

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



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 4-2-71

280

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.

§21A-1-3. Definitions.

1 As used in this chapter, unless the context clearly re-
2 quires otherwise:

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

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

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

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

14 "Base period employer" means any employer who in
15 the base period for any benefit year paid wages to an
16 individual who filed claim for unemployment compen-
17 sation within such benefit year.

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

20 "Benefit year" with respect to an individual means the
21 one-year period beginning with the first day of the
22 calendar week in which he filed a valid claim for bene-
23 fits, and thereafter the one-year period beginning with
24 the first day of the calendar week in which such individual
25 next files a valid claim for benefits after the termination
26 of his last preceding benefit year. An initial claim for
27 benefits filed in accordance with the provisions of this
28 chapter shall be deemed to be a valid claim within the
29 purposes of this definition if the individual has been paid

30 wages in his base period sufficient to make him eligible
31 for benefits under the provisions of this chapter.

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

34 "Board" means board of review.

35 "Calendar quarter" means the period of three conse-
36 cutive calendar months ending on March thirty-one, June
37 thirty, September thirty, or December thirty-one, or the
38 equivalent thereof as the commissioner may by regula-
39 tion prescribe.

40 "Commissioner" means the employment security com-
41 missioner.

42 "Computation date" means June thirty of the year im-
43 mediately preceding the January one on which an em-
44 ployer's contribution rate becomes effective.

45 "Employing unit" means an individual, or type of or-
46 ganization, including any partnership, association, trust,
47 estate, joint stock company, insurance company, corpora-
48 tion (domestic or foreign), institution of higher educa-
49 tion, or the receiver, trustee in bankruptcy, trustee or
50 successor thereof, or the legal representative of a de-

51 ceased person, which has on January first, one thousand
52 nine hundred thirty-five, or subsequent thereto, had in
53 its employ one or more individuals performing service
54 within this state.

55 "Employer" means:

56 (1) Until January one, one thousand nine hundred
57 seventy-two, any employing unit which for some portion
58 of a day, not necessarily simultaneously, in each of twenty
59 different calendar weeks, which weeks need not be con-
60 secutive, within either the current calendar year, or the
61 preceding calendar year, has had in employment four or
62 more individuals irrespective of whether the same individ-
63 uals were or were not employed on each of such days;

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

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

70 (4) Any employing unit which, after December thirty-
71 one, one thousand nine hundred sixty-three, and until

72 January one, one thousand nine hundred seventy-two, in
73 any one calendar quarter, in any calendar year, has in
74 employment four or more individuals and has paid wages
75 for employment in the total sum of five thousand dollars
76 or more, or which, after such date, has paid wages for
77 employment in any calendar year in the sum total of
78 twenty thousand dollars or more;

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

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

87 (7) Any employing unit which, after December thirty-
88 one, one thousand nine hundred seventy-one, (i) in any
89 calendar quarter in either the current or preceding
90 calendar year paid for service in employment wages of
91 one thousand five hundred dollars or more, or (ii) for
92 some portion of a day in each of twenty different calendar

93 weeks, whether or not such weeks were consecutive, in
94 either the current or the preceding calendar year had
95 in employment at least one individual (irrespective of
96 whether the same individual was in employment in each
97 such day);

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

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

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

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

111 (2) Any service performed prior to January one, one
112 thousand nine hundred seventy-two, which was employ-
113 ment as defined in this section prior to such date and,

114 subject to the other provisions of this section, service
115 performed after December thirty-one, one thousand nine
116 hundred seventy-one, by an employee, as defined in
117 section 3306(i) of the "Federal Unemployment Tax Act,"
118 including service in interstate commerce;

119 (3) Any service performed prior to January one, one
120 thousand nine hundred seventy-two, which was employ-
121 ment as defined in this section prior to such date and,
122 subject to the other provisions of this section, service
123 performed after December thirty-one, one thousand nine
124 hundred seventy-one, including service in interstate com-
125 merce, by any officer of a corporation;

126 (4) An individual's entire service, performed within
127 or both within and without this state if: (a) The serv-
128 ice is localized in this state; or (b) the service is not
129 localized in any state but some of the service is per-
130 formed in this state and (i) the base of operations, or,
131 if there is no base of operations, then the place from
132 which such service is directed or controlled, is in this
133 state; or (ii) the base of operations or place from which
134 such service is directed or controlled is not in any state

135 in which some part of the service is performed but the
136 individual's residence is in this state;

137 (5) Service not covered under paragraph four of this
138 subsection and performed entirely without this state with
139 respect to no part of which contributions are required
140 and paid under an unemployment compensation law
141 of any other state or of the federal government, shall
142 be deemed to be employment subject to this chapter
143 if the individual performing such services is a resident
144 of this state and the commissioner approves the election
145 of the employing unit for whom such services are per-
146 formed that the entire service of such individual shall
147 be deemed to be employment subject to this chapter;

148 (6) Service shall be deemed to be localized within
149 a state, if: (a) The service is performed entirely with-
150 in such state; or (b) the service is performed both within
151 and without such state, but the service performed with-
152 out such state is incidental to the individual's service
153 within this state, as, for example, is temporary or transi-
154 tory in nature or consists of isolated transactions;

155 (7) Services performed by an individual for wages

156 shall be deemed to be employment subject to this chap-
157 ter unless and until it is shown to the satisfaction of
158 the commissioner that: (a) Such individual has been
159 and will continue to be free from control or direction
160 over the performance of such services, both under his
161 contract of service and in fact; and (b) such service
162 is either outside the usual course of the business for
163 which such service is performed or that such service
164 is performed outside of all the places of business of
165 the enterprise for which such service is performed; and
166 (c) such individual is customarily engaged in an in-
167 dependently established trade, occupation, profession or
168 business;

169 (8) All service performed by an officer or member
170 of the crew of an American vessel (as defined in section
171 three hundred five of an act of Congress entitled "Social
172 Security Act Amendment of 1946," approved August tenth,
173 one thousand nine hundred forty-six) on or in connection
174 with such vessel, provided that the operating office,
175 from which the operations of such vessel operating on
176 navigable waters within or within and without the United

177 States is ordinarily and regularly supervised, managed,
178 directed and controlled, is within this state;

179 (9) Service performed after December thirty-one, one
180 thousand nine hundred seventy-one, by an individual
181 in the employ of this state or any of its instrumentali-
182 ties (or in the employ of this state and one or more
183 other states or their instrumentalities), when such serv-
184 ice is performed for a hospital or institution of higher
185 education located in this state provided that such service
186 is excluded from "employment" as defined in the "Federal
187 Unemployment Tax Act" solely by reason of section
188 3306(c)(7) of that act, and is not excluded from "em-
189 ployment" under subdivision eleven of the exclusions
190 from the term "employment";

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

196 (a) the service is excluded from "employment" as de-

197 fined in the "Federal Unemployment Tax Act" solely
198 by reason of section 3306(c) (8) of that act; and

199 (b) the organization had four or more individuals in
200 employment for some portion of a day in each of twenty
201 different weeks, whether or not such weeks were conse-
202 cutive, within either the current or preceding calendar
203 year, regardless of whether they were employed at the
204 same moment of time;

205 (11) Service of an individual who is a citizen of the
206 United States, performed outside the United States (ex-
207 cept in Canada or the Virgin Islands), after December
208 thirty-one, one thousand nine hundred seventy-one, in
209 the employ of an American employer (other than serv-
210 ice which is deemed "employment" under the provisions
211 of subdivisions four, five or six of this definition of "em-
212 ployment" or the parallel provisions of another state's
213 law), if:

214 (a) the employer's principal place of business in the
215 United States is located in this state; or

216 (b) the employer has no place of business in the
217 United States, but (i) the employer is an individual

218 who is a resident of this state; or (ii) the employer is
219 a corporation which is organized under the laws of
220 this state; or (iii) the employer is a partnership or a
221 trust and the number of the partners or trustees who
222 are residents of this state is greater than the number
223 who are residents of any one other state; or

224 (c) none of the criteria of subparagraphs (a) and (b)
225 of this subdivision (11) is met but the employer has
226 elected coverage in this state or, the employer having
227 failed to elect coverage in any state, the individual
228 has filed a claim for benefits, based on such service,
229 under the law of this state.

230 An "American employer," for purposes of this subdivi-
231 sion (11) means a person who is (i) an individual who
232 is a resident of the United States; or (ii) a partnership
233 if two thirds or more of the partners are residents of
234 the United States; or (iii) a trust, if all of the trustees
235 are residents of the United States; or (iv) a corpora-
236 tion organized under the laws of the United States or
237 of any state.

238 Notwithstanding the foregoing definition of "employ-

239 ment," if the services performed during one half or
240 more of any pay period by an employee for the person
241 employing him constitute employment, all the services
242 of such employee for such period shall be deemed to
243 be employment; but if the services performed during
244 more than one half of any such pay period by an
245 employee for the person employing him do not constitute
246 employment, then none of the services of such employee
247 for such period shall be deemed to be employment.

248 The term "employment" shall not include:

249 (1) Services performed in the employ of this state
250 or any political subdivision thereof, or any instrumen-
251 tality of this state or its subdivisions, except as other-
252 wise provided herein;

253 (2) Service performed directly in the employ of an-
254 other state, or its political subdivisions;

255 (3) Service performed in the employ of the United
256 States or an instrumentality of the United States exempt
257 under the constitution of the United States from the
258 payments imposed by this law, except that to the extent
259 that the Congress of the United States shall permit states

260 to require any instrumentalities of the United States to
261 make payments into an unemployment fund under a
262 state unemployment compensation law, all of the pro-
263 visions of this law shall be applicable to such instrumen-
264 talities, and to service performed for such instrumentali-
265 ties, in the same manner, to the same extent and on
266 the same terms as to all other employers, employing
267 units, individuals, and services: *Provided*, That if this
268 state shall not be certified for any year by the secretary
269 of labor under section 1603(c) of the "Federal Internal
270 Revenue Code," the payments required of such instru-
271 mentalities with respect to such year shall be refunded
272 by the commissioner from the fund in the same man-
273 ner and within the same period as is provided in section
274 nineteen, article five of this chapter, with respect to
275 payments erroneously collected;

276 (4) Service performed after June thirty, one thou-
277 sand nine hundred thirty-nine, with respect to which
278 unemployment compensation is payable under the "Rail-
279 road Unemployment Insurance Act" (52 Stat. 1094), and
280 service with respect to which unemployment benefits

281 are payable under an unemployment compensation sys-
282 tem for maritime employees established by an act of
283 Congress. The commissioner may enter into agreements
284 with the proper agency established under such an act
285 of Congress to provide reciprocal treatment to individuals
286 who, after acquiring potential rights to unemployment
287 compensation under an act of Congress, or who have,
288 after acquiring potential rights to unemployment com-
289 pensation under an act of Congress, acquired rights to
290 benefit under this chapter. Such agreements shall be-
291 come effective ten days after such publications as comply
292 with the general rules of the department;

293 (5) Agricultural labor, and for the purposes of this
294 chapter, the term "agricultural labor" includes all serv-
295 ices performed:

296 (a) On a farm, in the employ of any person, in con-
297 nection with cultivating the soil, or in connection with
298 raising or harvesting any agricultural or horticultural
299 commodity, including the raising, shearing, feeding, car-
300 ing for, training, and management of livestock, bees,
301 poultry, and fur-bearing animals and wildlife;

302 (b) In the employ of the owner or tenant or other
303 operator of a farm, in connection with the operation,
304 management, conservation, improvement, or maintenance
305 of such farm and its tools and equipment, or in salvag-
306 ing timber or clearing land of brush and other debris
307 left by a hurricane, if the major part of such service
308 is performed on a farm;

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

318 (d) (i) In the employ of the operator of a farm in
319 handling, planting, drying, packing, packaging, proces-
320 sing, freezing, grading, storing or delivering to storage
321 or to market or to a carrier for transportation to market,
322 in its unmanufactured state, any agricultural or horti-

323 cultural commodity; but only if such operator produced
324 more than one half of the commodity with respect to
325 which such service is performed; or (ii) in the employ
326 of a group of operators of farms (or a cooperative organi-
327 zation of which such operators are members) in the per-
328 formance of service described in subparagraph (i), but
329 only if such operators produced more than one half of
330 the commodity with respect to which such service is
331 performed; but the provisions of subparagraphs (i) and
332 (ii) shall not be deemed to be applicable with respect
333 to service performed in connection with commercial can-
334 ning or commercial freezing or in connection with any
335 agricultural or horticultural commodity after its delivery
336 to a terminal market for distribution for consumption;

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

340 As used in this subdivision (5), the term "farm" includes
341 stock, dairy, poultry, fruit, fur-bearing animal, and truck
342 farms, plantations, ranches, greenhouses and nurseries,
343 or other similar land areas or structures used primarily

344 for the raising of any agricultural or horticultural com-
345 modity, and orchards, and the term "greenhouses and
346 nurseries" shall not include greenhouses and nurseries
347 employing more than fifteen full-time employees;

348 (6) Domestic service in a private home;

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

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

353 (9) Service as an officer or member of a crew of an
354 American vessel, performed on or in connection with
355 such vessel, if the operating office, from which the oper-
356 ations of the vessel operating on navigable water with-
357 in or without the United States are ordinarily and regu-
358 larly supervised, managed, directed and controlled, is
359 without this state;

360 (10) Services performed by agents of mutual fund
361 broker-dealers or insurance companies, exclusive of in-
362 dustrial insurance agents, or by agents of investment
363 companies, who are compensated wholly on a commis-
364 sion basis;

365 (11) Service performed (i) in the employ of a church
366 or convention or association of churches, or an organiza-
367 tion which is operated primarily for religious purposes
368 and which is operated, supervised, controlled, or prin-
369 cipally supported by a church or convention or associa-
370 tion of churches; or (ii) by a duly ordained, commis-
371 sioned or licensed minister of a church in the exercise
372 of his ministry or by a member of a religious order in
373 the exercise of duties required by such order; or (iii)
374 the employ of a school which is not an institution of
375 higher education; or (iv) in a facility conducted for the
376 purpose of carrying out a program of rehabilitation for
377 individuals whose earning capacity is impaired by age
378 or physical or mental deficiency or injury or provid-
379 ing remunerative work for individuals who because of
380 their impaired physical or mental capacity cannot be
381 readily absorbed in the competitive labor market by an
382 individual receiving such rehabilitation or remunerative
383 work; or (v) as part of an unemployment work-relief
384 or work-training program assisted or financed in whole
385 or in part by any federal agency or an agency of a

386 state or political subdivision thereof, by an individual
387 receiving such work relief or work training; or (vi)
388 for a hospital in a state prison or other state correctional
389 institution by an inmate of the prison or correctional
390 institution;

391 (12) Service performed, in the employ of a school,
392 college or university, if such service is performed (i)
393 by a student who is enrolled and is regularly attending
394 classes at such school, college or university, or (ii) by
395 the spouse of such a student, if such spouse is advised,
396 at the time such spouse commences to perform such
397 service, that (I) the employment of such spouse to per-
398 form such service is provided under a program to pro-
399 vide financial assistance to such student by such school,
400 college or university, and (II) such employment will not
401 be covered by any program of unemployment insurance;

402 (13) Service performed by an individual under the
403 age of twenty-two who is enrolled at a nonprofit or public
404 educational institution which normally maintains a regu-
405 lar faculty and curriculum and normally has a regularly
406 organized body of students in attendance at the place

407 where its educational activities are carried on as a stu-
408 dent in a full-time program, taken for credit at such in-
409 stitution, which combines academic instruction with work
410 experience, if such service is an integral part of such
411 program, and such institution has so certified to the em-
412 ployer, except that this subdivision shall not apply to
413 service performed in a program established for or on
414 behalf of an employer or group of employers;

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

418 Notwithstanding the foregoing exclusions from the defi-
419 nition of "employment," services, except agricultural labor
420 and domestic service in a private home, shall be deemed
421 to be in employment if with respect to such services a
422 tax is required to be paid under any federal law imposing
423 a tax against which credit may be taken for contributions
424 required to be paid into a state unemployment compensa-
425 tion fund.

426 "Employment office" means a free employment office or

427 branch thereof, operated by this state, or any free public
428 employment office maintained as a part of a state con-
429 trolled system of public employment offices in any other
430 state.

431 “Fund” means the unemployment compensation fund
432 established by this chapter.

433 “Hospital” means an institution which has been licensed,
434 certified or approved by the state department of health
435 as a hospital.

436 “Institution of higher education” means an educational
437 institution which:

438 (1) Admits as regular students only individuals having
439 a certificate of graduating from a high school, or the recog-
440 nized equivalent of such a certificate;

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

443 (3) Provides an educational program for which it
444 awards a bachelor’s or higher degree, or provides a pro-
445 gram which is acceptable for full credit toward such a
446 degree, or provides a program of post-graduate or post-

447 doctoral studies, or provides a program of training to
448 prepare students for gainful employment in a recognized
449 occupation; and

450 (4) Is a public or other nonprofit institution.

451 Notwithstanding any of the foregoing provisions of this
452 definition, all colleges and universities in this state are in-
453 stitutions of higher education for purposes of this section.

454 "Payments" means the money required to be paid or
455 that may be voluntarily paid into the state unemploy-
456 ment compensation fund as provided in article five of
457 this chapter.

458 "Separated from employment" means, for the purposes
459 of this chapter, the total severance whether by quit-
460 ting, discharge, or otherwise, of the employer-employee
461 relationship.

462 "State" includes, in addition to the states of the United
463 States, Puerto Rico, District of Columbia and the Virgin
464 Islands.

465 "Total and partial unemployment" means:

466 (1) An individual shall be deemed totally unemployed
467 in any week in which such individual is separated from

468 employment for an employing unit and during which he
469 performs no services and with respect to which no wages
470 are payable to him.

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

478 "Wages" means all remuneration for personal service,
479 including commissions and bonuses and the cash value
480 of all remuneration in any medium other than cash:
481 *Provided*, That the term "wages" shall not include:

482 (1) That part of the remuneration which, after re-
483 muneration equal to three thousand dollars has been
484 paid to an individual by an employer with respect to
485 employment during any calendar year, is paid after
486 December thirty-one, one thousand nine hundred thirty-
487 nine, and prior to January one, one thousand nine hundred
488 forty-seven, to such individual by such employer with

489 respect to employment during such calendar year; or
490 that part of the remuneration which, after remuneration
491 equal to three thousand dollars with respect to employ-
492 ment after one thousand nine hundred thirty-eight has
493 been paid to an individual by an employer during any
494 calendar year after one thousand nine hundred forty-
495 six, is paid to such individual by such employer during
496 such calendar year, except that for the purposes of
497 sections one, ten, eleven and thirteen, article six of this
498 chapter, all remuneration earned by an individual in
499 employment shall be credited to the individual and in-
500 cluded in his computation of base period wages: *Pro-*
501 *vided*, That notwithstanding the foregoing provisions, on
502 and after January one, one thousand nine hundred sixty-
503 two, the term "wages" shall not include:

504 That part of the remuneration which, after remuner-
505 tion equal to three thousand six hundred dollars has
506 been paid to an individual by an employer with respect
507 to employment during any calendar year, is paid during
508 any calendar year after one thousand nine hundred sixty-
509 one; and shall not include that part of remuneration

510 which, after remuneration equal to four thousand two
511 hundred dollars is paid during a calendar year after one
512 thousand nine hundred seventy-one to an individual by
513 an employer or his predecessor with respect to employ-
514 ment during any calendar year, is paid to such individual
515 by such employer during such calendar year unless that
516 part of the remuneration is subject to a tax under a
517 federal law imposing a tax against which credit may be
518 taken for contributions required to be paid into a state
519 unemployment fund. For the purposes of this subdivi-
520 sion (i), the term employment shall include service
521 constituting employment under any unemployment com-
522 pensation law of another state; or which as a condition
523 for full tax credit against the tax imposed by the "Fed-
524 eral Unemployment Tax Act" is required to be covered
525 under this chapter; and, except, that for the purposes
526 of sections one, ten, eleven and thirteen of article six of
527 this chapter, all remuneration earned by an individual
528 in employment shall be credited to the individual and
529 included in his computation of base period wages:
530 *And provided further,* That the remuneration paid to an
531 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

553 to an individual by an employer under the “Federal Un-
554 employment Tax Act” during any calendar year, wages
555 for the purposes of this definition shall include remunera-
556 tion paid in a calendar year to an individual by an em-
557 ployer subject to this article or his predecessor with re-
558 spect to employment during any calendar year up to an
559 amount equal to the amount of remuneration taxable
560 under the “Federal Unemployment Tax Act”;

561 (2) The amount of any payment made after December
562 thirty-one, one thousand nine hundred fifty-two (includ-
563 ing any amount paid by an employer for insurance or an-
564 nnuities, or into a fund, to provide for any such payment),
565 to, or on behalf of, an individual in its employ or any of his
566 dependents, under a plan or system established by an em-
567 ployer which makes provision for individuals in its employ
568 generally (or for such individuals and their dependents),
569 or for a class or classes of such individuals (or for a class
570 or classes of such individuals and their dependents), on ac-
571 count of (A) retirement, or (B) sickness or accident disa-
572 bility, or (C) medical or hospitalization expenses in con-
573 nection with sickness or accident disability, or (D) death;

574 (3) Any payment made after December thirty-one, one
575 thousand nine hundred fifty-two, by an employer to an in-
576 dividual in its employ (including any amount paid by an
577 employer for insurance or annuities, or into a fund, to pro-
578 vide for any such payment) on account of retirement;

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

587 (5) Any payment made after December thirty-one,
588 one thousand nine hundred fifty-two, by an employer to,
589 or on behalf of, an individual in its employ or his bene-
590 ficiary (A) from or to a trust described in section 401(a)
591 which is exempt from tax under section 501(a) of the
592 "Federal Internal Revenue Code" at the time of such
593 payment unless such payment is made to such individual

594 as an employee of the trust as remuneration for services
595 rendered by such individual and not as a beneficiary of the
596 trust, or (B) under or to an annuity plan which, at the
597 time of such payment, is a plan described in section 403(a)
598 of the "Federal Internal Revenue Code";

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

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

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

615 (9) Payments, not required under any contract of hire,
616 made to an individual with respect to his period of
617 training or service in the armed forces of the United
618 States by an employer by which such individual was
619 formerly employed.

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

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

628 "Week" means a calendar week, ending at midnight
629 Saturday, or the equivalent thereof, as determined in
630 accordance with the regulations prescribed by the com-
631 missioner.

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

635 "Year" means a calendar year or the equivalent there-
636 of, as determined by the commissioner.

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.

§21A-2-16. Federal-state cooperation.

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

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

17 The department of employment security, by its com-

18 missioner, is designated the agent of this state for the
19 purpose of complying with and administering sections
20 sixteen and seventeen of an act of Congress entitled "An
21 act to extend and improve the unemployment compen-
22 sation program," approved September one, one thousand
23 nine hundred fifty-four.

24 The department of employment security, by its com-
25 missioner, is designated the agent of this state for the
26 purpose of complying with and administering an act
27 of Congress entitled "An act to amend title XV of the
28 Social Security Act to extend the unemployment insur-
29 ance system to exservicemen, and for other purposes,"
30 approved August twenty-eight, one thousand nine hun-
31 dred fifty-eight.

32 The department of employment security, by its com-
33 missioner, is designated the agent of this state for the
34 purpose of complying with and administering an act
35 of Congress entitled "An act relating to manpower re-
36 quirements, resources, development, and utilization, and
37 for other purposes," approved March fifteen, one thou-
38 sand nine hundred sixty-two.

39 The department of employment security, by its com-
40 missioner, is designated the agent of this state for the
41 purpose of complying with and administering an act of
42 Congress entitled "An act to establish an effective pro-
43 gram to alleviate conditions of substantial and persistent
44 unemployment and under employment in certain eco-
45 nomically distressed areas," approved May one, one thou-
46 sand nine hundred sixty-one.

47 The department of employment security, by its com-
48 missioner, is designated the agent of this state for the
49 purpose of complying with and administering chapter
50 three of title III of an act of Congress entitled "An act
51 to promote the general welfare, foreign policy, and
52 security of the United States through international trade
53 agreements and through adjustment assistance to do-
54 mestic industry, agriculture, and labor, and for other
55 purposes," approved October eleven, one thousand nine
56 hundred sixty-two.

57 The department of employment security, by its com-
58 missioner, is designated the agent of this state for the
59 purpose of complying with and administering an act of

60 Congress entitled "An act to provide for the establish-
61 ment of a temporary program of extended unemployment
62 compensation, to provide for a temporary increase in
63 the rate of the federal unemployment tax, and for other
64 purposes," approved January three, one thousand nine
65 hundred sixty-one.

66 The department of employment security, by its com-
67 missioner, is also designated the agent of this state for
68 the purpose of complying with and administering other
69 programs of the United States government such as the
70 foregoing.

71 The commissioner of employment security is desig-
72 nated as the officer of this state for the purpose of com-
73 plying with and administering the tasks assigned to the
74 West Virginia department of employment security pur-
75 suant to section six, article two-b, chapter eighteen of
76 this code relating to the area vocational educational
77 program of this state.

78 The commissioner is also authorized with the approval
79 of the advisory council, to apply for an advance to the
80 unemployment compensation fund in accordance with

81 the conditions specified in title XII of the "Social Se-
82 curity Act," as amended, in order to secure to this state
83 and its citizens the advantages available under the pro-
84 visions of that title.

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

97 In the administration of the provisions in article six-a
98 of this chapter, which are enacted to conform with the
99 requirements of the "Federal-State Extended Unemploy-
100 ment Compensation Act of 1970," the commissioner shall
101 take such action as may be necessary (i) to ensure that

102 the provisions are so interpreted and applied as to meet
103 the requirements of such federal act, and (ii) to secure
104 this state the full reimbursement of the federal share of
105 extended and regular benefits paid under this act which
106 are reimbursable under said federal act.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-2. Termination of coverage.

1 Except as otherwise provided in section three of this
2 article, an employing unit, with the exception of any
3 employing unit for which service in employment is de-
4 fined in subdivision ten of the definition of "employment"
5 as set forth in section three, article one of this chapter,
6 shall cease to be an employer subject to this chapter
7 only as of the first day of any calendar year and only if
8 it files with the commissioner not later than January
9 thirty-first of such year, a written application for termi-
10 nation of coverage, as of such first day of January, and
11 the commissioner finds that within the preceding calen-
12 dar year the employing unit did not pay wages of one
13 thousand five hundred dollars or more in any calendar
14 quarter for employment subject to this chapter and dur-

15 ing that calendar year no service was performed for it
16 with respect to which it was liable for any tax against
17 which credit may be taken for contributions required
18 to be paid into the unemployment compensation fund
19 of this state; and any employing unit for which service
20 in employment is defined in subdivision ten of the defi-
21 nition of "employment" as set forth in section three,
22 article one of this chapter, shall cease to be an employer
23 subject to this chapter only as of the first day of any
24 calendar year and only if it files with the commissioner
25 not later than January thirty-first of such year, a writ-
26 ten application for termination of coverage, as of such
27 first day of January, and the commissioner finds that
28 there were no twenty different days, each day being in
29 a different calendar week within the preceding calen-
30 dar year, within which such employing unit had four
31 or more individuals in employment subject to this chap-
32 ter: *Provided*, That the commissioner may for good cause
33 extend the time for filing application for termination of
34 coverage, effective as of the first day of the next suc-
35 ceeding 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
2 provisions of this chapter, which files with the com-
3 missioner its written election to become an employer
4 subject hereto for not less than two calendar years,
5 shall, with the written approval of such election by the
6 commissioner, become an employer subject hereto to
7 the same extent as all other employers, as of the date
8 stated in such approval, and shall cease to be subject
9 hereto as of January one of any calendar year subse-
10 quent to such two calendar years, only if during January
11 of such year it has filed with the commissioner a written
12 notice to that effect.

13 (2) Any employing unit for which services that do
14 not constitute employment as defined in this chapter are
15 performed, may file with the commissioner a written
16 election that all such services performed by individuals
17 in its employ in one or more distinct establishments or
18 places of business shall be deemed to constitute employ-
19 ment for all the purposes of this chapter for not less than

20 two calendar years. Upon the written approval of such
21 election by the commissioner, such services shall be
22 deemed to constitute employment subject to this chap-
23 ter from and after the date stated in such approval. Such
24 services shall cease to be deemed employment subject
25 hereto as of January first of any calendar year subsequent
26 to such two calendar years, only if during January of such
27 year such employing unit has filed with the commissioner
28 a written notice to that effect.

29 (3) An employing unit which is or becomes an em-
30 ployer subject to this chapter within any calendar year
31 shall be subject to this chapter during the whole of such
32 calendar year.

33 (4) Any political subdivision of this state may elect
34 to cover under this chapter service performed by em-
35 ployees in all of the hospitals and institutions of higher
36 education, as defined in section three, article one of this
37 chapter, operated by such political subdivision. Any such
38 election of coverage is to be made by filing with the com-
39 missioner a notice of such election at least thirty days
40 prior to the effective date of such election. Any political

41 subdivision electing coverage under this subsection shall
42 make payments in lieu of contributions with respect to
43 benefits attributable to such employment as provided with
44 respect to nonprofit organizations in section three-a of
45 this article. The provisions of section fifteen, article six
46 of this chapter with respect to benefit rights based on
47 service for state and nonprofit institutions of higher edu-
48 cation shall be applicable also to service covered by an
49 election under this subsection. The amounts required to
50 be paid in lieu of contributions by any political sub-
51 division under this subsection shall be billed and pay-
52 ment made as provided in section thirteen of this article
53 with respect to similar payments by nonprofit organiza-
54 tions. An election under this subsection may be termi-
55 nated, by filing with the commissioner written notice not
56 later than thirty days preceding the last day of the
57 calendar year in which the termination is to be effective.
58 Such termination becomes effective as of the first day
59 of the next ensuing calendar year with respect to services
60 performed after that date.

§21A-5-3a. Financing benefits paid to employees of nonprofit organizations.

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

8 (1) *Liability for contribution payments and election*
9 *of reimbursement*—Any nonprofit organization which,
10 pursuant to provisions of this chapter, is, or becomes,
11 subject to this chapter on or after January one, one thou-
12 sand nine hundred seventy-two, shall be liable for pay-
13 ments and shall pay contributions in accordance with the
14 provisions of this article and of this chapter, unless it
15 elects, in accordance with this subdivision (1), to pay
16 to the commissioner for the unemployment fund an
17 amount equal to the amount of regular benefits and of
18 one half of the extended benefits paid, that is attributable
19 to service in the employ of such nonprofit organization,

20 to individuals for weeks of unemployment which begin
21 during the effective period of such election.

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

32 (b) Any nonprofit organization which becomes subject
33 to this chapter after January one, one thousand nine
34 hundred seventy-two, may elect to become liable for pay-
35 ments in lieu of contributions for a period of not less
36 than twelve months beginning with the date on which
37 such subjectivity begins by filing a written notice of its
38 election with the commissioner not later than thirty days
39 immediately following the date of the determination of
40 such subjectivity.

41 (c) Any nonprofit organization which makes an elec-
42 tion in accordance with subparagraph (a) or subpara-
43 graph (b) of this subdivision (1) will continue to be
44 liable for payments in lieu of contributions until it files
45 with the commissioner a written notice terminating its
46 election not later than thirty days prior to the beginning
47 of the taxable year for which such termination shall first
48 be effective.

49 (d) Any nonprofit organization which has been pay-
50 ing contributions under this chapter for a period subse-
51 quent to January one, one thousand nine hundred
52 seventy-two, may change to a reimbursable basis by filing
53 with the commissioner not later than thirty days prior
54 to the beginning of any taxable year a written notice of
55 election to become liable for payments in lieu of contri-
56 butions. Such election shall not be terminable by the
57 organization for that and the next year.

58 (e) The commissioner may for good cause extend the
59 period within which a notice of election, or a notice of
60 termination, must be filed and may permit an election to
61 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

82 quarter or other prescribed period which is attributable
83 to service in the employ of such organization.

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

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

103 of the preceding calendar year, such percentage of its
104 payroll during such year as the commissioner shall de-
105 termine.

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

110 At the end of each taxable year, the commissioner shall
111 determine whether the total of payments for such year
112 made by a nonprofit organization is less than, or in excess
113 of, the total amount of regular benefits plus one half of
114 the amount of extended benefits paid to individuals dur-
115 ing such taxable year based on wages attributable to
116 service in the employ of such organization. Each non-
117 profit organization whose total payments for such year
118 are less than the amount so determined shall be liable
119 for payment of the unpaid balance to the fund in ac-
120 cordance with subparagraph (c) of this subdivision (2).
121 If the total payments exceed the amount so determined
122 for the taxable year, all or a part of the excess may, at
123 the discretion of the commissioner, be refunded from the

124 fund or retained in the fund as part of the payments
125 which may be required for the next taxable year.

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

133 (d) Payments made by any nonprofit organization
134 under the provisions of this subdivision (2) shall not be
135 deducted or deductible, in whole or in part, from the
136 remuneration of individuals in the employ of the organ-
137 ization.

138 (e) The amount due specified in any bill from the
139 commissioner shall be conclusive on the organization
140 unless, not later than fifteen days after the bill was mailed
141 to its last known address or otherwise delivered to it, the
142 organization files an application for redetermination by
143 the commissioner, setting forth the grounds for such ap-
144 plication. The commissioner shall promptly review and

145 reconsider the amount due specified in the bill and shall
146 thereafter issue a redetermination in any case in which
147 such application for redetermination has been filed. Any
148 such redetermination shall be conclusive on the organiza-
149 tion unless, not later than fifteen days after the redeter-
150 mination was mailed to its last known address or other-
151 wise delivered to it, the organization files an appeal to
152 the board of review, setting forth the grounds for the
153 appeal.

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

165 (3) *Allocation of benefit costs*—Each employer which

166 is liable for payments in lieu of contributions shall pay
167 to the commissioner for the fund the amount of regular
168 benefits plus the amount of one half of extended benefits
169 paid which are attributable to service in the employ of
170 such employer. If benefits paid to an individual are based
171 on wages paid by more than one employer and one or
172 more of such employers are liable for payments in lieu
173 of contributions, the amount payable to the fund by each
174 employer which is liable for such payments shall be
175 determined in accordance with the provisions of sub-
176 paragraph (a) or subparagraph (b) of this subsection (3).

177 (a) Proportionate allocation (when fewer than all
178 base period employers are liable for reimbursement)—
179 If benefits paid to an individual are based on wages paid
180 by one or more employers which are liable for payments
181 in lieu of contributions and on wages paid by one or more
182 employers which are liable for contributions, the amount
183 of benefits payable by each employer which is liable for
184 payments in lieu of contributions shall be an amount
185 which bears the same ratio to the total benefits paid to
186 the individual as the total base period wages paid to the

187 individual by such employer bear to the total base
188 period wages paid to the individual by all of his base
189 period employers.

190 (b) Proportionate allocation (when all base period
191 employers are liable for reimbursement)—If benefits paid
192 to an individual are based on wages paid by two or more
193 employers which are liable for payments in lieu of con-
194 tributions, the amount of benefits payable by each such
195 employer shall be an amount which bears the same ratio
196 to the total benefits paid to the individual as the total
197 base period wages paid to the individual by such employer
198 bear to the total base period wages paid to the individual
199 by all of his base period employers.

200 (4) *Group accounts*—Two or more employers which
201 have become liable for payments in lieu of contributions,
202 in accordance with the provisions of this section, may
203 file a joint application with the commissioner for the
204 establishment of a group account for the purpose of shar-
205 ing the cost of benefits paid which are attributable to
206 service in the employ of such employers. Each such appli-
207 cation shall identify and authorize a group representative

208 to act as the group's agent for the purposes of this sub-
209 division (4). Upon his approval of the application, the
210 commissioner shall establish a group account for such
211 employers effective as of the beginning of the calendar
212 quarter in which he receives the application and shall
213 notify the group's representative of the effective date of
214 the account. Such account shall remain in effect for not
215 less than three years and thereafter until terminated at
216 the discretion of the commissioner or upon application
217 by the group. Upon establishment of the account, each
218 member of the group shall be liable for payments in lieu
219 of contributions with respect to each calendar quarter
220 in the amount which bears the same ratio to the total
221 benefits paid in such quarter which are attributable to
222 service performed in the employ of all members of the
223 group as the total wages paid for service in employment
224 by such member in such quarter bear to the total wages
225 paid during such quarter for service performed in the
226 employ of all members of the group. The commissioner
227 shall prescribe such regulation as he deems necessary
228 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

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

§21A-5-7. Joint and separate accounts.

1 (1) The commissioner shall maintain a separate ac-
2 count for each employer, and shall credit his account
3 with all contributions paid by him prior to July first, one
4 thousand nine hundred sixty-one. On and after July first,
5 one thousand nine hundred sixty-one, the commissioner
6 shall maintain a separate account for each employer, and
7 shall credit said employer's account with all contribu-
8 tions of such employer in excess of seven tenths of one
9 percent of taxable wages; and on and after July first, one
10 thousand nine hundred seventy-one, the commissioner
11 shall maintain a separate account for each employer, and
12 shall credit said employer's account with all contributions
13 of such employer in excess of four tenths of one percent
14 of taxable wages: *Provided*, That any adjustment made
15 in an employer's account after the computation date shall
16 not be used in the computation of the balance of an em-
17 ployer until the next following computation date: *Pro-*
18 *vided, however*, That nothing in this chapter shall be con-

19 strued to grant an employer or individual in his service
20 prior claims or rights to the amounts paid by him into
21 the fund, either on his behalf or on behalf of such in-
22 dividuals. The account of any employer which has been
23 inactive for a period of four consecutive calendar years
24 shall be terminated for all purposes.

25 (2) Benefits paid to an eligible individual for regular
26 and extended total unemployment beginning after the
27 effective date of this act shall be charged to the account
28 of the last employer with whom he has been employed
29 as much as thirty working days, whether or not such
30 days are consecutive: *Provided further*, That no em-
31 ployer's account shall be charged with benefits paid to
32 any individual who has been separated from a non-
33 covered employing unit in which he was employed as
34 much as thirty days, whether or not such days are con-
35 secutive: *And provided further*, That benefits paid to
36 an eligible individual for regular and extended partial
37 unemployment beginning after the effective date of this
38 act shall be charged to the account of the claimant's cur-
39 rent employer: *Provided*, That no employer's account

40 shall be charged with more than fifty percent of the
41 benefits paid to an eligible individual as extended bene-
42 fits under the provisions of article six-a of this chapter.

43 (3) The commissioner shall, for each calendar year
44 hereafter, classify employers in accordance with their
45 actual experience in the payment of contributions on
46 their own behalf and with respect to benefits charged
47 against their accounts, with a view of fixing such contribu-
48 tion rates as will reflect such experiences. For the pur-
49 pose of fixing such contribution rates for each calendar
50 year, the books of the department shall be closed on July
51 thirty-one of the preceding calendar year, and any con-
52 tributions thereafter paid, as well as benefits thereafter
53 paid with respect to compensable weeks ending on or
54 before June thirty of the preceding calendar year, shall
55 not be taken into account until the next annual date for
56 fixing contribution rates: *Provided, however,* That if an
57 employer has failed to furnish to the commissioner on
58 or before July thirty-one of such preceding calendar
59 year the wage information for all past periods necessary
60 for the computation of the contribution rate, such em-

61 ployer's rate shall be, if it is immediately prior to such
62 July thirty-one, less than three and three-tenths percent,
63 increased to three and three-tenths percent: *Provided*
64 *further*, That any payment made or any information
65 necessary for the computation of a reduced rate fur-
66 nished on or before the termination of an extension
67 of time for such payment or reporting of such informa-
68 tion granted pursuant to a regulation of the commis-
69 sioner authorizing such extension, shall be taken into
70 account for the purposes of fixing contribution rates:
71 *And provided further*, That when the time for filing any
72 report or making any payment required hereunder falls
73 on Saturday, Sunday, or a legal holiday, the due date
74 shall be deemed to be the next succeeding business day:
75 *Provided*, That whenever through mistake or inadvert-
76 ence erroneous credits or charges are found to have been
77 made to or against the reserved account of any employer,
78 the rate shall be adjusted as of January one of the calen-
79 dar year in which such mistake or inadvertence is dis-
80 covered, but payments made under any rate assigned

81 prior to January one of such year shall not be deemed
82 to be erroneously collected.

83 (4) The commissioner may prescribe regulations for
84 the establishment, maintenance, and dissolution of joint
85 accounts by two or more employers, and shall, in ac-
86 cordance with such regulations and upon application by
87 two or more employers to establish such an account,
88 or to merge their several individual accounts in a joint
89 account, maintain such joint account as if it constituted
90 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:

8 (1) There have elapsed thirty-six consecutive months
9 immediately preceding the computation date throughout

10 which an employer's account was chargeable with
11 benefits.

12 (2) His payments credited to his account for all past
13 years exceed the benefits charged to his account by an
14 amount equal to at least the percent of his average an-
15 nual payroll as shown in Column B of Table II. His rate
16 shall be the amount appearing in Column C of Table II
17 on line with the percentage in Column B.

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

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

28 If the commissioner, in accordance with the provisions
29 of section ten-a of this article, determines the fund to
30 be below the sum of seventy-five million dollars, then,

31 by the express provisions of this paragraph, the em-
 32 ployer's rate shall immediately be the amount appearing
 33 in Column C of Table II on line with the percentage in
 34 Column B; and the provisions of section ten-a of this
 35 article shall be fully applied by the commissioner. It is
 36 the express intent of this paragraph that the increases
 37 of the aforesaid section ten-a be applied to and added
 38 to the employers' rates set forth in the aforesaid Column
 39 C of Table II.

40 The commission shall determine an employer's com-
 41 pliance with these requirements.

42

TABLE II

43 Col. A	Col. B	Col. C	Col. D	Col. E
44	Percent of			
45	Average			
46	Annual Payroll			
47 Rate	by Which Credits	Employer's		
48 Class	Exceed Charges	Rate		
49 (1)	0.0 to 6.0	2.7	2.2	1.7
50 (2)	6.0	2.5	2.0	1.5
51 (3)	7.0	2.3	1.8	1.3

52	(4)	8.0	2.1	1.6	1.1
53	(5)	9.0	1.9	1.4	0.9
54	(6)	10.0	1.7	1.2	0.7
55	(7)	10.5	1.5	1.0	0.5
56	(8)	11.0	1.3	0.8	0.3
57	(9)	11.5	1.1	0.6	0.1
58	(10)	12.0	0.9	0.4	0.0
59	(11)	12.5	0.7	0.2	0.0
60	(12)	13.0	0.5	0.0	0.0
61	(13)	14.0	0.3	0.0	0.0
62	(14)	16.0	0.1	0.0	0.0
63	(15)	18.0 and over	0.0	0.0	0.0

64 All employer accounts in which charges for all past
65 years exceed credits for such past years shall be adjusted
66 effective June thirty, one thousand nine hundred sixty-
67 seven, so that as of said date, for the purpose of deter-
68 mining such employer's rate of contribution, the credits
69 for all past years shall be deemed to equal the charges
70 to such accounts.

71 Effective on and after the computation date of June
72 thirty, one thousand nine hundred sixty-eight, and not-

73 withstanding the provisions of subsection (1), section
74 seven of this article relating to the noncrediting of em-
75 ployers' accounts with the first seven tenths or with the
76 first four tenths of one percent of contributions paid; for
77 the purpose of determining whether or not an employer
78 shall pay contributions at a rate in excess of two and
79 seven-tenths percent as hereinafter set forth, but not for
80 the purpose of determining such rate, the department
81 shall, only for the purpose set forth herein and not as
82 a credit to such account, add to the accounts of all
83 employers having a debit balance, contribution payments
84 made by such employers on and after July one, one
85 thousand nine hundred sixty-seven, which payments are
86 not credited to employers' accounts by reason of the
87 provisions contained in subsection (1), section seven of
88 this article. If, after such contribution payments have
89 been added to such employers' accounts, such accounts
90 continue to show a debit balance, such employers shall
91 make payments at a rate in excess of two and seven-
92 tenths percent. If, after such contribution payments have
93 been added to such employers' accounts, such accounts

94 show a credit balance, such employers shall make pay-
95 ments at the rate of two and seven-tenths percent. If,
96 under the conditions set forth in this paragraph, it is
97 determined that an employer shall pay contributions at
98 a rate in excess of two and seven-tenths percent, the rate
99 in excess of two and seven-tenths percent at which an
100 employer shall pay contributions shall then be deter-
101 mined solely under the conditions set forth in the fol-
102 lowing paragraphs of this section. The provisions con-
103 tained in this paragraph shall in no way be considered
104 as providing for the crediting to an employer's account,
105 of amounts of employer contribution payments which are
106 expressly not credited to employer's accounts in sub-
107 section (1), section seven of this article.

108 Effective on and after the computation date of June
109 thirty, one thousand nine hundred sixty-seven, all em-
110 ployers with a debt balance account in which the bene-
111 fits charged to their account for all past years exceed the
112 payments credited to their account for such past years
113 by an amount up to and including ten percent of their
114 average annual payroll, shall make payments to the un-

115 employment compensation fund at the rate of three
116 percent of wages paid by them with respect to employ-
117 ment.

118 Effective on and after the computation date of June
119 thirty, one thousand nine hundred sixty-seven, all em-
120 ployers with a debit balance account in which the bene-
121 fits charged to their account for all past years exceed
122 the payments credited to their account for such past
123 years by an amount in excess of ten percent of their
124 average annual payroll, shall make payments to the un-
125 employment compensation fund at the rate of three and
126 three-tenths percent of wages paid by them with respect
127 to employment.

128 "Debit balance account" for the purposes of this sec-
129 tion means an account in which the benefits charged for
130 all past years exceed the payments credited for such past
131 years.

132 "Credit balance account" for the purposes of this sec-
133 tion means an account in which the payments credited
134 for all past years exceed the benefits charged for such
135 past years.

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

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commis-
2 sioner, an individual shall be disqualified for benefits:
3 (1) For the week in which he left his most recent
4 work voluntarily without good cause involving fault on
5 the part of the employer and the six weeks immediately
6 following such week. Such disqualification shall carry
7 a reduction in the maximum benefit amount equal to
8 six times the individual's weekly benefit rate. However,
9 if the claimant returns to work in covered employment
10 during his benefit year, the maximum benefit amount
11 shall be increased by the amount of decrease imposed
12 under the disqualification. For the purpose of this sub-
13 division, the term "work" means employment with the
14 last employing unit with whom such individual was

15 employed as much as thirty days, whether or not such
16 days are consecutive.

17 For purposes of this subdivision (1), an individual
18 shall not be deemed to have left his most recent work
19 voluntarily without good cause involving fault on the
20 part of the employer, if such individual leaves his work
21 with an employer with whom he has been employed
22 at least thirty working days or more for the purpose
23 of returning to, and if he in fact, within a fourteen-day
24 calendar period, does return to, employment with the
25 last preceding employer with whom he was previously
26 employed within the past year prior to his return to
27 work day, and which last preceding employer, after
28 having previously employed such individual for thirty
29 working days or more, laid off such individual because
30 of lack of work, which layoff occasioned the payment of
31 benefits under this chapter or could have occasioned the
32 payment of benefits under this chapter had such in-
33 dividual applied for such benefits. It is the intent of this
34 paragraph to cause no disqualification for benefits for
35 such an individual who complies with the foregoing set

36 of requirements and conditions. Benefits paid to such
37 individual under the provisions of this chapter shall,
38 notwithstanding the provisions of subsection (2), sec-
39 tion seven, article five of this chapter, and of subdivision
40 (12) of this section three, be charged to the account of
41 such last preceding employer with whom such individual
42 was previously employed for thirty working days.

43 (2) For the week in which he was discharged from
44 his most recent work for misconduct and the six weeks
45 immediately following such week; or for the week in
46 which he was discharged from his last thirty day em-
47 ploying unit for misconduct and the six weeks immedi-
48 ately following such week. Such disqualification shall
49 carry a reduction in the maximum benefit amount equal
50 to six times the individual's weekly benefit. However,
51 if the claimant returns to work in covered employment
52 for thirty days during his benefit year, whether or not
53 such days are consecutive, the maximum benefit amount
54 shall be increased by the amount of the decrease imposed
55 under the disqualification; except that:

56 If he were discharged from his most recent work for

57 one of the following reasons; or if he were discharged
58 from his last thirty day employing unit for one of the
59 following reasons: Misconduct consisting of wilful destruc-
60 tion of his employer's property, assault upon the person
61 of his employer or any employee of his employer, if such
62 assault is committed at such individual's place of em-
63 ployment or in the course of employment; reporting to
64 work in an intoxicated condition, or being intoxicated
65 while at work; arson, theft, larceny, fraud or embezzle-
66 ment in connection with his work; or any other gross
67 misconduct; he shall be and remain disqualified for bene-
68 fits until he has thereafter worked for at least thirty days
69 in covered employment.

70 (3) For the week in which he failed without good cause
71 to apply for available suitable work, accept suitable work
72 when offered, or return to his customary self-employ-
73 ment when directed to do so by the commissioner, and
74 for the four weeks which immediately follow and for
75 such an additional period as any offer of suitable work
76 shall continue open for his acceptance.

77 (4) For a week in which his total or partial unem-

78 ployment is due to a stoppage of work which exists be-
79 cause of a labor dispute at the factory, establishment,
80 or other premises at which he was last employed, unless
81 the commissioner is satisfied that he was not (one) par-
82 ticipating, financing, or directly interested in such dis-
83 pute, and (two) did not belong to a grade or class of
84 workers who were participating, financing, or directly
85 interested in the labor dispute which resulted in the
86 stoppage of work. No disqualification under this sub-
87 division shall be imposed if the employees are required
88 to accept wages, hours or conditions of employment sub-
89 stantially less favorable than those prevailing for similar
90 work in the locality, or if employees are denied the right
91 of collective bargaining under generally prevailing con-
92 ditions, or if an employer shuts down his plant or opera-
93 tion or dismisses his employees in order to force wage re-
94 duction, changes in hours or working conditions.

95 For the purpose of this subdivision, if any stoppage
96 of work continues longer than four weeks after the
97 termination of the labor dispute which caused stoppage
98 of work, there shall be a rebuttable presumption that

99 that part of the stoppage of work which exists after said
100 period of four weeks after the determination of said labor
101 dispute, did not exist because of said labor dispute; and
102 in such event the burden shall be upon the employer or
103 other interested party to show otherwise.

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

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

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

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

113 (6) For the week in which an individual has volun-
114 tarily quit employment to marry or to perform any mari-
115 tal, parental or family duty, or to attend to his or her per-
116 sonal business or affairs, and until the individual returns
117 to covered employment and has been employed in cov-
118 ered employment at last thirty working days.

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

120 (a) Voluntarily quit her employment because of preg-
121 nancy, whether or not upon a physician's advice, and
122 until she returns to covered employment and has been
123 employed therein at least thirty working days; except
124 that such disqualification shall last no longer than six
125 weeks subsequent to the birth of her child, provided such
126 individual furnishes to the department a certificate from
127 a physician that she is physically able to work;

128 (b) Was discharged or laid off from her employment
129 because of pregnancy and until she returns to covered
130 employment and has been employed therein at least
131 thirty working days; except that such disqualification
132 shall last no longer than six weeks prior to and six weeks
133 subsequent to the date of birth of the child, provided such
134 individual furnishes to the department certificates from
135 a physician that she is physically able to work.

136 (8) For each week in which an individual is unem-
137 ployed because, having voluntarily left employment to
138 attend a school, college, university, or other educational
139 institution, he is attending such school, college, univer-

140 sity, or other educational institution, or is awaiting en-
141 trance thereto or is awaiting the starting of a new term
142 or session thereof, and until the individual returns to
143 covered employment.

144 (9) For each week in which he is unemployed because
145 of his request, or that of his duly authorized agent, for a
146 vacation period at a specified time that would leave the
147 employer no other alternative but to suspend operations.

148 (10) For each week in which he is receiving or has
149 received remuneration in the form of an annuity, pen-
150 sion, or other retirement pay, from an employer or from
151 any trust or fund contributed to by an employer. But if
152 such remuneration for any week is less than the benefits
153 which would otherwise be due him for such week under
154 this chapter, he shall be entitled to receive for such week,
155 if otherwise eligible, benefits reduced by the amount of
156 such remuneration: *Provided*, That if such amount of
157 benefits is not a multiple of one dollar, it shall be com-
158 puted to the next higher multiple of one dollar: *Pro-*
159 *vided, however*, That there shall be no disqualification
160 if in the individual's base period there are no wages

161 which were paid by the employer paying such remun-
162 eration, or by a fund into which the employer has paid
163 during said base period. Claimant may be required to cer-
164 tify as to whether or not he is receiving or has received
165 remuneration in the form of an annuity, pension, or other
166 retirement pay from an employer or from a trust fund
167 contributed to by an employer.

168 (11) For each week with respect to which he know-
169 ingly made a false statement or representation knowing
170 it to be false or knowingly failed to disclose a material
171 fact in order to obtain or increase a benefit under this
172 article. For each week of disqualification he shall be dis-
173 qualified an additional five weeks and his maximum
174 benefit amount shall be reduced by an amount equal to
175 five times his weekly benefit rate. Such five weeks' dis-
176 qualification periods are to run consecutively beginning
177 with the first week in which it is determined a fraudu-
178 lent claim was filed: *Provided further*, That an individual
179 shall not be disqualified under this subdivision for a
180 period of more than fifty-two consecutive weeks: *And*
181 *provided further*, That disqualification under this sub-

182 division shall not preclude prosecution under section
183 seven, article ten of this chapter.

184 (12) For the purposes of this section an employer's ac-
185 count shall not be charged under any of the following con-
186 ditions: When benefits are paid for unemployment im-
187 mediately after the expiration of a period of disqualifica-
188 tion for (a) leaving work voluntary without good cause
189 involving fault on the part of the employer, (b) discharge
190 for any of the causes set forth in subdivision (2) of this
191 section, (c) failing without good cause to apply for avail-
192 able suitable work, accept suitable work, when offered, or
193 to return to his customary self-employment when di-
194 rected to do so by the commissioner.

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

1 Each eligible individual who is totally unemployed in
2 any week shall be paid benefits with respect to that week
3 at the weekly rate appearing in column (C) in Table A
4 in this paragraph, on the line on which in column (A)
5 there is indicated the employee's wage class, except as
6 otherwise provided under the term "total and partial

7 unemployment” in section three, article one of this chap-
 8 ter. The employee’s wage class shall be determined by
 9 his base period wages as shown in column (B) in Table A.
 10 The right of an employee to receive benefits shall not be
 11 prejudiced nor the amount thereof be diminished by
 12 reason of failure by an employer to pay either the wages
 13 earned by the employee or the contribution due on such
 14 wages. An individual who is totally unemployed but
 15 earns in excess of fifteen dollars as a result of odd-job or
 16 subsidiary work in any benefit week shall be paid benefits
 17 for such week in accordance with the provisions of this
 18 chapter pertaining to benefits for partial unemployment.

19 TABLE A

		Maximum Benefit		
		in Benefit Year for		
21 Wage	Wages in	Weekly	Total and/or Partial	
22 Class	Base Period	Benefit Rate	Unemployment	
23 (Column A)	(Column B)	(Column C)	(Column D)	
24	Under \$700.00	Ineligible		
25 1	700.00— 799.99	\$12.00	\$312.00	
26 2	800.00— 899.99	13.00	338.00	

77 [Enr. Com. Sub. for S. B. No. 280]

27	3	900.00— 999.99	14.00	364.00
28	4	1000.00—1149.99	15.00	390.00
29	5	1150.00—1299.99	16.00	416.00
30	6	1300.00—1449.99	17.00	442.00
31	7	1450.00—1599.99	18.00	468.00
32	8	1600.00—1749.99	19.00	494.00
33	9	1750.00—1899.99	20.00	520.00
34	10	1900.00—2049.99	21.00	546.00
35	11	2050.00—2199.99	22.00	572.00
36	12	2200.00—2349.99	23.00	598.00
37	13	2350.00—2499.99	24.00	624.00
38	14	2500.00—2599.99	25.00	650.00
39	15	2600.00—2699.99	26.00	676.00
40	16	2700.00—2799.99	27.00	702.00
41	17	2800.00—2899.99	28.00	728.00
42	18	2900.00—2999.99	29.00	754.00
43	19	3000.00—3099.99	30.00	780.00
44	20	3100.00—3199.99	31.00	806.00
45	21	3200.00—3349.99	32.00	832.00
46	22	3350.00—3499.99	33.00	858.00
47	23	3500.00—3649.99	34.00	884.00
48	24	3650.00—3799.99	35.00	910.00

49 Notwithstanding any of the foregoing provisions of
50 this section, on and after July one, one thousand nine
51 hundred sixty-seven, the maximum weekly benefit rate
52 shall be forty percent of the average weekly wage in West
53 Virginia.

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

58 Notwithstanding any of the foregoing provisions of this
59 section, on and after July one, one thousand nine hun-
60 dred seventy-one, the maximum weekly benefit rate
61 shall be fifty percent of the average weekly wage in West
62 Virginia.

63 The commissioner, after he has determined the maxi-
64 mum weekly benefit rate upon the basis of the above
65 formula, shall establish as many additional wage classes
66 as are required, increasing the amount of base period
67 wages required for each class by one hundred fifty dollars,
68 the weekly benefit rate for each class by one dollar, and
69 the maximum benefit by twenty-six dollars. The maxi-

70 mum weekly benefit rate, when computed by the com-
71 missioner, in accordance with the foregoing provisions,
72 shall be rounded to the next higher dollar amount, if
73 the computation exceeds forty-nine percent of a dollar
74 amount. Such rounding off to the next higher dollar
75 amount shall result in one additional wage class, with
76 commensurate base period wage requirement of one
77 hundred fifty dollars over the preceding wage class, and
78 with a maximum benefit increase over the preceding wage
79 wage class of twenty-six dollars. Such an additional wage
80 class shall be published by the commissioner with the
81 table required to be published by the foregoing pro-
82 visions of this section.

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

86 Average weekly wage shall be computed by dividing
87 the number of employees in West Virginia earning wages
88 in covered employment into the total wages paid to em-
89 ployees in West Virginia in covered employment, and by
90 further dividing said result by fifty-two, and shall be de-

91 terminated from employer wage and contribution reports
92 for the previous calendar year which are furnished to the
93 department on or before June one following such calendar
94 year. The average weekly wage, as determined by the
95 commissioner, shall be rounded to the next higher dollar.

96 The computation and determination of rates as afore-
97 said shall be completed annually before July one, and
98 any such new wage class, with its corresponding wages
99 in base period, weekly benefit rate, and maximum benefit
100 in a benefit year established by the commissioner in the
101 foregoing manner effective on a July one, shall apply
102 only to a new claim established by a claimant on and
103 after said July one, and shall not apply to continued
104 claims of a claimant based on his new claim established
105 before said July one.

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

1 Benefits based on service in employment as defined in
2 subdivisions nine and ten of the definition of “employ-
3 ment” in section three, article one of this chapter, shall

4 be payable in the same amount, on the same terms and
5 subject to the same conditions as compensation payable
6 on the basis of other service subject to this chapter;
7 except that benefits based on service in an instructional,
8 research, or principal administrative capacity in an insti-
9 tution of higher education shall not be paid to an indi-
10 vidual for any week of unemployment which begins dur-
11 ing the period between two successive academic years, or
12 during a similar period between two regular terms,
13 whether or not successive, or during a period of paid
14 sabbatical leave provided for in the individual's contract,
15 if the individual has a contract or contracts to perform
16 services in any such capacity for any institution or insti-
17 tutions of higher education for both such academic years
18 or both such terms.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions.

1 As used in this article, unless the context clearly re-
2 quires otherwise:

- 3 (1) "Extended benefit period" means a period which
4 (a) begins with the third week after whichever of
5 the following weeks occurs first:

6 (i) a week for which there is a national "on" indicator;

7 or

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

9 and

10 (b) ends with either of the following weeks, which-

11 ever occurs later:

12 (i) the third week after the first week for which there

13 is both a national "off" indicator and a state "off" indi-

14 cator; or

15 (ii) the thirteenth consecutive week of such period.

16 Notwithstanding the foregoing provisions of this sec-

17 tion, no extended benefit period may begin by reason of

18 a state "on" indicator before the fourteenth week follow-

19 ing the end of a prior extended benefit period which was

20 in effect with respect to this state, and no extended bene-

21 fit period may become effective in this state prior to the

22 sixty-first day following the date of enactment of the

23 "Federal-State Extended Unemployment Compensation

24 Act of 1970" and, within the period beginning on such

25 sixty-first day and ending on December thirty-one, one

26 thousand nine hundred seventy-one, an extended benefit

27 period may become effective and be terminated in this
28 state solely by reason of a state “on” and a state “off”
29 indicator, respectively.

30 (2) There is a “national ‘on’ indicator” for a week if
31 the United States secretary of labor determines that for
32 each of the three most recent completed calendar months
33 ending before such week, the rate of insured unemploy-
34 ment (seasonally adjusted) for all states equaled or
35 exceeded four and five-tenths percent.

36 (3) There is a “national ‘off’ indicator” for a week if
37 the United States secretary of labor determines that for
38 each of the three most recent completed calendar months
39 ending before such week, the rate of insured unemploy-
40 ment (seasonally adjusted) for all states was less than
41 four and five-tenths percent.

42 (4) There is a “state ‘on’ indicator” for this state for
43 a week if the commissioner determines, in accordance
44 with the regulations of the United States secretary of
45 labor, that for the period consisting of such week and the
46 immediately preceding twelve weeks, the rate of insured
47 unemployment (not seasonally adjusted) under this
48 article:

49 (a) equaled or exceeded one hundred twenty percent
50 of the average of such rates for the corresponding thir-
51 teen-week period ending in each of the preceding two
52 calendar years, and

53 (b) equaled or exceeded four percent.

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

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

65 (b) was less than four percent.

66 (6) "Rate of insured unemployment," for purposes of
67 subdivisions (4) and (5) of this section, means the per-
68 centage derived by dividing

69 (a) the average weekly number of individuals filing

70 claims in this state for weeks of unemployment with
71 respect to the most recent thirteen-consecutive-week
72 period, as determined by the commissioner on the basis
73 of his reports to the United States secretary of labor, by

74 (b) the average monthly employment covered under
75 this chapter for the first four of the most recent six com-
76 pleted calendar quarters ending before the end of such
77 thirteen-week period.

78 (7) "Regular benefits" means benefits payable to an
79 individual under this chapter or under any other state
80 law (including benefits payable to federal civilian em-
81 ployees and to ex-servicemen pursuant to 5 U.S.C., chap-
82 ter 85) other than extended benefits.

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

88 (9) "Eligibility period" of an individual means the
89 period consisting of the weeks in his benefit year which
90 begin in an extended benefit period and, if his benefit

91 year ends within such extended benefit period, any weeks
92 thereafter which begin in such period.

93 (10) "Exhaustee" means an individual who, with re-
94 spect to any week of unemployment in his eligibility
95 period:

96 (a) has received, prior to such week, all of the regular
97 benefits which were available to him under this chapter
98 or any other state law (including dependents' allowances
99 and benefits payable to federal civilian employees and
100 ex-servicemen under 5 U.S.C., chapter 85) in his current
101 benefit year that includes such week: *Provided*, That for
102 the purposes of this subdivision, an individual shall be
103 deemed to have received all of the regular benefits which
104 were available to him although (i) as a result of a pend-
105 ing appeal with respect to wages and/or employment
106 which were not considered in the original monetary
107 determination in his benefit year, he may subsequently be
108 determined to be entitled to added regular benefits, or
109 (ii) he may be entitled to regular benefits with respect
110 to future weeks of unemployment, but such benefits are
111 not payable with respect to such week of unemployment

112 by reason of the provisions of section one-a, article six of
113 this chapter; or

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

118 (c) has no right to unemployment benefits or allow-
119 ances, as the case may be, under the "Railroad Unemploy-
120 ment Insurance Act," the "Trade Expansion Act of 1962,"
121 the "Automotive Products Trade Act of 1965" and such
122 other federal laws as are specified in regulations issued
123 by the United States secretary of labor; and has not re-
124 ceived and is not seeking unemployment benefits under
125 the unemployment compensation law of the Virgin
126 Islands or of Canada; but if he is seeking such benefits
127 and the appropriate agency finally determines that he is
128 not entitled to benefits under such law he is considered
129 an exhaustee.

130 (11) "State law" means the unemployment insurance
131 law of any state, approved by the United States secretary
132 of labor under section 3304 of the "Internal Revenue Code
133 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
2 the other provisions of this article, as provided in the
3 regulations of the commissioner, the provisions of this
4 chapter which apply to claims for, or the payment of,
5 regular benefits shall apply to claims for, and the pay-
6 ment of, extended benefits.

§21A-6A-3. Eligibility requirements for extended benefits.

1 An individual shall be eligible to receive extended bene-
2 fits with respect to any week of unemployment in his
3 eligibility period only if the commissioner finds that with
4 respect to such week:

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

7 (2) he has satisfied the eligibility requirements of this
8 chapter for the receipt of regular benefits which are ap-
9 plicable to individuals claiming extended benefits, in-
10 cluding not being subject to a disqualification for the
11 receipt of benefits.

§21A-6A-4. Weekly extended benefit amount.

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

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

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

4 (1) fifty percent of the total amount of regular benefits
5 which were payable to him under this chapter in his ap-
6 plicable benefit year;

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

**§21A-6A-6. Beginning and termination of extended benefit
period.**

1 (1) Whenever an extended benefit period is to become
2 effective in this state (or in all states) as a result of a
3 state or a national "on" indicator, or an extended benefit

4 period is to be terminated in this state as a result of
5 a state "off" indicator or state and national "off" indi-
6 cators, the commissioner shall make an appropriate public
7 announcement.

8 (2) Computations required by the provisions of sub-
9 division (6), section one of this article shall be made by
10 the commissioner, in accordance with regulations pre-
11 scribed by the United States secretary of labor.

§21A-6A-7. Effective date of article.

1 The provisions of this article shall be applicable to
2 compensable weeks beginning on or after February seven,
3 one thousand nine hundred seventy-one, determined in
4 accordance with the provisions of this article on the basis
5 of a state "on" indicator which occurred prior to said
6 February seven, as determined by the commissioner.

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

Russell G. Beall
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard Myer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

E. Hans Mortenson
President of the Senate

Lewis N. McManus
Speaker House of Delegates

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

Arch A. Moore Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/19/71

Time 2:33 p.m.

RECEIVED

APR 2 11 00 AM '71
STATE OF VIRGINIA