WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973

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ENROLLED

HOUSE BILL No. 1732

(By Mr. [Signature])

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PASSED April 13, 1973

In Effect July 1, 1973

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


1 As used in this chapter, unless the context clearly requires
2 otherwise:
“Administration fund” means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

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

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

“Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.

“Base period employer” means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

“Base period wages” means wages paid to an individual during the base period by all his base period employers.

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

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

“Board” means board of review.

“Calendar quarter” means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty, or December thirty-one, or the equivalent thereof as the commissioner may by regulation prescribe.

“Commissioner” means the employment security commissioner.

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

“Employer” means:

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

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

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

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

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

(6) For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;
(7) Any employing unit which, after December thirty-one, one thousand nine hundred seventy-one, (i) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more, or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one individual (irrespective of whether the same individual was in employment in each such day);

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

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

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

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

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

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

(4) An individual's entire service, performed within or both within and without this state if: (a) The service is localized in this state; or (b) the service is not localized in
any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

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

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

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

(8) All service performed by an officer or member of the crew of an American vessel (as defined in section three hundred five of an act of Congress entitled “Social Security Act Amendment of 1946,” approved August tenth, one thousand nine hundred forty-six) on or in connection with
such vessel, provided that the operating office, from which
the operations of such vessel operating on navigable waters
within and without the United States is ordinarily and
regularly supervised, managed, directed and controlled, is
within this state;
(9) Service performed after December thirty-one, one
thousand nine hundred seventy-one, by an individual in the
employ of this state or any of its instrumentalities (or in the
employ of this state and one or more other states or their
instrumentalities), when such service is performed for a
hospital or institution of higher education located in this
state: Provided, That such service is excluded from "employ-
ment" as defined in the "Federal Unemployment Tax Act"
solely by reason of section 3306(c)(7) of that act, and
is not excluded from "employment" under subdivision eleven
of the exclusions from the term "employment";
(10) Service performed after December thirty-one, one
thousand nine hundred seventy-one, by an individual in the
employ of a religious, charitable, educational or other or-
ganization but only if the following conditions are met:
(a) The service is excluded from "employment" as defined
in the "Federal Unemployment Tax Act" solely by reason of
section 3306(c)(8) of that act; and
(b) The organization had four or more individuals in
employment for some portion of a day in each of twenty
different weeks, whether or not such weeks were consecutive,
within either the current or preceding calendar year, regardless
of whether they were employed at the same moment of
time;
(11) Service of an individual who is a citizen of the
United States, performed outside the United States (except
in Canada or the Virgin Islands), after December thirty-one,
one thousand nine hundred seventy-one, in the employ of an
American employer (other than service which is deemed
"employment" under the provisions of subdivisions four,
five or six of this definition of "employment" or the parallel
provisions of another state's law), if:
(a) The employer's principal place of business in the
United States is located in this state; or
(b) The employer has no place of business in the United
States, but (i) the employer is an individual who is a resident
of this state; or (ii) the employer is a corporation which is
organized under the laws of this state; or (iii) the employer is
a partnership or a trust and the number of the partners or
trustees who are residents of this state is greater than the
number who are residents of any one other state; or
(c) None of the criteria of subparagraphs (a) and (b)
of this subdivision (11) is met but the employer has elected
coverage in this state or, the employer having failed to elect
coverage in any state, the individual has filed a claim for
benefits, based on such service, under the law of this state.
An “American employer,” for purposes of this subdivision
(11), means a person who is (i) an individual who is a resident
of the United States; or (ii) a partnership if two thirds or
more of the partners are residents of the United States; or
(iii) a trust, if all of the trustees are residents of the United
States; or (iv) a corporation organized under the laws of the
United States or of any state.
Notwithstanding the foregoing definition of “employment,”
if the services performed during one half or more of any
pay period by an employee for the person employing him
constitute employment, all the services of such employee
for such period shall be deemed to be employment; but if
the services performed during more than one half of any
such pay period by an employee for the person employing
him do not constitute employment, then none of the services
of such employee for such period shall be deemed to be
employment.
The term “employment” shall not include:
(1) Services performed in the employ of this state or any
political subdivision thereof, or any instrumentality of this
state or its subdivisions, except as otherwise provided herein;
(2) Service performed directly in the employ of another
state, or its political subdivisions;
(3) Service performed in the employ of the United States or
an instrumentality of the United States exempt under the con-
stitution of the United States from the payments imposed by
this law, except that to the extent that the Congress of the
United States shall permit states to require any instrumentali-
ties of the United States to make payments into an unemploy-
ment fund under a state unemployment compensation law, all
of the provisions of this law shall be applicable to such instru-
mentalities, and to service performed for such instrumental-
ties, in the same manner, to the same extent and on the same
terms as to all other employers, employing units, individuals,
and services: Provided, That if this state shall not be certified
for any year by the secretary of labor under section 1603(c)
of the "Federal Internal Revenue Code," the payments re-
quired of such instrumentalities with respect to such year shall
be refunded by the commissioner from the fund in the same
manner and within the same period as is provided in section
nineteen, article five of this chapter, with respect to payments
erroneously collected;
(4) Service performed after June thirty, one thousand nine
hundred thirty-nine, with respect to which unemployment
compensation is payable under the "Railroad Unemployment
Insurance Act" (52 Stat. 1094), and service with respect to
which unemployment benefits are payable under an unemploy-
ment compensation system for maritime employees establish-
ed by an act of Congress. The commissioner may enter into
agreements with the proper agency established under such an
act of Congress to provide reciprocal treatment to individuals
who, after acquiring potential rights to unemployment compen-
sation under an act of Congress, or who have, after acquiring
potential rights to unemployment compensation under an act
of Congress, acquired rights to benefit under this chapter. Such
agreement shall become effective ten days after such publica-
tions as comply with the general rules of the department;
(5) Agricultural labor, and for the purposes of this chapter,
the term "agricultural labor" includes all services performed:
(a) On a farm, in the employ of any person, in connection
with cultivating the soil, or in connection with raising or har-
vesting any agricultural or horticultural commodity, including
the raising, shearing, feeding, caring for, training, and manage-
ment of livestock, bees, poultry, and fur-bearing animals
and wildlife;
(b) In the employ of the owner or tenant or other
operator of a farm, in connection with the operation, manage-
ment, conservation, improvement, or maintenance of such
farm and its tools and equipment, or in salvaging timber or
clearing land of brush and other debris left by a hurricane,
if the major part of such service is performed on a farm;

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

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of subparagraphs (i) and (ii) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

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

(6) Domestic service in a private home;

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

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

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

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

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

(12) Service performed, in the employ of a school, college or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school,
college or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (1) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college or university, and (11) such employment will not be covered by any program of unemployment insurance;

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

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

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

“Employment office” means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.

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

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

“Institution of higher education” means an educational institution which:
(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

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

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

(4) Is a public or other nonprofit institution.

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

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

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

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

"Total and partial unemployment" means:

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

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

"Wages" means all remuneration for personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash: Provided, That
(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand nine hundred thirty-eight has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That notwithstanding the foregoing provisions, on and after January one, one thousand nine hundred sixty-two, the term “wages” shall not include:

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a calendar year after one thousand nine hundred seventy-one to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision (1), the term employment shall include service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the “Federal Unemployment Tax Act” is required to be covered
486 under this chapter; and, except, that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, however, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand six hundred dollars or four thousand two hundred dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided further, That if the definition of the term “wages” as contained in section 3306(b) of the “Internal Revenue Code of 1954” as amended; (a) effective prior to January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective on or after January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand six hundred dollars, or effective on or after January one, one thousand nine hundred seventy-two, to include remuneration in excess of four thousand two hundred dollars, paid to an individual by an employer under the “Federal Unemployment Tax Act” during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this article or his predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the “Federal Unemployment Tax Act”; (2) The amount of any payment made after December thirty-one, one thousand nine hundred fifty-two (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual in its employ or any of his dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of
such individuals (or for a class or classes of such individuals and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

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

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

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

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

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

(8) Any payment (other than vacation or sick pay) made by an employer after December thirty-one, one thousand nine hundred fifty-two, to an individual in its employ after the
month in which he attains the age of sixty-five, if he did not
work for the employer in the period for which such payment
is made;
(9) Payments, not required under any contract of hire, made
to an individual with respect to his period of training or ser-
vice in the armed forces of the United States by an employer
by which such individual was formerly employed;
(10) Vacation pay received by an individual after becoming
separated from employment, but earned prior to becoming
separated from employment.
Gratuities customarily received by an individual in the
course of his employment from persons other than his employ-
ing unit shall be treated as wages paid by his employing unit,
if accounted for and reported to such employing unit.
The reasonable cash value of remuneration in any medium
other than cash shall be estimated and determined in accor-
dance with rules prescribed by the commissioner.
“Week” means a calendar week, ending at midnight Satur-
day, or the equivalent thereof, as determined in accordance
with the regulations prescribed by the commissioner.
“Weekly benefit rate” means the maximum amount of bene-
fit an eligible individual will receive for one week of total
unemployment.
“Year” means a calendar year or the equivalent thereof, as
determined by the commissioner.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-4. Individual not denied benefits by receiving vocational
training.
Notwithstanding any other provision in this article, no
individual shall be denied unemployment compensation bene-
fits because of his receiving training as part of an area voca-
tional program, or similar program, which has as its object the
training of unemployed individuals in new occupational skills:
Provided, That such individual's training and training institu-
tion are approved by the commissioner, and such individual
produces evidence of his continued attendance and satisfactory
progress at such training institution when requested to do so
by the commissioner.
§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

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

**TABLE A**

<table>
<thead>
<tr>
<th>Wage Class (Column A)</th>
<th>Wages in Base Period (Column B)</th>
<th>Weekly Benefit Rate (Column C)</th>
<th>Maximum Benefit In Benefit Year for Total and/or Partial Unemployment (Column D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $700.00</td>
<td>$700.00— 799.99</td>
<td>Ineligible</td>
<td>$12.00 $312.00</td>
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45 Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred sixty-seven, the maximum weekly benefit rate shall be forty percent of the average weekly wage in West Virginia.

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

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

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

49 The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the above formula, shall
establish as many additional wage classes as are required, increasing the amount of base period wages required for each class by one hundred fifty dollars, the weekly benefit rate for each class by one dollar, and the maximum benefit by twenty-six dollars. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next higher dollar amount, if the computation exceeds forty-nine percent of a dollar amount. Such rounding off to the next higher dollar amount shall result in one additional wage class, with commensurate base period wage requirement of one hundred fifty dollars over the preceding wage class, and with a maximum benefit increase over the preceding wage class of twenty-six dollars. Such an additional wage class shall be published by the commissioner with the table required to be published by the foregoing provisions of this section.

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

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before June one following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.

The computation and determination of rates as aforesaid shall be completed annually before July one, and any such new wage class, with its corresponding wages in base period, weekly benefit rate, and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on a July one, shall apply only to a new claim established by a claimant on and after said July one, and shall not apply to continued claims of a claimant based on his new claim established before said July one.
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 known as the employment security special administration fund, which shall consist of interest collected on delinquent payments pursuant to section seventeen, article five of this chapter. The moneys deposited with this fund are hereby appropriated and made available to the order of the commissioner for the purpose of (a) replacements in the employment security administration fund as provided in section eight of this article, (b) to meet special, extraordinary, and contingent expenses not provided for in the employment security administration fund, and (c) refunds pursuant to section nineteen of article five, of interest erroneously collected. This fund shall be administered and disbursed in the same manner and under the same conditions as other special funds of the state treasury.

2 Balances to the credit of the special administration fund shall not lapse at any time but shall be continuously available to the commissioner for expenditures consistent with this chapter:

Provided, (1) That not more than one hundred thousand dollars shall be expended from said fund in any fiscal year for purposes (a) and (b); (2) that at the beginning of each calendar quarter the commissioner shall estimate the amount that may be required in that quarter for refunds of interest erroneously collected; (3) that thereupon the excess, if any, over the amounts provided to be expended under this section shall be paid into the unemployment compensation trust fund.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

N. Darrel Darby  
Chairman Senate Committee

Chairman House Committee

Originated in the House.

Howard W. Carson  
Clerk of the Senate

C. R. Blankenship  
Clerk of the House of Delegates

W. J. Boatner  
President of the Senate

Lawrence L. Barnes  
Speaker House of Delegates

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

A. H. Sasser  
Governor
PRESENTED TO THE
GOVERNOR

Date 4/24/73
Time 2:34 p.m.

RECEIVED

[Signature]
STATE OF WEST VIRGINIA