

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973



ENROLLED

HOUSE BILL No. 1232

(By Mr. Seibert)



PASSED April 12 1973

In Effect July 1, 1973 Passage



FILED IN THE OFFICE
EDGAR F. MITCHELL III
SECRETARY OF STATE
THIS DATE 5/3/73

1232

ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 1232

(By MR. SEIBERT)

(Originating in the House Committee on the Judiciary)

[Passed April 12, 1973; in effect July 1, 1973.]

AN ACT to amend and reenact section three, article one; sections four and ten, article six; and section five-a, article nine, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the department of employment security; definitions; individuals not denied benefits by receiving vocational training; benefit rate—total unemployment; benefits not to be reduced by vacation pay in certain cases; annual computation and publication of rates; special administration fund.

Be it enacted by the Legislature of West Virginia:

That section three, article one; sections four and ten, article six; and section five-a, article nine, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

§21A-1-3. Definitions.

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

3 "Administration fund" means the employment security ad-
4 ministration fund, from which the administrative expenses
5 under this chapter shall be paid.

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

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

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

14 "Base period employer" means any employer who in the base
15 period for any benefit year paid wages to an individual who
16 filed claim for unemployment compensation within such bene-
17 fit 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 fifty-two week period beginning with the first day of the cal-
22 endar week in which a valid claim is effective, and thereafter
23 the fifty-two week period beginning with the first day of the
24 calendar week in which such individual next files a valid claim
25 for benefits after the termination of his last preceding benefit
26 year. An initial claim for benefits filed in accordance with the
27 provisions of this chapter shall be deemed to be a valid claim
28 within the purposes of this definition if the individual has been
29 paid wages in his base period sufficient to make him eligible
30 for benefits under the provisions of this chapter.

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

33 "Board" means board of review.

34 "Calendar quarter" means the period of three consecutive
35 calendar months ending on March thirty-one, June thirty, Sep-
36 tember thirty, or December thirty-one, or the equivalent there-
37 of as the commissioner may by regulation prescribe.

38 "Commissioner" means the employment security commis-
39 sioner.

40 "Computation date" means June thirty of the year immed-
41 ately preceding the January one on which an employer's con-
42 tribution rate becomes effective.

43 “Employing unit” means an individual, or type of organi-
44 zation, including any partnership, association, trust, estate,
45 joint-stock company, insurance company, corporation (domes-
46 tic or foreign), institution of higher education, or the receiver,
47 trustee in bankruptcy, trustee or successor thereof, or the legal
48 representative of a deceased person, which has on January
49 first, one thousand nine hundred thirty-five, or subsequent
50 thereto, had in its employ one or more individuals perform-
51 ing service within this state.

52 “Employer” means:

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

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

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

67 (4) Any employing unit which, after December thirty-one,
68 one thousand nine hundred sixty-three, and until January one,
69 one thousand nine hundred seventy-two, in any one calendar
70 quarter, in any calendar year, has in employment four or
71 more individuals and has paid wages for employment in the
72 total sum of five thousand dollars or more, or which, after
73 such date, has paid wages for employment in any calendar
74 year in the sum total of twenty thousand dollars or more;

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

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

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

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

97 (9) Any employing unit for which service in employ-
98 ment, as defined in subdivision ten of the definition of "em-
99 ployment" in this section, is performed after December thirty-
100 one, one thousand nine hundred seventy-one.

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

103 (1) Service, including service in interstate commerce, per-
104 formed for wages or under any contract of hire, written or
105 oral, express or implied;

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

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

121 (4) An individual's entire service, performed within or
122 both within and without this state if: (a) The service is
123 localized in this state; or (b) the service is not localized in

124 any state but some of the service is performed in this state
125 and (i) the base of operations, or, if there is no base of
126 operations, then the place from which such service is directed
127 or controlled, is in this state; or (ii) the base of operations
128 or place from which such service is directed or controlled
129 is not in any state in which some part of the service is per-
130 formed but the individual's residence is in this state;

131 (5) Service not covered under paragraph four of this
132 subdivision and performed entirely without this state with
133 respect to no part of which contributions are required and paid
134 under an unemployment compensation law of any other state
135 or of the federal government, shall be deemed to be employ-
136 ment subject to this chapter if the individual performing such
137 services is a resident of this state and the commissioner
138 approves the election of the employing unit for whom such
139 services are performed that the entire service of such individual
140 shall be deemed to be employment subject to this chapter;

141 (6) Service shall be deemed to be localized within a state,
142 if: (a) The service is performed entirely within such state; or
143 (b) the service is performed both within and without such
144 state, but the service performed without such state is in-
145 cidental to the individual's service within this state, as, for
146 example, is temporary or transitory in nature or consists of
147 isolated transactions;

148 (7) Services performed by an individual for wages shall
149 be deemed to be employment subject to this chapter unless and
150 until it is shown to the satisfaction of the commissioner that:

151 (a) Such individual has been and will continue to be free
152 from control or direction over the performance of such services,
153 both under his contract of service and in fact; and (b)
154 such service is either outside the usual course of the business
155 for which such service is performed or that such service is
156 performed outside of all the places of business of the enter-
157 prise for which such service is performed; and (c) such
158 individual is customarily engaged in an independently estab-
159 lished trade, occupation, profession or business;

160 (8) All service performed by an officer or member of
161 the crew of an American vessel (as defined in section three
162 hundred five of an act of Congress entitled "Social Security
163 Act Amendment of 1946," approved August tenth, one
164 thousand nine hundred forty-six) on or in connection with

165 such vessel, provided that the operating office, from which
166 the operations of such vessel operating on navigable waters
167 within and without the United States is ordinarily and
168 regularly supervised, managed, directed and controlled, is
169 within this state;

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

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

185 (a) The service is excluded from "employment" as defined
186 in the "Federal Unemployment Tax Act" solely by reason of
187 section 3306(c)(8) of that act; and

188 (b) The organization had four or more individuals in
189 employment for some portion of a day in each of twenty
190 different weeks, whether or not such weeks were consecutive,
191 within either the current or preceding calendar year, regardless
192 of whether they were employed at the same moment of
193 time;

194 (11) Service of an individual who is a citizen of the
195 United States, performed outside the United States (except
196 in Canada or the Virgin Islands), after December thirty-one,
197 one thousand nine hundred seventy-one, in the employ of an
198 American employer (other than service which is deemed
199 "employment" under the provisions of subdivisions four,
200 five or six of this definition of "employment" or the parallel
201 provisions of another state's law), if:

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

204 (b) The employer has no place of business in the United
205 States, but (i) the employer is an individual who is a resident

206 of this state; or (ii) the employer is a corporation which is
207 organized under the laws of this state; or (iii) the employer is
208 a partnership or a trust and the number of the partners or
209 trustees who are residents of this state is greater than the
210 number who are residents of any one other state; or

211 (c) None of the criteria of subparagraphs (a) and (b)
212 of this subdivision (11) is met but the employer has elected
213 coverage in this state or, the employer having failed to elect
214 coverage in any state, the individual has filed a claim for
215 benefits, based on such service, under the law of this state.

216 An "American employer," for purposes of this subdivision
217 (11), means a person who is (i) an individual who is a resident
218 of the United States; or (ii) a partnership if two thirds or
219 more of the partners are residents of the United States; or
220 (iii) a trust, if all of the trustees are residents of the United
221 States; or (iv) a corporation organized under the laws of the
222 United States or of any state.

223 Notwithstanding the foregoing definition of "employment,"
224 if the services performed during one half or more of any
225 pay period by an employee for the person employing him
226 constitute employment, all the services of such employee
227 for such period shall be deemed to be employment; but if
228 the services performed during more than one half of any
229 such pay period by an employee for the person employing
230 him do not constitute employment, then none of the services
231 of such employee for such period shall be deemed to be
232 employment.

233 The term "employment" shall not include:

234 (1) Services performed in the employ of this state or any
235 political subdivision thereof, or any instrumentality of this
236 state or its subdivisions, except as otherwise provided herein;

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

239 (3) Service performed in the employ of the United States or
240 an instrumentality of the United States exempt under the con-
241 stitution of the United States from the payments imposed by
242 this law, except that to the extent that the Congress of the
243 United States shall permit states to require any instrumental-
244 ities of the United States to make payments into an unemploy-
245 ment fund under a state unemployment compensation law, all

246 of the provisions of this law shall be applicable to such instru-
247 mentalities, and to service performed for such instrumentali-
248 ties, in the same manner, to the same extent and on the same
249 terms as to all other employers, employing units, individuals,
250 and services: *Provided*, That if this state shall not be certified
251 for any year by the secretary of labor under section 1603(c)
252 of the "Federal Internal Revenue Code," the payments re-
253 quired of such instrumentalities with respect to such year shall
254 be refunded by the commissioner from the fund in the same
255 manner and within the same period as is provided in section
256 nineteen, article five of this chapter, with respect to payments
257 erroneously collected;

258 (4) Service performed after June thirty, one thousand nine
259 hundred thirty-nine, with respect to which unemployment
260 compensation is payable under the "Railroad Unemployment
261 Insurance Act" (52 Stat. 1094), and service with respect to
262 which unemployment benefits are payable under an unemploy-
263 ment compensation system for maritime employees establish-
264 ed by an act of Congress. The commissioner may enter into
265 agreements with the proper agency established under such an
266 act of Congress to provide reciprocal treatment to individuals
267 who, after acquiring potential rights to unemployment compen-
268 sation under an act of Congress, or who have, after acquiring
269 potential rights to unemployment compensation under an act
270 of Congress, acquired rights to benefit under this chapter. Such
271 agreement shall become effective ten days after such publica-
272 tions as comply with the general rules of the department;

273 (5) Agricultural labor, and for the purposes of this chapter,
274 the term "agricultural labor" includes all services performed:

275 (a) On a farm, in the employ of any person, in connection
276 with cultivating the soil, or in connection with raising or har-
277 vesting any agricultural or horticultural commodity, including
278 the raising, shearing, feeding, caring for, training, and manage-
279 ment of livestock, bees, poultry, and fur-bearing animals
280 and wildlife;

281 (b) In the employ of the owner or tenant or other
282 operator of a farm, in connection with the operation, manage-
283 ment, conservation, improvement, or maintenance of such
284 farm and its tools and equipment, or in salvaging timber or
285 clearing land of brush and other debris left by a hurricane,

286 if the major part of such service is performed on a farm;

287 (c) In connection with the production or harvesting of
288 any commodity defined as an agricultural commodity in
289 section 15(g) of the "Agricultural Marketing Act," as
290 amended (46 Stat. 1550, sec. 3; 12 U.S.C. § 1141j) or in
291 connection with the ginning of cotton, or in connection with
292 the operation or maintenance of ditches, canals, reservoirs,
293 or waterways, not owned or operated for profit, used ex-
294 clusively for supplying and storing water for farming pur-
295 poses;

296 (d) (i) In the employ of the operator of a farm in handling,
297 planting, drying, packing, packaging, processing, freezing,
298 grading, storing or delivering to storage or to market or to a
299 carrier for transportation to market, in its unmanufactured
300 state, any agricultural or horticultural commodity; but only
301 if such operator produced more than one half of the commodity
302 with respect to which such service is performed; or (ii) in the
303 employ of a group of operators of farms (or a cooperative or-
304 ganization of which such operators are members) in the per-
305 formance of service described in subparagraph (i), but only if
306 such operators produced more than one half of the commodity
307 with respect to which such service is performed; but the pro-
308 visions of subparagraphs (i) and (ii) shall not be deemed to be
309 applicable with respect to service performed in connection with
310 commercial canning or commercial freezing or in connection
311 with any agricultural or horticultural commodity after its
312 delivery to a terminal market for distribution for consump-
313 tion;

314 (e) On a farm operated for profit if such service is not in
315 the course of the employer's trade or business or is domestic
316 service in a private home of the employer. As used in this
317 subdivision (5), the term "farm" includes stock, dairy, poul-
318 try, fruit, fur-bearing animal, and truck farms, plantations,
319 ranches, greenhouses and nurseries, or other similar land areas
320 or structures used primarily for the raising of any agricultural
321 or horticultural commodity, and orchards, and the term
322 "greenhouses and nurseries" shall not include greenhouses and
323 nurseries employing more than fifteen full-time employees;

324 (6) Domestic service in a private home;

325 (7) Service performed by an individual in the employ of his

326 son, daughter, or spouse;

327 (8) Service performed by a child under the age of eighteen
328 years in the employ of his father or mother;

329 (9) Service as an officer or member of a crew of an Ameri-
330 can vessel, performed on or in connection with such vessel, if
331 the operating office, from which the operations of the vessel
332 operating on navigable water within or without the United
333 States are ordinarily and regularly supervised, managed,
334 directed and controlled, is without this state;

335 (10) Services performed by agents of mutual fund broker-
336 dealers or insurance companies, exclusive of industrial in-
337 surance agents, or by agents of investment companies, who are
338 compensated wholly on a commission basis;

339 (11) Service performed (i) in the employ of a church or
340 convention or association of churches, or an organization
341 which is operated primarily for religious purposes and which
342 is operated, supervised, controlled, or principally supported by
343 a church or convention or association of churches; or (ii)
344 by a duly ordained, commissioned or licensed minister of
345 a church in the exercise of his ministry or by a member of
346 a religious order in the exercise of duties required by such
347 order; or (iii) the employ of a school which is not an in-
348 stitution of higher education; or (iv) in a facility conducted
349 for the purpose of carrying out a program of rehabilitation
350 for individuals whose earning capacity is impaired by age
351 or physical or mental deficiency or injury or providing
352 remunerative work for individuals who because of their
353 impaired physical or mental capacity cannot be readily ab-
354 sorbed in the competitive labor market by an individual
355 receiving such rehabilitation or remunerative work; or (v) as
356 part of an unemployment work-relief or work-training program
357 assisted or financed in whole or in part by any federal agency
358 or an agency of a state or political subdivision thereof, by an
359 individual receiving such work relief or work training; or
360 (vi) for a hospital in a state prison or other state correctional
361 institution by an inmate of the prison or correctional institu-
362 tion;

363 (12) Service performed, in the employ of a school, college
364 or university, if such service is performed (i) by a student who
365 is enrolled and is regularly attending classes at such school,

366 college or university, or (ii) by the spouse of such a student, if
367 such spouse is advised, at the time such spouse commences to
368 perform such service, that (1) the employment of such spouse
369 to perform such service is provided under a program to provide
370 financial assistance to such student by such school, college or
371 university, and (11) such employment will not be covered by
372 any program of unemployment insurance;

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

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

388 Notwithstanding the foregoing exclusions from the definition
389 of "employment," services, except agricultural labor and do-
390 mestic service in a private home, shall be deemed to be in em-
391 ployment if with respect to such services a tax is required to be
392 paid under any federal law imposing a tax against which credit
393 may be taken for contributions required to be paid into a state
394 unemployment compensation fund.

395 "Employment office" means a free employment office or
396 branch thereof, operated by this state, or any free public em-
397 ployment office maintained as a part of a state controlled sys-
398 tem of public employment offices in any other state.

399 "Fund" means the unemployment compensation fund es-
400 tablished by this chapter.

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

404 "Institution of higher education" means an educational in-
405 stitution which:

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

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

411 (3) Provides an educational program for which it awards a
412 bachelor's or higher degree, or provides a program which is
413 acceptable for full credit toward such a degree, or provides a
414 program of post-graduate or post-doctoral studies, or pro-
415 vides a program of training to prepare students for gainful em-
416 ployment in a recognized occupation; and

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

418 Notwithstanding any of the foregoing provisions of this
419 definition, all colleges and universities in this state are insti-
420 tutions of higher education for purposes of this section.

421 "Payments" means the money required to be paid or that
422 may be voluntarily paid into the state unemployment compen-
423 sation fund as provided in article five of this chapter.

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

427 "State" includes, in addition to the states of the United
428 States, Puerto Rico, District of Columbia and the Virgin Is-
429 lands.

430 "Total and partial unemployment" means:

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

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

443 "Wages" means all remuneration for personal service, in-
444 cluding commissions and bonuses and the cash value of all
445 remuneration in any medium other than cash: *Provided*, That

446 the term "wages" shall not include:

447 (1) That part of the remuneration which, after remuneration
448 equal to three thousand dollars has been paid to an individual
449 by an employer with respect to employment during any calen-
450 dar year, is paid after December thirty-one, one thousand nine
451 hundred thirty-nine, and prior to January one, one thousand
452 nine hundred forty-seven, to such individual by such employer
453 with respect to employment during such calendar year; or that
454 part of the remuneration which, after remuneration equal to
455 three thousand dollars with respect to employment after one
456 thousand nine hundred thirty-eight has been paid to an indi-
457 vidual by an employer during any calendar year after one
458 thousand nine hundred forty-six, is paid to such individual by
459 such employer during such calendar year, except that for the
460 purposes of sections one, ten, eleven and thirteen, article six
461 of this chapter, all remuneration earned by an individual in
462 employment shall be credited to the individual and included
463 in his computation of base period wages: *Provided*, That not-
464 withstanding the foregoing provisions, on and after January
465 one, one thousand nine hundred sixty-two, the term "wages"
466 shall not include:

467 That part of the remuneration which, after remuneration
468 equal to three thousand six hundred dollars has been paid to
469 an individual by an employer with respect to employment dur-
470 ing any calendar year, is paid during any calendar year after
471 one thousand nine hundred sixty-one; and shall not include
472 that part of remuneration which, after remuneration equal to
473 four thousand two hundred dollars is paid during a calendar
474 year after one thousand nine hundred seventy-one to an indi-
475 vidual by an employer or his predecessor with respect to em-
476 ployment during any calendar year, is paid to such individual
477 by such employer during such calendar year unless that part
478 of the remuneration is subject to a tax under a federal law
479 imposing a tax against which credit may be taken for contri-
480 butions required to be paid into a state unemployment fund.
481 For the purposes of this subdivision (1), the term employment
482 shall include service constituting employment under any un-
483 employment compensation law of another state; or which as a
484 condition for full tax credit against the tax imposed by the
485 "Federal Unemployment Tax Act" is required to be covered

486 under this chapter; and, except, that for the purposes of sec-
487 tions one, ten, eleven and thirteen, article six of this chapter,
488 all remuneration earned by an individual in employment shall
489 be credited to the individual and included in his computation
490 of base period wages: *Provided, however,* That the remunera-
491 tion paid to an individual by an employer with respect to em-
492 ployment in another state or other states upon which contri-
493 butions were required of and paid by such employer under an
494 unemployment compensation law of such other state or states
495 shall be included as a part of the remuneration equal to the
496 amounts of three thousand six hundred dollars or four thou-
497 sand two hundred dollars herein referred to. In applying such
498 limitation on the amount of remuneration that is taxable an
499 employer shall be accorded the benefit of all or any portion of
500 such amount which may have been paid by its predecessor or
501 predecessors: *Provided further,* That if the definition of the
502 term "wages" as contained in section 3306(b) of the "Internal
503 Revenue Code of 1954" as amended; (a) effective prior to
504 January one, one thousand nine hundred sixty-two, to include
505 remuneration in excess of three thousand dollars, or (b) effec-
506 tive on or after January one, one thousand nine hundred six-
507 ty-two, to include remuneration in excess of three thousand six
508 hundred dollars, or effective on or after January one, one
509 thousand nine hundred seventy-two, to include remuneration in
510 excess of four thousand two hundred dollars, paid to an indi-
511 vidual by an employer under the "Federal Unemployment Tax
512 Act" during any calendar year, wages for the purposes of this
513 definition shall include remuneration paid in a calendar year
514 to an individual by an employer subject to this article or his
515 predecessor with respect to employment during any calendar
516 year up to an amount equal to the amount of remuneration
517 taxable under the "Federal Unemployment Tax Act";

518 (2) The amount of any payment made after December
519 thirty-one, one thousand nine hundred fifty-two (including any
520 amount paid by an employer for insurance or annuities, or into
521 a fund, to provide for any such payment), to, or on behalf of,
522 an individual in its employ or any of his dependents, under a
523 plan or system established by an employer which makes pro-
524 vision for individuals in its employ generally (or for such in-
525 dividuals and their dependents), or for a class or classes of

526 such individuals (or for a class or classes of such individuals
527 and their dependents), on account of (A) retirement, or (B)
528 sickness or accident disability, or (C) medical or hospitaliza-
529 tion expenses in connection with sickness or accident disability,
530 or (D) death;

531 (3) Any payment made after December thirty-one, one thou-
532 sand nine hundred fifty-two, by an employer to an individual
533 in its employ (including any amount paid by an employer for
534 insurance or annuities, or into a fund, to provide for any such
535 payment) on account of retirement;

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

543 (5) Any payment made after December thirty-one, one
544 thousand nine hundred fifty-two, by an employer to, or on be-
545 half of, an individual in its employ or his beneficiary (A) from
546 or to a trust described in section 401(a) which is exempt from
547 tax under section 501(a) of the "Federal Internal Revenue
548 Code" at the time of such payment unless such payment is
549 made to such individual as an employee of the trust as remun-
550 eration for services rendered by such individual and not as a
551 beneficiary of the trust, or (B) under or to an annuity plan
552 which, at the time of such payment, is a plan described in sec-
553 tion 403(a) of the "Federal Internal Revenue Code";

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

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

562 (8) Any payment (other than vacation or sick pay) made by
563 an employer after December thirty-one, one thousand nine
564 hundred fifty-two, to an individual in its employ after the

565 month in which he attains the age of sixty-five, if he did not
566 work for the employer in the period for which such payment
567 is made;

568 (9) Payments, not required under any contract of hire, made
569 to an individual with respect to his period of training or ser-
570 vice in the armed forces of the United States by an employer
571 by which such individual was formerly employed;

572 (10) Vacation pay received by an individual after becoming
573 separated from employment, but earned prior to becoming
574 separated from employment.

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

579 The reasonable cash value of remuneration in any medium
580 other than cash shall be estimated and determined in accor-
581 dance with rules prescribed by the commissioner.

582 "Week" means a calendar week, ending at midnight Satur-
583 day, or the equivalent thereof, as determined in accordance
584 with the regulations prescribed by the commissioner.

585 "Weekly benefit rate" means the maximum amount of bene-
586 fit an eligible individual will receive for one week of total
587 unemployment.

588 "Year" means a calendar year or the equivalent thereof, as
589 determined by the commissioner.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-4. Individual not denied benefits by receiving vocational training.

1 Notwithstanding any other provision in this article, no
2 individual shall be denied unemployment compensation bene-
3 fits because of his receiving training as part of an area voca-
4 tional program, or similar program, which has as its object the
5 training of unemployed individuals in new occupational skills:
6 *Provided*, That such individual's training and training institu-
7 tion are approved by the commissioner, and such individual
8 produces evidence of his continued attendance and satisfactory
9 progress at such training institution when requested to do so
10 by the commissioner.

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

1 Each eligible individual who is totally unemployed in any
 2 week shall be paid benefits with respect to that week at the
 3 weekly rate appearing in Column (C) in Table A in this para-
 4 graph, on the line on which in Column (A) there is indicated
 5 the employee's wage class, except as otherwise provided under
 6 the term "total and partial unemployment" in section three,
 7 article one of this chapter. The employee's wage class shall be
 8 determined by his base period wages as shown in Column (B)
 9 in Table A. The right of an employee to receive benefits shall
 10 not be prejudiced nor the amount thereof be diminished by
 11 reason of failure by an employer to pay either the wages earned
 12 by the employee or the contribution due on such wages. An
 13 individual who is totally unemployed but earns in excess of
 14 fifteen dollars as a result of odd-job or subsidiary work in any
 15 benefit week shall be paid benefits for such week in accordance
 16 with the provisions of this chapter pertaining to benefits for
 17 partial unemployment.

18 **TABLE A**

19	Wage Class	Wages in Base Period		Weekly Benefit Rate	Maximum Benefit In Benefit Year for Total and/or Partial Unemployment
	(Column A)	(Column B)		(Column C)	(Column D)
20		Under	\$ 700.00	Ineligible	-----
21	1	700.00—	799.99	\$ 12.00	\$312.00
22	2	800.00—	899.99	13.00	338.00
23	3	900.00—	999.99	14.00	364.00
24	4	1000.00—	1149.99	15.00	390.00
25	5	1150.00—	1299.99	16.00	416.00
26	6	1300.00—	1449.99	17.00	442.00
27	7	1450.00—	1599.99	18.00	468.00
28	8	1600.00—	1749.99	19.00	494.00
29	9	1750.00—	1899.99	20.00	520.00

30	10	1900.00— 2049.99	21.00	546.00
31	11	2050.00— 2199.99	22.00	572.00
32	12	2200.00— 2349.99	23.00	598.00
33	13	2350.00— 2499.99	24.00	624.00
34	14	2500.00— 2599.99	25.00	650.00
35	15	2600.00— 2699.99	26.00	676.00
36	16	2700.00— 2799.99	27.00	702.00
37	17	2800.00— 2899.99	28.00	728.00
38	18	2900.00— 2999.99	29.00	754.00
39	19	3000.00— 3099.99	30.00	780.00
40	20	3100.00— 3199.99	31.00	806.00
41	21	3200.00— 3349.99	32.00	832.00
42	22	3350.00— 3499.99	33.00	858.00
43	23	3500.00— 3649.99	34.00	884.00
44	24	3650.00— 3799.99	35.00	910.00

45 Notwithstanding any of the foregoing provisions of this
 46 section, on and after July one, one thousand nine hundred six-
 47 ty-seven, the maximum weekly benefit rate shall be forty per-
 48 cent of the average weekly wage in West Virginia.

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

53 Notwithstanding any of the foregoing provisions of this sec-
 54 tion, on and after July one, one thousand nine hundred seven-
 55 ty-one, the maximum weekly benefit rate shall be fifty percent
 56 of the average weekly wage in West Virginia.

57 Notwithstanding any of the foregoing provisions of this sec-
 58 tion, on and after July one, one thousand nine hundred seventy-
 59 three, the maximum weekly benefit rate shall be fifty-five per-
 60 cent of the average weekly wage in West Virginia.

61 The commissioner, after he has determined the maximum
 62 weekly benefit rate upon the basis of the above formula, shall

63 establish as many additional wage classes as are required, in-
64 creasing the amount of base period wages required for each
65 class by one hundred fifty dollars, the weekly benefit rate for
66 each class by one dollar, and the maximum benefit by twenty-
67 six dollars. The maximum weekly benefit rate, when computed
68 by the commissioner, in accordance with the foregoing pro-
69 visions, shall be rounded to the next higher dollar amount, if
70 the computation exceeds forty-nine percent of a dollar amount.
71 Such rounding off to the next higher dollar amount shall re-
72 sult in one additional wage class, with commensurate base per-
73 iod wage requirement of one hundred fifty dollars over the
74 preceding wage class, and with a maximum benefit increase
75 over the preceding wage class of twenty-six dollars. Such an
76 additional wage class shall be published by the commissioner
77 with the table required to be published by the foregoing pro-
78 visions of this section.

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

82 Average weekly wage shall be computed by dividing the
83 number of employees in West Virginia earning wages in cov-
84 ered employment into the total wages paid to employees in
85 West Virginia in covered employment, and by further dividing
86 said result by fifty-two, and shall be determined from em-
87 ployer wage and contribution reports for the previous calen-
88 dar year which are furnished to the department on or before
89 June one following such calendar year. The average weekly
90 wage, as determined by the commissioner, shall be rounded to
91 the next higher dollar.

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

ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.

§21A-9-5a. Special administration fund.

1 There is hereby created in the state treasury a fund to be
2 known as the employment security special administration fund,
3 which shall consist of interest collected on delinquent pay-
4 ments pursuant to section seventeen, article five of this chap-
5 ter. The moneys deposited with this fund are hereby appro-
6 priated and made available to the order of the commissioner
7 for the purpose of (a) replacements in the employment security
8 administration fund as provided in section eight of this article,
9 (b) to meet special, extraordinary, and contingent expenses
10 not provided for in the employment security administration
11 fund, and (c) refunds pursuant to section nineteen of article
12 five, of interest erroneously collected. This fund shall be ad-
13 ministered and disbursed in the same manner and under the
14 same conditions as other special funds of the state treasury.
15 Balances to the credit of the special administration fund shall
16 not lapse at any time but shall be continuously available to the
17 commissioner for expenditures consistent with this chapter:
18 *Provided*, (1) That not more than one hundred thousand dol-
19 lars shall be expended from said fund in any fiscal year for
20 purposes (a) and (b); (2) that at the beginning of each calendar
21 quarter the commissioner shall estimate the amount that may be
22 required in that quarter for refunds of interest erroneously col-
23 lected; (3) that thereupon the excess, if any, over the amounts
24 provided to be expended under this section shall be paid into
25 the unemployment compensation trust fund.

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

W. Darrel Darby
Chairman Senate Committee

Harold C. Christian Jr.
Chairman House Committee

Originated in the House.

Takes effect July 1, 1973.

Howard W. Carson
Clerk of the Senate

U. Blankenship
Clerk of the House of Delegates

H. J. Bobbitt
President of the Senate

Lewis F. Thomas
Speaker House of Delegates

The within approved this the 24th
April day of _____, 1973.

Arch A. Shaeffer Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 4/24/73

Time 2:34 P.M.

RECEIVED

APR 24 1973

CLERK OF THE
STATE OF WEST VIRGINIA