WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 280

(By Mr. Carrigan, original sponsor)

PASSED MARCH 13, 1971

In Effect from passage
AN ACT to amend and reenact section three, article one; section sixteen, article two; sections two, three, five, seven and ten, article five; and sections three and ten, article six, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article five by adding thereto a new section, designated section three-a; to further amend said article six by adding thereto a new section, designated section fifteen; and to further amend said chapter by adding thereto a new article, designated article six-a, all relating to the department of employment security, the commissioner of employment security and unemployment compensation.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


1 As used in this chapter, unless the context clearly requires otherwise:

2 “Administration fund” means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

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

"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.

"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 first day of the calendar week in which he filed a valid claim for benefits, and thereafter the one-year period beginning with the first day of the calendar week in 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 commissioner may by regulation prescribe.

"Commissioner" means the employment security commissioner.

"Computation date" means June thirty of the year immediately preceding the January one on which an employer's contribution rate becomes effective.

"Employing unit" means an individual, or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, corporation (domestic or foreign), institution of higher education, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a de-
ceased 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) Until January one, one thousand nine hundred seventy-two, 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;

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

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

(4) Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until
January one, one thousand nine hundred seventy-two, 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;

(5) Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until January one, one thousand nine hundred seventy-two, in any three weeks' period, in any calendar year, has in employment ten or more individuals;

(6) For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

(7) Any employing unit which, after December thirty-one, one thousand nine hundred seventy-one, (i) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more, or (ii) for some portion of a day in each of twenty different calendar
weeks, whether or not such weeks were consecutive, in 
either the current or the preceding calendar year had 
in employment at least one individual (irrespective of 
whether the same individual was in employment in each 
such day);

(8) Any employing unit for which service in employ-
ment, as defined in subdivision nine of the definition of 
"employment" in this section, is performed after Decem-
ber thirty-one, one thousand nine hundred seventy-one;

(9) Any employing unit for which service in employ-
ment, as defined in subdivision ten of the definition of 
"employment" in this section, is performed after Decem-
ber thirty-one, one thousand nine hundred seventy-one.

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

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

(2) Any service performed prior to January one, one 
thousand nine hundred seventy-two, which was employ-
ment as defined in this section prior to such date and,
subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, by an employee, as defined in section 3306(i) of the "Federal Unemployment Tax Act," including service in interstate commerce;

(3) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, including service in interstate commerce, by any officer of a corporation;

(4) 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;

(5) Service not covered under paragraph four 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 commissioner 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;

(6) 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 without such state is incidental to the individual’s service within this state, as, for example, is temporary or transitory in nature or consists of isolated transactions;

(7) 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 commissioner that: (a) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and (b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) such individual is customarily engaged in an independently established trade, occupation, profession or business;

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

(9) Service performed after December thirty-one, one thousand nine hundred seventy-one, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities), when such service is performed for a hospital or institution of higher education located in this state provided that such service is excluded from "employment" as defined in the "Federal Unemployment Tax Act" solely by reason of section 3306(c)(7) of that act, and is not excluded from "employment" under subdivision eleven of the exclusions from the term "employment";

(10) Service performed after December thirty-one, one thousand nine hundred seventy-one, by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) the service is excluded from "employment" as de-
fined in the “Federal Unemployment Tax Act” solely
by reason of section 3306(c)(8) of that act; and
(b) the organization had four or more individuals in
employment for some portion of a day in each of twenty
different weeks, whether or not such weeks were conse-
cutive, within either the current or preceding calendar
year, regardless of whether they were employed at the
same moment of time;
(11) Service of an individual who is a citizen of the
United States, performed outside the United States (ex-
cept in Canada or the Virgin Islands), after December
thirty-one, one thousand nine hundred seventy-one, in
the employ of an American employer (other than serv-
ice which is deemed “employment” under the provisions
of subdivisions four, five or six of this definition of “em-
ployment” or the parallel provisions of another state’s
law), if:
(a) the employer’s principal place of business in the
United States is located in this state; or
(b) the employer has no place of business in the
United States, but (i) the employer is an individual
who is a resident of this state; or (ii) the employer is
a corporation which is organized under the laws of
this state; or (iii) the employer is a partnership or a
trust and the number of the partners or trustees who
are residents of this state is greater than the number
who are residents of any one other state; or
(c) none of the criteria of subparagraphs (a) and (b)
of this subdivision (11) is met but the employer has
elected coverage in this state or, the employer having
failed to elect coverage in any state, the individual
has filed a claim for benefits, based on such service,
under the law of this state.
An “American employer,” for purposes of this subdivi-
sion (11) means a person who is (i) an individual who
is a resident of the United States; or (ii) a partnership
if two thirds or more of the partners are residents of
the United States; or (iii) a trust, if all of the trustees
are residents of the United States; or (iv) a corpora-
tion organized under the laws of the United States or
of any state.
Notwithstanding the foregoing definition of “employ-
"employment," 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, except as otherwise provided herein;

(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 1603(c) of the “Federal Internal Revenue Code,” the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner 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 unemployment compensation is payable under the “Railroad Unemployment Insurance Act” (52 Stat. 1094), and service with respect to which unemployment benefits
are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring 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, and for the purposes of this chapter, the term "agricultural labor" includes all services performed:

(a) 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;
(b) 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;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the "Agricultural Marketing Act," as amended (46 Stat. 1550, sec. 3; 12 U.S.C. 1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm 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, in its unmanufactured state, any agricultural or horti-
cultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of subparagraphs (i) and (ii) 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;

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subdivision (5), 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, and 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 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;

(10) 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;
(11) Service performed (i) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) the employ of a school which is not an institution of higher education; or (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a
state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution;

(12) Service performed, in the employ of a school, college or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college or university, and (II) such employment will not be covered by any program of unemployment insurance;

(13) Service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place
where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(14) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in this section.

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.

"Hospital" means an institution which has been licensed, certified or approved by the state department of health as a hospital.

"Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduating from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of post-graduate or post-
doctoral studies, or provides a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition, all colleges and universities in this state are institutions of higher education for purposes of this section.

"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, District of Columbia and the Virgin Islands.

"Total and partial unemployment" means:

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

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

“Wages” means all remuneration for personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash:

Provided, That the term “wages” shall not include:

(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with
respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand nine hundred thirty-eight has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That notwithstanding the foregoing provisions, on and after January one, one thousand nine hundred sixty-two, the term “wages” shall not include: That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration
which, after remuneration equal to four thousand two
hundred dollars is paid during a calendar year after one
thousand nine hundred seventy-one to an individual by
an employer or his predecessor with respect to employ-
ment during any calendar year, is paid to such individual
by such employer during such calendar year unless that
part of the remuneration is subject to a tax under a
federal law imposing a tax against which credit may be
taken for contributions required to be paid into a state
unemployment fund. For the purposes of this subdivi-
sion (i), the term employment shall include service
constituting employment under any unemployment com-
pensation law of another state; or which as a condition
for full tax credit against the tax imposed by the "Fed-
eral Unemployment Tax Act" is required to be covered
under this chapter; and, except, that for the purposes
of sections one, ten, eleven and thirteen of article six of
this chapter, all remuneration earned by an individual
in employment shall be credited to the individual and
included in his computation of base period wages:

And provided further, That the remuneration paid to an
individual by an employer with respect to employment

532 in another state or other states upon which contribu-
533 tions were required of and paid by such employer under
534 an unemployment compensation law of such other state
535 or states shall be included as a part of the remuneration
536 equal to the amounts of three thousand six hundred
537 dollars or four thousand two hundred dollars herein
538 referred to. In applying such limitation on the amount
539 of remuneration that is taxable an employer shall be
540 accorded the benefit of all or any portion of such amount
541 which may have been paid by its predecessor or predeces-
542 sors: Provided, however, That if the definition of the
543 term “wages” as contained in section 3306(b) of the
544 “Internal Revenue Code of 1954” is amended (a) effec-
545 tive prior to January one, one thousand nine hundred
546 sixty-two, to include remuneration in excess of three
547 thousand dollars, or (b) effective on or after January
548 one, one thousand nine hundred sixty-two, to include
549 remuneration in excess of three thousand six hundred
550 dollars, or effective on or after January one, one thou-
551 sand nine hundred seventy-two, to include remuneration
552 in excess of four thousand two hundred dollars, paid
to an individual by an employer under the "Federal Un-
employment Tax Act" during any calendar year, wages
for the purposes of this definition shall include remunera-
tion paid in a calendar year to an individual by an em-
ployer subject to this article or his predecessor with re-
spect to employment during any calendar year up to an
amount equal to the amount of remuneration taxable
under the "Federal Unemployment Tax Act";

(2) The amount of any payment made after December
thirty-one, one thousand nine hundred fifty-two (includ-
ing any amount paid by an employer for insurance or an-
uities, 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 em-
ployer 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 ac-
count of (A) retirement, or (B) sickness or accident disa-
bility, or (C) medical or hospitalization expenses in con-
nection with sickness or accident disability, or (D) death;
(3) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

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

(5) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his beneficiary (A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) of the "Federal Internal Revenue Code" at the time of such payment unless such payment is made to such individual
as an employee of the trust as remuneration for services
rendered by such individual and not as a beneficiary of the
trust, or (B) under or to an annuity plan which, at the
time of such payment, is a plan described in section 403(a)
of the "Federal Internal Revenue Code";

(6) The payment by an employer (without deduction
from the remuneration of the individual in its employ)
of the tax imposed upon an individual in its employ
under section 3101 of the "Federal Internal Revenue
Code";

(7) Remuneration paid by an employer after Decem-
ber thirty-one, one thousand nine hundred fifty-two, in
any medium other than cash to an individual in its
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 an employer by which such individual was formerly employed.

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

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

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

"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 commissioner.

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.


1 The commissioner shall have all powers and duties necessary to secure to the state the benefits of congressional action for the promotion and maintenance of a system of public employment offices. To this end the provisions of the act referred to in the preceding section and such additional congressional action consistent with the above act are accepted by the state and the state pledges its observance and compliance therewith.

9 The department of employment security, by its commissioner, is designated the agent of this state for the purpose of compliance with the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such systems, and for other purposes," approved June six, one thousand nine hundred thirty-three, as amended.

The department of employment security, by its com-
missioner, is designated the agent of this state for the purpose of complying with and administering sections sixteen and seventeen of an act of Congress entitled “An act to extend and improve the unemployment compensation program,” approved September one, one thousand nine hundred fifty-four.

The department of employment security, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled “An act to amend title XV of the Social Security Act to extend the unemployment insurance system to exservicemen, and for other purposes,” approved August twenty-eight, one thousand nine hundred fifty-eight.

The department of employment security, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled “An act relating to manpower requirements, resources, development, and utilization, and for other purposes,” approved March fifteen, one thousand nine hundred sixty-two.
The department of employment security, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act to establish an effective program to alleviate conditions of substantial and persistent unemployment and under employment in certain economically distressed areas," approved May one, one thousand sixty-one.

The department of employment security, by its commissioner, is designated the agent of this state for the purpose of complying with and administering chapter three of title III of an act of Congress entitled "An act to promote the general welfare, foreign policy, and security of the United States through international trade agreements and through adjustment assistance to domestic industry, agriculture, and labor, and for other purposes," approved October eleven, one thousand sixty-two.

The department of employment security, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of
Congress entitled "An act to provide for the establishment of a temporary program of extended unemployment compensation, to provide for a temporary increase in the rate of the federal unemployment tax, and for other purposes," approved January three, one thousand nine hundred sixty-one.

The department of employment security, by its commissioner, is also designated the agent of this state for the purpose of complying with and administering other programs of the United States government such as the foregoing.

The commissioner of employment security is designated as the officer of this state for the purpose of complying with and administering the tasks assigned to the West Virginia department of employment security pursuant to section six, article two-b, chapter eighteen of this code relating to the area vocational educational program of this state.

The commissioner is also authorized with the approval of the advisory council, to apply for an advance to the unemployment compensation fund in accordance with
the conditions specified in title XII of the "Social Security Act," as amended, in order to secure to this state and its citizens the advantages available under the provisions of that title.

In the administration of this chapter the commissioner shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the "Social Security Act" which relate to unemployment compensation, the "Federal Unemployment Tax Act," the "Wagner-Peyser Act," and the "Federal-State Extended Unemployment Compensation Act of 1970."

In the administration of the provisions in article six-a of this chapter, which are enacted to conform with the requirements of the "Federal-State Extended Unemployment Compensation Act of 1970," the commissioner shall take such action as may be necessary (i) to ensure that
the provisions are so interpreted and applied as to meet
the requirements of such federal act, and (ii) to secure
this state the full reimbursement of the federal share of
extended and regular benefits paid under this act which
are reimbursable under said federal act.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.


Except as otherwise provided in section three of this
article, an employing unit, with the exception of any
employing unit for which service in employment is de-
fin ed in subdivision ten of the definition of "employment"
as set forth in section three, article one of this chapter,
shall cease to be an employer subject to this chapter
only as of the first day of any calendar year and only if
it files with the commissioner not later than January
thirty-first of such year, a written application for termi-
nation of coverage, as of such first day of January, and
the commissioner finds that within the preceding calen-
dar year the employing unit did not pay wages of one
thousand five hundred dollars or more in any calendar
quarter for employment subject to this chapter and dur-
ing that calendar year no service was performed for it with respect to which it was liable for any tax against which credit may be taken for contributions required to be paid into the unemployment compensation fund of this state; and any employing unit for which service in employment is defined in subdivision ten of the definition of "employment" as set forth in section three, article one of this chapter, shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the commissioner not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the commissioner finds that there were no twenty different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit had four or more individuals in employment subject to this chapter: Provided, That the commissioner may for good cause extend the time for filing application for termination of coverage, effective as of the first day of the next succeeding quarter after the application is approved.
§21A-5-3. Voluntary coverage; elective coverage by political subdivisions.

1 (1) An employing unit, not otherwise subject to the provisions of this chapter, which files with the commissioner its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January one of any calendar year subsequent to such two calendar years, only if during January of such year it has filed with the commissioner a written notice to that effect.

2 (2) Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the commissioner a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than
two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January first of any calendar year subsequent to such two calendar years, only if during January of such year such employing unit has filed with the commissioner a written notice to that effect.

(3) An employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

(4) Any political subdivision of this state may elect to cover under this chapter service performed by employees in all of the hospitals and institutions of higher education, as defined in section three, article one of this chapter, operated by such political subdivision. Any such election of coverage is to be made by filing with the commissioner a notice of such election at least thirty days prior to the effective date of such election. Any political
subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in section three-a of this article. The provisions of section fifteen, article six of this chapter with respect to benefit rights based on service for state and nonprofit institutions of higher education shall be applicable also to service covered by an election under this subsection. The amounts required to be paid in lieu of contributions by any political subdivision under this subsection shall be billed and payment made as provided in section thirteen of this article with respect to similar payments by nonprofit organizations. An election under this subsection may be terminated, by filing with the commissioner written notice not later than thirty days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.
§21A-5-3a. Financing benefits paid to employees of nonprofit organizations.

1 Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in section 501(c)(3) of the “U. S. Internal Revenue Code” which is exempt from income tax under section 501(a) of such code.

8 (1) Liability for contribution payments and election of reimbursement—Any nonprofit organization which, pursuant to provisions of this chapter, is, or becomes, subject to this chapter on or after January one, one thousand nine hundred seventy-two, shall be liable for payments and shall pay contributions in accordance with the provisions of this article and of this chapter, unless it elects, in accordance with this subdivision (1), to pay to the commissioner for the unemployment fund an amount equal to the amount of regular benefits and of one half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization,
to individuals for weeks of unemployment which begin
during the effective period of such election.

(a) Any nonprofit organization which is, or becomes,
subject to this chapter on January one, one thousand nine
hundred seventy-two, may elect to become liable for pay-
ments in lieu of contributions for a period of not less
than one taxable year beginning with January one, one
thousand nine hundred seventy-two, provided it files
with the commissioner a written notice of its election
within the thirty-day period immediately following such
date or within a like period immediately following the
date of enactment of this section, whichever occurs later.

(b) Any nonprofit organization which becomes subject
to this chapter after January one, one thousand nine
hundred seventy-two, may elect to become liable for pay-
ments in lieu of contributions for a period of not less
than twelve months beginning with the date on which
such subjectivity begins by filing a written notice of its
election with the commissioner not later than thirty days
immediately following the date of the determination of
such subjectivity.
(c) Any nonprofit organization which makes an election in accordance with subparagraph (a) or subparagraph (b) of this subdivision (1) will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(d) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to January one, one thousand nine hundred seventy-two, may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(e) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to
62 benefits paid after December thirty-one, one thousand
63 nine hundred sixty-nine.
64 (f) The commissioner, in accordance with such regu-
65 lations as he may prescribe, shall notify each nonprofit
66 organization of any determination which he may make
67 of its status as an employer and of the effective date of
68 any election which it makes and of any termination of
69 such election.
70 (2) Reimbursement payments—Payments in lieu of
71 contributions shall be made in accordance with the pro-
72 visions of this subdivision (2) including either sub-
73 paragraph (a) or subparagraph (b) of this subdivi-
74 sion (2).
75 (a) At the end of each calendar quarter, or at the end
76 of any other period as determined by the commissioner,
77 the commissioner shall bill each nonprofit organization
78 (or group of such organizations) which has elected to
79 make payments in lieu of contributions for an amount
80 equal to the full amount of regular benefits plus one half
81 of the amount of extended benefits paid during such
quarter or other prescribed period which is attributable
to service in the employ of such organization.

(b) Each nonprofit organization which has elected
payments in lieu of contributions may request permission
to make such payments as provided herein. Such method
of payment shall become effective upon approval by the
commissioner.

At the end of each calendar quarter, or at the end of
such other period as determined by the commissioner,
the commissioner shall bill each nonprofit organization
for an amount representing one of the following: (i) for
one thousand nine hundred seventy-two, one percent of
its total payroll for one thousand nine hundred seventy-
one; or (ii) for years after one thousand nine hundred
seventy-two, such percentage of its total payroll for the
immediately preceding calendar year as the commissioner
shall determine. Such determination shall be based each
year on the average benefit costs attributable to service
in the employ of nonprofit organizations during the pre-
ceding calendar year; or (iii) for any organization which
did not pay wages throughout the four calendar quarters
of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall de-
termine.

At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

At the end of each taxable year, the commissioner shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subparagraph (c) of this subdivision (2).

If the total payments exceed the amount so determined for the taxable year, all or a part of the excess may, at the discretion of the commissioner, be refunded from the
fund or retained in the fund as part of the payments which may be required for the next taxable year.

(c) Payment of any bill rendered under subparagraph (a) or subparagraph (b) of this subdivision (2) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph (e) of this subdivision (2).

(d) Payments made by any nonprofit organization under the provisions of this subdivision (2) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(e) The amount due specified in any bill from the commissioner shall be conclusive on the organization unless, not later than fifteen days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the commissioner, setting forth the grounds for such application. The commissioner shall promptly review and
reconsider the amount due specified in the bill and shall
thereafter issue a redetermination in any case in which
such application for redetermination has been filed. Any
such redetermination shall be conclusive on the organiza-
ition unless, not later than fifteen days after the redeter-
mination was mailed to its last known address or other-
wise delivered to it, the organization files an appeal to
the board of review, setting forth the grounds for the
appeal.

(f) Past due payments of amounts in lieu of contribu-
tions shall be subject to the same interest and penalties
that, pursuant to section seventeen of this article and the
provisions of article ten of this chapter, apply to past due
contributions. Also, unpaid amounts in lieu of contribu-
tions are subject to the same assessment and civil action
provisions of this chapter as apply to unpaid contribu-
tions. Further, the provisions of this chapter which pro-
vide for the adjustment or refund of contributions shall
apply to the adjustment or refund of payments in lieu of
contributions.

(3) Allocation of benefit costs—Each employer which
is liable for payments in lieu of contributions shall pay to the commissioner for the fund the amount of regular benefits plus the amount of one half of extended benefits paid which are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer which is liable for such payments shall be determined in accordance with the provisions of subparagraph (a) or subparagraph (b) of this subsection (3).

(a) Proportionate allocation (when fewer than all base period employers are liable for reimbursement)— If benefits paid to an individual are based on wages paid by one or more employers which are liable for payments in lieu of contributions and on wages paid by one or more employers which are liable for contributions, the amount of benefits payable by each employer which is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the
individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(b) Proportionate allocation (when all base period employers are liable for reimbursement)—If benefits paid to an individual are based on wages paid by two or more employers which are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(4) Group accounts—Two or more employers which have become liable for payments in lieu of contributions, in accordance with the provisions of this section, may file a joint application with the commissioner for the establishment of a group account for the purpose of sharing the cost of benefits paid which are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative
to act as the group’s agent for the purposes of this sub-
division (4). Upon his approval of the application, the
commissioner shall establish a group account for such
employers effective as of the beginning of the calendar
quarter in which he receives the application and shall
notify the group’s representative of the effective date of
the account. Such account shall remain in effect for not
less than three years and thereafter until terminated at
the discretion of the commissioner or upon application
by the group. Upon establishment of the account, each
member of the group shall be liable for payments in lieu
of contributions with respect to each calendar quarter
in the amount which bears the same ratio to the total
benefits paid in such quarter which are attributable to
service performed in the employ of all members of the
group as the total wages paid for service in employment
by such member in such quarter bear to the total wages
paid during such quarter for service performed in the
employ of all members of the group. The commissioner
shall prescribe such regulation as he deems necessary
with respect to applications for establishment, mainte-
229 nance and termination of group accounts which are
230 authorized by this subdivision (4), for addition of new
231 members to, and withdrawal of active members from,
232 such accounts, and for the determination of the amounts
233 which are payable under this subdivision (4) by members
234 of the group and the time and manner of such payments.

§21A-5-5. Rate of contribution.

1 On and after January first, one thousand nine hun-
2 dred forty-one, an employer shall make payments to the
3 unemployment compensation fund equal to two and
4 seven-tenths percent of wages paid by him with respect
5 to employment during each calendar year beginning with
6 the calendar year one thousand nine hundred forty-one,
7 subject, however, to other provisions of this article; ex-
8 cept that on and after January first, one thousand nine
9 hundred seventy-two, each employer subject to this chap-
10 ter shall pay contributions at the rate of one and five-
11 tenths percent of wages paid by him with respect to em-
12 ployment during each calendar year until he has been
13 an employer for not less than thirty-six consecutive
14 months ending on the computation date; thereafter, his
55  [Enr. Com. Sub. for S. B. No. 280

contribution rate shall be determined in accordance with
the provisions of section ten of this article.


(1) The commissioner shall maintain a separate ac-
count 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 contribu-
tions of such employer in excess of seven tenths of one
percent of taxable wages; and on and after July first, one
thousand nine hundred seventy-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 four tenths of one percent
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 em-
ployer until the next following computation date: Pro-
vided, however, That nothing in this chapter shall be con-
strued 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 regular and extended 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 further, That no employer's account shall be charged with benefits paid to any individual who has been separated from a non-covered employing unit in which he was employed as much as thirty days, whether or not such days are consecutive: And provided further, That benefits paid to an eligible individual for regular and extended partial unemployment beginning after the effective date of this act shall be charged to the account of the claimant's current employer: Provided, That no employer's account
shall be charged with more than fifty percent of the benefits paid to an eligible individual as extended benefits under the provisions of article six-a of this chapter.

(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-
player's rate shall be, if it is immediately prior to such July thirty-one, less than three and three-tenths percent, increased to three and three-tenths percent: 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: And 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, That whenever through mistake or inadvertence erroneous credits or charges are found to have been made to or against the reserved 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 ac-
cordance 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. Same—Decreased rates; adjustment of accounts and
rates; debit balance account rates.

1 After the requirements of section nine of this article
2 have been complied with, on and after January one, one
3 thousand nine hundred fifty-four, an employer's pay-
4 ment shall remain two and seven-tenths percent; and
5 on and after January one, one thousand nine hundred
6 seventy-two, an employer's payment shall remain one
7 and five-tenths percent; until:

(1) There have elapsed thirty-six consecutive months
9 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 percent of his average annual payroll as shown in Column B of Table II. His rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred million dollars, an employer's rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred ten million dollars, an employer's rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

If the commissioner, in accordance with the provisions of section ten-a of this article, determines the fund to be below the sum of seventy-five million dollars, then,
by the express provisions of this paragraph, the employer's rate shall immediately be the amount appearing in Column C of Table II on line with the percentage in Column B; and the provisions of section ten-a of this article shall be fully applied by the commissioner. It is the express intent of this paragraph that the increases of the aforesaid section ten-a be applied to and added to the employers' rates set forth in the aforesaid Column C of Table II.

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

TABLE II

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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 not-
withstanding the provisions of subsection (1), section seven of this article relating to the noncrediting of employers' accounts with the first seven tenths or with the first four tenths of one percent of contributions paid; for the purpose of determining whether or not an employer shall pay contributions at a rate in excess of two and seven-tenths percent as hereinafter set forth, but not for the purpose of determining 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 employers on and after July one, one thousand nine hundred sixty-seven, which payments are not credited to employers' accounts by reason of the provisions contained in subsection (1), section seven of this article. If, after such contribution payments have been added to such employers' accounts, such accounts continue to show a debit balance, such employers shall make payments at a rate in excess of two and seven-tenths percent. If, after such contribution payments have been added to such employers' accounts, such accounts
show a credit balance, such employers shall make pay-
ments at the rate of two and seven-tenths percent. 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 percent, the rate
in excess of two and seven-tenths percent at which an
employer shall pay contributions shall then be deter-
mined solely under the conditions set forth in the fol-
lowing paragraphs of this section. 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 employer's accounts in sub-
section (1), section seven of this article.

Effective on and after the computation date of June
thirty, one thousand nine hundred sixty-seven, all em-
ployers with a debt 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 percent of their
average annual payroll, shall make payments to the un-
employment compensation fund at the rate of three percent 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 percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment.

“Debit balance account” for the purposes of this section 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 section 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.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§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 decrease imposed under the disqualification. For the purpose of this subdivision, 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.

For purposes of this subdivision (1), an individual
shall not be deemed to have left his most recent work
voluntarily without good cause involving fault on the
part of the employer, if such individual leaves his work
with an employer with whom he has been employed
at least thirty working days or more for the purpose
of returning to, and if he in fact, within a fourteen-day
calendar period, does return to, employment with the
last preceding employer with whom he was previously
employed within the past year prior to his return to
work day, and which last preceding employer, after
having previously employed such individual for thirty
working days or more, laid off such individual because
of lack of work, which layoff occasioned the payment of
benefits under this chapter or could have occasioned the
payment of benefits under this chapter had such in-
dividual applied for such benefits. It is the intent of this
paragraph to cause no disqualification for benefits for
such an individual who complies with the foregoing set
of requirements and conditions. Benefits paid to such individual under the provisions of this chapter shall, notwithstanding the provisions of subsection (2), section seven, article five of this chapter, and of subdivision (12) of this section three, be charged to the account of such last preceding employer with whom such individual was previously employed for thirty working days.

(2) For the week in which he was discharged from his most recent work for misconduct and the six weeks immediately following such week; or for the week in which he was discharged from his last thirty day employing unit 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, 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 were discharged from his most recent work for
one of the following reasons; or if he were discharged
from his last thirty day employing unit for one of the
following reasons: Misconduct consisting of wilful destruc-
tion 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 em-
ployment 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
misconduct; he shall be and remain disqualified for bene-
fits 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-employ-
ment when directed to do so by the commissioner, 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.

(4) For a week in which his total or partial unem-
employment 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 subdivision 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 purpose of this subdivision, 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
der period of four weeks after the determination 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 volun-
tarily quit employment to marry or to perform any mari-
tal, parental or family duty, or to attend to his or her per-
sonal business or affairs, and until the individual returns
to covered employment and has been employed in cov-
ered employment at last 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, univer-
sity, or other educational institution, or is awaiting en-
trance 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, pen-
sion, 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 that 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 com-
puted to the next higher multiple of one dollar: Pro-
vided, however, 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 with respect to 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 week of disqualification he shall be disqualified an additional five weeks and his maximum benefit amount shall be reduced by an amount equal to fives 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 further, That an individual shall not be disqualified under this subdivision for a period of more than fifty-two consecutive weeks: And provided further, That disqualification under this sub-
division shall not preclude prosecution under section seven, article ten of this chapter.

(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 voluntary without good cause involving fault on the part of the employer, (b) discharge for any of the causes set forth in subdivision (2) of this section, (c) failing without good cause to apply for available suitable work, accept suitable work, when offered, or to return to his customary self-employment when directed to do so by the commissioner.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

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 fifteen 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.

TABLE A

<table>
<thead>
<tr>
<th>Wage Class (Column A)</th>
<th>Wages in Base Period (Column B)</th>
<th>Weekly Benefit Rate (Column C)</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unemployment (Column D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $700.00</td>
<td>Under $700.00</td>
<td>$12.00</td>
<td>Under $700.00 Ineligible</td>
</tr>
<tr>
<td>700.00—799.99</td>
<td>$12.00</td>
<td>$312.00</td>
<td></td>
</tr>
<tr>
<td>800.00—899.99</td>
<td>13.00</td>
<td>338.00</td>
<td></td>
</tr>
<tr>
<td>#</td>
<td>#</td>
<td>Description</td>
<td>Rate</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>-------------</td>
<td>------</td>
</tr>
<tr>
<td>27</td>
<td>3</td>
<td>900.00—999.99</td>
<td>14.00</td>
</tr>
<tr>
<td>28</td>
<td>4</td>
<td>1000.00—1149.99</td>
<td>15.00</td>
</tr>
<tr>
<td>29</td>
<td>5</td>
<td>1150.00—1299.99</td>
<td>16.00</td>
</tr>
<tr>
<td>30</td>
<td>6</td>
<td>1300.00—1449.99</td>
<td>17.00</td>
</tr>
<tr>
<td>31</td>
<td>7</td>
<td>1450.00—1599.99</td>
<td>18.00</td>
</tr>
<tr>
<td>32</td>
<td>8</td>
<td>1600.00—1749.99</td>
<td>19.00</td>
</tr>
<tr>
<td>33</td>
<td>9</td>
<td>1750.00—1899.99</td>
<td>20.00</td>
</tr>
<tr>
<td>34</td>
<td>10</td>
<td>1900.00—2049.99</td>
<td>21.00</td>
</tr>
<tr>
<td>35</td>
<td>11</td>
<td>2050.00—2199.99</td>
<td>22.00</td>
</tr>
<tr>
<td>36</td>
<td>12</td>
<td>2200.00—2349.99</td>
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<td>37</td>
<td>13</td>
<td>2350.00—2499.99</td>
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<tr>
<td>38</td>
<td>14</td>
<td>2500.00—2599.99</td>
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<tr>
<td>39</td>
<td>15</td>
<td>2600.00—2699.99</td>
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<tr>
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<td>16</td>
<td>2700.00—2799.99</td>
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<tr>
<td>41</td>
<td>17</td>
<td>2800.00—2899.99</td>
<td>28.00</td>
</tr>
<tr>
<td>42</td>
<td>18</td>
<td>2900.00—2999.99</td>
<td>29.00</td>
</tr>
<tr>
<td>43</td>
<td>19</td>
<td>3000.00—3099.99</td>
<td>30.00</td>
</tr>
<tr>
<td>44</td>
<td>20</td>
<td>3100.00—3199.99</td>
<td>31.00</td>
</tr>
<tr>
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<td>3200.00—3349.99</td>
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<td>47</td>
<td>23</td>
<td>3500.00—3649.99</td>
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<tr>
<td>48</td>
<td>24</td>
<td>3650.00—3799.99</td>
<td>35.00</td>
</tr>
</tbody>
</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 percent of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy, the maximum weekly benefit rate shall be forty-five percent of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-one, the maximum weekly benefit rate shall be fifty percent 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. The maxi-
mum weekly benefit rate, when computed by the com-
missioner, in accordance with the foregoing provisions,
shall be rounded to the next higher dollar amount, if
the computation exceeds forty-nine percent of a dollar
amount. Such rounding off to the next higher dollar
amount shall result in one additional wage class, with
commensurate base period wage requirement of one
hundred fifty dollars over the preceding wage class, and
with a maximum benefit increase over the preceding wage
class of twenty-six dollars. Such an additional wage
class shall be published by the commissioner with the
table required to be published by the foregoing pro-
visions of this section.

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 em-
ployees in West Virginia in covered employment, and by
further dividing said result by fifty-two, and shall be de-
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terminated 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 aforesaid 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 benefit in a benefit year established by the commissioner in the foregoing manner effective on a July one, shall apply 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.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals and institutions of higher education.

1 Benefits based on service in employment as defined in subdivisions nine and ten of the definition of “employment” in section three, article one of this chapter, shall
be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual’s contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


As used in this article, unless the context clearly requires otherwise:

(1) “Extended benefit period” means a period which begins with the third week after whichever of the following weeks occurs first:
(i) a week for which there is a national "on" indicator;

or

(ii) a week for which there is a state "on" indicator;

and

(b) ends with either of the following weeks, whichever occurs later:

(i) the third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or

(ii) the thirteenth consecutive week of such period.

Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and no extended benefit period may become effective in this state prior to the sixty-first day following the date of enactment of the "Federal-State Extended Unemployment Compensation Act of 1970" and, within the period beginning on such sixty-first day and ending on December thirty-one, one thousand nine hundred seventy-one, an extended benefit
period may become effective and be terminated in this state solely by reason of a state "on" and a state "off" indicator, respectively.

(2) There is a "national 'on' indicator" for a week if the United States secretary of labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent.

(3) There is a "national 'off' indicator" for a week if the United States secretary of labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths percent.

(4) There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:
(a) equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(b) equaled or exceeded four percent.

(5) There is a "state 'off' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(a) was less than one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, or

(b) was less than four percent.

(6) "Rate of insured unemployment," for purposes of subdivisions (4) and (5) of this section, means the percentage derived by dividing

(a) the average weekly number of individuals filing
claims in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor, by (b) the average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(7) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit
91 year ends within such extended benefit period, any weeks thereafter which begin in such period.

93 (10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

96 (a) has received, prior to such week, all of the regular benefits which were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits which were available to him although (i) as a result of a pending appeal with respect to wages and/or employment which were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment.
by reason of the provisions of section one-a, article six of this chapter; or

(b) his benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year which would include such week; and

(c) has no right to unemployment benefits or allowances, as the case may be, under the “Railroad Unemployment Insurance Act,” the “Trade Expansion Act of 1962,” the “Automotive Products Trade Act of 1965” and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) “State law” means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the “Internal Revenue Code of 1954.”
§21A-6A-2. Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.

1 Except when the result would be inconsistent with the other provisions of this article, as provided in the regulations of the commissioner, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.


1 An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the commissioner finds that with respect to such week:

5 (1) he is an "exhaustee" as defined in subdivision ten, section one of this article,

7 (2) he has satisfied the eligibility requirements of this chapter for the receipt of regular benefits which are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

1 The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

§21A-6A-5. Total extended benefit amount.

1 The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

2 (1) fifty percent of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

3 (2) thirteen times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.


1 (1) Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national “on” indicator, or an extended benefit
period is to be terminated in this state as a result of
a state "off" indicator or state and national "off" indicators, the commissioner shall make an appropriate public
announcement.

(2) Computations required by the provisions of subdiv-
dision (6), section one of this article shall be made by
the commissioner, in accordance with regulations pre-
scribed by the United States secretary of labor.

§21A-6A-7. Effective date of article.

The provisions of this article shall be applicable to
compensable weeks beginning on or after February seven,
one thousand nine hundred seventy-one, determined in
accordance with the provisions of this article on the basis
of a state "on" indicator which occurred prior to said
February seven, as determined by the commissioner.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originated in the Senate.

To take effect from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker House of Delegates

[Signature]

The within approved this the 1st day of April, 1971.

[Signature]

Governor