision reverses or affirms the decision of the appeal
7 tribunal and regardless of any further appeal: Provided,
8 That such decision does not relate to a disqualification
9 under subsection (4) of section three of article six; but
if the decision of the board is reversed on appeal an
employer's account shall not be charged with the benefits
so paid.

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

The decision of the board shall be final and benefits
shall be paid or denied in accordance therewith, unless
a claimant, last employer, or other interested party ap-
peals to the circuit court of Kanawha county within
thirty days after mailing of notification of the board's
decision: Provided, That, in cases relating to a disqual-
ification under subsection (4) of section three of article
six the decision of the board shall be final and benefits
shall be paid or denied in accordance therewith, unless
a claimant, last employer, or other interested party ap-
peals to the circuit court of Kanawha county within
twenty days after mailing of notification of the board's
decision.

Parties to the proceedings before the board shall be
made defendants in any such appeal; and the commis-
sioner shall be a necessary party to such judicial review.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tappan
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

 Originated in the House.

Takes effect April 1, 1967.

J. Lawrence Heyde
Clerk of the Senate

I. A. Blankenship
Clerk of the House of Delegates

Howard S. Carroll
President of the Senate

W. Solon White
Speaker House of Delegates

The within approved this the 17th day of March, 1967.

Hulet C. Smith
Governor
PRESENTED TO THE
GOVERNOR

Date 3/17/67
Time 3:07 p.m.