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STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976



ENROLLED

Committee Substitute for

HOUSE BILL No. 1422

(By Mr. *Holmes & Mr. Tompkins*)



PASSED 1976

In Effect Passage



FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/29/76

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1422

(By MR. HOLMES and MR. TOMPKINS)

(Originating in the House Committee on the Judiciary)

[Passed March 13, 1976; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article one; 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, relating to unemployment compensation; definitions; disqualification for benefits; and total and partial unemployment.

Be it enacted by the Legislature of West Virginia:

That section three, article one; sections ~~one~~, 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 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.

Handwritten signature and initials, possibly "C. B. Tompkins" and "C. B. Holmes", with a large flourish extending upwards.

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 last
10 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 first
13 day of the individual's benefit year.

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

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

34 "Board" means board of review.

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

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

41 “Computation date” means June thirty of the year im-
42 mediately preceding the January one on which an employer’s
43 contribution rate becomes effective.

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

53 “Employer” means:

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

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

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

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

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

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

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

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

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

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

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

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

114 Unemployment Tax Act," including service in interstate com-
115 merce;

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

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

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

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

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

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

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

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

189 (a) The service is excluded from "employment" as de-

190 fined in the “Federal Unemployment Tax Act” solely by
191 reason of section 3306(c) (8) of that act; and

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

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

205 (a) The employer’s principal place of business in the
206 United States is located in this state; or

207 (b) The employer has no place of business in the United
208 States, but (i) the employer is an individual who is a resident
209 of this state; or (ii) the employer is a corporation which is
210 organized under the laws of this state; or (iii) the employer is
211 a partnership or a trust and the number of the partners or
212 trustees who are residents of this state is greater than the
213 number who are residents of any one other state; or

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

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

226 Notwithstanding the foregoing definition of “employment,”

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

235 The term "employment" shall not include:

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

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

241 (3) Service performed in the employ of the United
242 States or an instrumentality of the United States exempt
243 under the constitution of the United States from the pay-
244 ments imposed by this law, except that to the extent that
245 the Congress of the United States shall permit states to
246 require any instrumentalities of the United States to make
247 payments into an unemployment fund under a state unem-
248 ployment compensation law, all of the provisions of this
249 law shall be applicable to such instrumentalities, and to
250 service performed for such instrumentalities, in the same
251 manner, to the same extent and on the same terms as to all
252 other employers, employing units, individuals, and services:
253 *Provided*, That if this state shall not be certified for any
254 year by the secretary of labor under section 1603(c) of the
255 "Federal Internal Revenue Code," the payments required of
256 such instrumentalities with respect to such year shall be re-
257 funded by the commissioner from the fund in the same
258 manner and within the same period as is provided in section
259 nineteen, article five of this chapter, with respect to pay-
260 ments erroneously collected;

261 (4) Service performed after June thirty, one thousand
262 nine hundred thirty-nine, with respect to which unem-
263 ployment compensation is payable under the "Railroad Un-
264 employment Insurance Act" and service with respect to

265 which unemployment benefits are payable under an un-
266 employment compensation system for maritime employees
267 established by an act of Congress. The commissioner may
268 enter into agreements with the proper agency established
269 under such an act of Congress to provide reciprocal
270 treatment to individuals who, after acquiring potential
271 rights to unemployment compensation under an act of Con-
272 gress, or who have, after acquiring potential rights to un-
273 employment compensation under an act of Congress, acquired
274 rights to benefit under this chapter. Such agreement shall
275 become effective ten days after such publications as comply
276 with the general rules of the department;

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

279 (a) On a farm, in the employ of any person, in connec-
280 tion with cultivating the soil, or in connection with raising
281 or harvesting any agricultural or horticultural commodity,
282 including the raising, shearing, feeding, caring for, training,
283 and management of livestock, bees, poultry, and fur-bearing
284 animals and wildlife;

285 (b) In the employ of the owner or tenant or other operator
286 of a farm, in connection with the operation, management,
287 conservation, improvement, or maintenance of such farm and
288 its tools and equipment, or in salvaging timber or clearing land
289 of brush and other debris left by a hurricane, if the major
290 part of such service is performed on a farm;

291 (c) In connection with the production or harvesting
292 of any commodity defined as an agricultural commodity
293 in section 15(g) of the "Agricultural Marketing Act," as
294 amended or in connection with the ginning of cotton, or in
295 connection with the operation or maintenance of ditches,
296 canals, reservoirs, or waterways, not owned or operated for
297 profit, used exclusively for supplying and storing water for
298 farming purposes;

299 (d) (i) In the employ of the operator of a farm in
300 handling, planting, drying, packing, packaging, processing,
301 freezing, grading, storing or delivering to storage or to
302 market or to a carrier for transportation to market, in its

303 unmanufactured state, any agricultural or horticultural com-
304 modity; but only if such operator produced more than one
305 half of the commodity with respect to which such service is
306 performed; or (ii) in the employ of a group of operators of
307 farms (or a cooperative organization of which such operators
308 are members) in the performance of service described in
309 subparagraph (i), but only if such operators produced more
310 than one half of the commodity with respect to which such
311 service is performed; but the provisions of subparagraphs
312 (i) and (ii) shall not be deemed to be applicable with
313 respect to service performed in connection with commercial
314 canning or commercial freezing or in connection with any
315 agricultural or horticultural commodity after its delivery to
316 a terminal market for distribution for consumption;

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

328 (6) Domestic service in a private home;

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

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

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

339 (10) Services performed by agents of mutual fund broker-
340 dealers or insurance companies, exclusive of industrial in-

341 surance agents, or by agents of investment companies, who
342 are compensated wholly on a commission basis;

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

367 (12) Service performed, in the employ of a school, col-
368 lege or university, if such service is performed (i) by a
369 student who is enrolled and is regularly attending classes
370 at such school, college or university, or (ii) by the spouse
371 of such a student, if such spouse is advised, at the time
372 such spouse commences to perform such service, that (I) the
373 employment of such spouse to perform such service is pro-
374 vided under a program to provide financial assistance to such
375 student by such school, college or university, and (II) such
376 employment will not be covered by any program of unemploy-
377 ment insurance;

378 (13) Service performed by an individual under the age
379 of twenty-two who is enrolled at a nonprofit or public

380 educational institution which normally maintains a regular
381 faculty and curriculum and normally has a regularly or-
382 ganized body of students in attendance at the place where
383 its educational activities are carried on as a student in a
384 full-time program, taken for credit at such institution, which
385 combines academic instruction with work experience, if such
386 service is an integral part of such program, and such institution
387 has so certified to the employer, except that this subdivision
388 shall not apply to service performed in a program established
389 for or on behalf of an employer or group of employers;

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

393 Notwithstanding the foregoing exclusions from the defi-
394 nition of "employment," services, except agricultural la-
395 bor and domestic service in a private home, shall be
396 deemed to be in employment if with respect to such services a
397 tax is required to be paid under any federal law imposing
398 a tax against which credit may be taken for contributions
399 required to be paid into a state unemployment compensation
400 fund.

401 "Employment office" means a free employment office or
402 branch thereof, operated by this state, or any free public
403 employment office maintained as a part of a state controlled
404 system of public employment offices in any other state.

405 "Fund" means the unemployment compensation fund estab-
406 lished by this chapter.

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

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

412 (1) Admits as regular students only individuals having
413 a certificate of graduation from a high school, or the recog-
414 nized equivalent of such a certificate;

415 (2) Is legally authorized in this state to provide a program

416 of education beyond high school;

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

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

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

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

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

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

436 Total and partial "unemployment" means:

437 (1) An individual shall be deemed totally unemployed in
438 any week in which: Such individual is separated from em-
439 ployment for an employing unit and during which he performs
440 no services and with respect to which no wages are payable
441 to him.

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

449 "Wages" means all remuneration for personal service,
450 including commissions and bonuses and the cash value of all

451 remuneration in any medium other than cash: *Provided*, That
452 the term "wages" shall not include:

453 (1) That part of the remuneration which, after remunera-
454 tion equal to three thousand dollars has been paid to an
455 individual by an employer with respect to employment during
456 any calendar year, is paid after December thirty-one, one
457 thousand nine hundred thirty-nine, and prior to January
458 one, one thousand nine hundred forty-seven, to such in-
459 dividual by such employer with respect to employment during
460 such calendar year; or that part of the remuneration which,
461 after remuneration equal to three thousand dollars with
462 respect to employment after one thousand nine hundred
463 thirty-eight has been paid to an individual by an employer
464 during any calendar year after one thousand nine hundred
465 forty-six, is paid to such individual by such employer
466 during such calendar year, except that for the purposes of
467 sections one, ten, eleven and thirteen, article six of this
468 chapter, all remuneration earned by an individual in em-
469 ployment shall be credited to the individual and included
470 in his computation of base period wages: *Provided*, That
471 notwithstanding the foregoing provisions, on and after Jan-
472 uary one, one thousand nine hundred sixty-two, the term
473 "wages" shall not include:

474 That part of the remuneration which, after remuneration
475 equal to three thousand six hundred dollars has been paid
476 to an individual by an employer with respect to employment
477 during any calendar year, is paid during any calendar year
478 after one thousand nine hundred sixty-one; and shall not
479 include that part of remuneration which, after remuneration
480 equal to four thousand two hundred dollars is paid during a
481 calendar year after one thousand nine hundred seventy-one to
482 an individual by an employer or his predecessor with respect
483 to employment during any calendar year, is paid to such
484 individual by such employer during such calendar year unless
485 that part of the remuneration is subject to a tax under a
486 federal law imposing a tax against which credit may be
487 taken for contributions required to be paid into a state
488 unemployment fund. For the purposes of this subdivision
489 (1), the term employment shall include service constituting

490 employment under any unemployment compensation law of
491 another state; or which as a condition for full tax credit
492 against the tax imposed by the "Federal Unemployment Tax
493 Act" is required to be covered under this chapter; and,
494 except, that for the purposes of sections one, ten, eleven
495 and thirteen, article six of this chapter, all remuneration
496 earned by an individual in employment shall be credited to
497 the individual and included in his computation of base
498 period wages: *Provided, however,* That the remuneration paid
499 to an individual by an employer with respect to employment
500 in another state or other states upon which contributions
501 were required of and paid by such employer under an
502 unemployment compensation law of such other state or states
503 shall be included as a part of the remuneration equal to
504 the amounts of three thousand six hundred dollars or four
505 thousand two hundred dollars herein referred to. In ap-
506 plying such limitation on the amount of remuneration that
507 is taxable an employer shall be accorded the benefit of all
508 or any portion of such amount which may have been paid by
509 its predecessor or predecessors: *Provided further,* That if
510 the definition of the term "wages" as contained in section
511 3306(b) of the "Internal Revenue Code of 1954" as amended;
512 (a) effective prior to January one, one thousand nine
513 hundred sixty-two, to include remuneration in excess of
514 three thousand dollars, or (b) effective on or after Jan-
515 uary one, one thousand nine hundred sixty-two, to include
516 remuneration in excess of three thousand six hundred dol-
517 lars, or effective on or after January one, one thousand
518 nine hundred seventy-two, to include remuneration in excess
519 of four thousand two hundred dollars, paid to an individual
520 by an employer under the "Federal Unemployment Tax Act"
521 during any calendar year, wages for the purposes of this
522 definition shall include remuneration paid in a calendar
523 year to an individual by an employer subject to this article
524 or his predecessor with respect to employment during any
525 calendar year up to an amount equal to the amount of
526 remuneration taxable under the "Federal Unemployment Tax
527 Act";

528 (2) The amount of any payment made after December
529 thirty-one, one thousand nine hundred fifty-two (including

530 any amount paid by an employer for insurance or annuities,
531 or into a fund, to provide for any such payment), to, or on
532 behalf of, an individual in its employ or any of his de-
533 pendents, under a plan or system established by an em-
534 ployer which makes provision for individuals in its employ
535 generally (or for such individuals and their dependents), or
536 for a class or classes of such individuals (or for a class
537 or classes of such individuals and their dependents), on
538 account of (A) retirement, or (B) sickness or accident dis-
539 ability, or (C) medical or hospitalization expenses in con-
540 nection with sickness or accident disability, or (D) death;

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

546 (4) Any payment made after December thirty-one, one
547 thousand nine hundred fifty-two, by an employer on account
548 of sickness or accident disability, or medical or hospitaliza-
549 tion expenses in connection with sickness or accident dis-
550 ability, to, or on behalf of, an individual in its employ
551 after the expiration of six calendar months following the last
552 calendar month in which such individual worked for such
553 employer;

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

566 (6) The payment by an employer (without deduction from
567 the remuneration of the individual in its employ) of the tax

568 imposed upon an individual in its employ under section 3101
569 of the "Federal Internal Revenue Code";

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

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

580 (9) Payments, not required under any contract of hire,
581 made to an individual with respect to his period of training
582 or service in the armed forces of the United States by an
583 employer by which such individual was formerly employed;

584 (10) Vacation pay, severance pay, or savings plans received
585 by an individual after becoming totally or partially unemployed
586 but earned prior to becoming totally or partially unemployed:
587 *Provided, however,* That the term totally or partially unem-
588 ployed shall not be interpreted to include employees who are on
589 vacation by reason of their request, or the request of their duly
590 authorized agent for a vacation at a specific time, which re-
591 quest is acceded to by their employer;

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

596 The reasonable cash value of remuneration in any medium
597 other than cash shall be estimated and determined in ac-
598 cordance with rules prescribed by the commissioner.

599 "Week" means a calendar week, ending at midnight Sat-
600 urday, or the equivalent thereof, as determined in accordance
601 with the regulations prescribed by the commissioner.

602 "Weekly benefit rate" means the maximum amount of
603 benefit an eligible individual will receive for one week of total
604 unemployment.

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

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

1 Upon the determination of the facts by the commissioner,
2 an individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent work
4 voluntarily without good cause involving fault on the part of
5 the employer and the six weeks immediately following such
6 week. Such disqualification shall carry a reduction in the maxi-
7 mum benefit amount equal to six times the individual's week-
8 ly benefit rate. However, if the claimant returns to work in
9 covered employment during his benefit year, the maximum
10 benefit amount shall be increased by the amount of decrease
11 imposed under the disqualification. For the purpose of this
12 subdivision, the term "work" means employment with the last
13 employing unit with whom such individual was employed as
14 much as thirty days, whether or not such days are consecutive.

15 For purposes of this subdivision (1), an individual shall not
16 be deemed to have left his most recent work voluntarily with-
17 out good cause involving fault on the part of the employer, if
18 such individual leaves his work with an employer with whom
19 he has been employed at least thirty working days or more for
20 the purpose of returning to, and if he in fact, within a fourteen-
21 day calendar period, does return to, employment with the last
22 preceding employer with whom he was previously employed
23 within the past year prior to his return to work day, and which
24 last preceding employer, after having previously employed such
25 individual for thirty working days or more, laid off such indi-
26 vidual because of lack of work, which layoff occasioned the
27 payment of benefits under this chapter or could have occa-
28 sioned the payment of benefits under this chapter had such
29 individual applied for such benefits. It is the intent of this
30 paragraph to cause no disqualification for benefits for such an
31 individual who complies with the foregoing set of requirements
32 and conditions. Benefits paid to such individual under the
33 provisions of this chapter shall, notwithstanding the provisions
34 of subsection (2), section seven, article five of this chapter,
35 and of subdivision (12) of this section three, be charged to the

36 account of such last preceding employer with whom such in-
37 dividual was previously employed for thirty working days.

38 (2) For the week in which he was discharged from his most
39 recent work for misconduct and the six weeks immediately
40 following such week; or for the week in which he was dis-
41 charged from his last thirty-day employing unit for misconduct
42 and the six weeks immediately following such week. Such dis-
43 qualification shall carry a reduction in the maximum benefit
44 amount equal to six times the individual's weekly benefit. How-
45 ever, if the claimant returns to work in covered employment
46 for thirty days during his benefit year, whether or not such
47 days are consecutive, the maximum benefit amount shall be
48 increased by the amount of the decrease imposed under the
49 disqualification; except that:

50 If he were discharged from his most recent work for one
51 of the following reasons; or if he were discharged from his
52 last thirty-day employing unit for one of the following reasons:
53 Misconduct consisting of willful destruction of his employer's
54 property, assault upon the person of his employer or any em-
55 ployee of his employer, if such assault is committed at such
56 individual's place of employment or in the course of employ-
57 ment; reporting to work in an intoxicated condition, or being
58 intoxicated while at work; arson, theft, larceny, fraud or em-
59 bezzlement in connection with his work; or any other gross
60 misconduct; he shall be and remain disqualified for benefits
61 until he has thereafter worked for at least thirty days in covered
62 employment.

63 (3) For the week in which he failed without good cause to
64 apply for available suitable work, accept suitable work when
65 offered, or return to his customary self-employment when di-
66 rected to do so by the commissioner, and for the four weeks
67 which immediately follow for such an additional period as any
68 offer of suitable work shall continue open for his acceptance.

69 (4) For a week in which his total or partial unemployment
70 is due to a stoppage of work which exists because of a labor
71 dispute at the factory, establishment, or other premises at
72 which he was last employed, unless the commissioner is satis-
73 fied that he was not ~~(one)~~ participating, financing, or directly

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74 interested in such dispute, and ²(~~two~~) did not belong to a grade
75 or class of workers who were participating, financing, or di- *ok*
76 rectly interested in the labor dispute which resulted in the *B. M. H.*
77 stoppage of work. No disqualification under this subdivision
78 shall be imposed if the employees are required to accept wages,
79 hours or conditions of employment substantially less favorable
80 than those prevailing for similar work in the locality, or if
81 employees are denied the right of collective bargaining under
82 generally prevailing conditions, or if an employer shuts down
83 his plant or operation or dismisses his employees in order to
84 force wage reduction, changes in hours or working conditions.

85 For the purpose of this subdivision, if any stoppage of work
86 continues longer than four weeks after the termination of the
87 labor dispute which caused stoppage of work, there shall be a
88 rebuttable presumption that that part of the stoppage of work
89 which exists after said period of four weeks after the termi-
90 nation of said labor dispute, did not exist because of said labor
91 dispute; and in such event the burden shall be upon the em-
92 ployer or other interested party to show otherwise.

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

95 (a) Wages in lieu of notice;

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

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

101 (6) For the week in which an individual has volun-
102 tarily quit employment to marry or to perform any marital,
103 parental or family duty, or to attend to his or her per-
104 sonal business or affairs and until the individual returns
105 to covered employment and has been employed in covered
106 employment at least thirty working days.

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

108 (a) Voluntarily quit her employment because of preg-
109 nancy, whether or not upon a physician's advice, and until
110 she returns to covered employment and has been employed

111 therein at least thirty working days; except that such dis-
112 qualification shall last no longer than six weeks subsequent
113 to the birth of her child, provided such individual furnishes
114 to the department a certificate from a physician that she is
115 physically able to work;

116 (b) Was discharged or laid off from her employment
117 because of pregnancy and until she returns to covered
118 employment and has been employed therein at least thirty
119 working days; except that such disqualification shall last
120 no longer than six weeks prior to and six weeks subsequent
121 to the date of birth of the child, provided such individual
122 furnishes to the department certificates from a physician that
123 she is physically able to work.

124 (8) For each week in which an individual is unem-
125 ployed because, having voluntarily left employment to
126 attend a school, college, university, or other educational
127 institution, he is attending such school, college, university,
128 or other educational institution, or is awaiting entrance
129 thereto or is awaiting the starting of a new term or ses-
130 sion thereof, and until the individual returns to covered em-
131 ployment.

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

136 (10) For each week in which he is receiving or has received
137 remuneration in the form of an annuity, pension, or other re-
138 tirement pay, from an employer or from any trust or fund
139 contributed to by an employer. But if such remuneration for
140 any week is less than the benefits which would otherwise be
141 due him for such week under this chapter, he shall be entitled
142 to receive for such week, if otherwise eligible, benefits reduced
143 by the amount of such remuneration: *Provided*, That if such
144 amount of benefits is not a multiple of one dollar, it shall be
145 computed to the next higher multiple of one dollar: *Provided*,
146 *however*, That there shall be no disqualification if in the indi-
147 vidual's base period there are no wages which were paid by the
148 employer paying such remuneration, or by a fund into which

149 the employer has paid during said base period. Claimant may
150 be required to certify as to whether or not he is receiving or
151 has received remuneration in the form of an annuity, pension,
152 or other retirement pay from an employer or from a trust
153 fund contributed to by an employer.

154 (11) For each week with respect to which he knowingly
155 made a false statement or representation knowing it to be
156 false or knowingly failed to disclose a material fact in order
157 to obtain or increase a benefit under this article. For each
158 week of disqualification he shall be disqualified an additional
159 five weeks and his maximum benefit amount shall be re-
160 duced by an amount equal to five times his weekly benefit rate.
161 Such five weeks' disqualification periods are to run consecutive-
162 ly beginning with the first week in which it is determined a
163 fraudulent claim was filed: *Provided further*, That an indi-
164 vidual shall not be disqualified under this subdivision for a
165 period of more than fifty-two consecutive weeks: *And pro-*
166 *vided further*, That disqualification under this subdivision shall
167 not preclude prosecution under section seven, article ten of
168 this chapter.

169 (12) For the purposes of this section an employer's ac-
170 count shall not be charged under any of the following condi-
171 tions: When benefits are paid for unemployment immediately
172 after the expiration of a period of disqualification for (a) leav-
173 ing work voluntarily without good cause involving fault on the
174 part of the employer, (b) discharge for any of the causes set
175 forth in subdivision (2) of this section, (c) failing without good
176 cause to apply for available suitable work, accept suitable
177 work, when offered, or to return to his customary self-em-
178 ployment when directed to do so by the commissioner.

**§21A-6-10. Benefit rate—Total unemployment; annual computa-
tion 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
4 paragraph, on the line on which in Column (A) there is
5 indicated the employee's wage class, except as otherwise
6 provided under the term "total and partial unemployment" in

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

TABLE A

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)
18		Under \$ 700.00		Ineligible	-----
19	1	700.00	799.99	\$ 12.00	\$312.00
20	2	800.00	899.99	13.00	338.00
21	3	900.00	999.99	14.00	364.00
22	4	1,000.00	1,149.99	15.00	390.00
23	5	1,150.00	1,299.99	16.00	416.00
24	6	1,300.00	1,449.99	17.00	442.00
25	7	1,450.00	1,599.99	18.00	468.00
26	8	1,600.00	1,749.99	19.00	494.00
27	9	1,750.00	1,899.99	20.00	520.00
28	10	1,900.00	2,049.99	21.00	546.00
29	11	2,050.00	2,199.99	22.00	572.00
30	12	2,200.00	2,349.99	23.00	598.00
31	13	2,350.00	2,499.99	24.00	624.00
32	14	2,500.00	2,599.99	25.00	650.00
33	15	2,600.00	2,699.99	26.00	676.00
34	16	2,700.00	2,799.99	27.00	702.00
35	17	2,800.00	2,899.99	28.00	728.00
36	18	2,900.00	2,999.99	29.00	754.00
37	19	3,000.00	3,099.99	30.00	780.00
38	20	3,100.00	3,199.99	31.00	806.00

	(Column A)	(Column B)	(Column C)	(Column D)
39 21	3,200.00	3,349.99	32.00	832.00
40 22	3,350.00	3,499.99	33.00	858.00
41 23	3,500.00	3,649.99	34.00	884.00
42 24	3,650.00	3,799.99	35.00	910.00

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

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

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

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

59 The commissioner, after he has determined the maximum
 60 weekly benefit rate upon the basis of the above formula, shall
 61 establish as many additional wage classes as are required,
 62 increasing the amount of base period wages required for each
 63 class by one hundred fifty dollars, the weekly benefit rate
 64 for each class by one dollar, and the maximum benefit by
 65 twenty-six dollars. The maximum weekly benefit rate, when
 66 computed by the commissioner, in accordance with the forego-
 67 ing provisions, shall be rounded to the next higher dollar
 68 amount, if the computation exceeds forty-nine percent of a dol-
 69 lar amount. Such rounding off to the next higher dollar amount
 70 shall result in one additional wage class, with commensurate
 71 base period wage requirement of one hundred fifty dollars over
 72 the preceding wage class, and with a maximum benefit increase
 73 over the preceding wage class of twenty-six dollars. Such an
 74 additional wage class shall be published by the commissioner

75 with the table required to be published by the foregoing pro-
76 visions of this section.

77 Notwithstanding any of the foregoing provisions of this sec-
78 tion, including Table A, on and after July one, one thousand
79 nine hundred seventy-four:

80 (1) The maximum weekly benefit rate shall be sixty-six
81 and two-thirds percent of the average weekly wage in West
82 Virginia.

83 (2) The weekly benefit rate [Column (C) of said Table A]
84 in each and every wage class, one through twenty-four, both
85 inclusive [Column (A) of said Table A], shall be increased
86 two dollars, and the maximum benefit in benefit year for total
87 and/or partial unemployment [Column (D) of said Table A] in
88 each and every wage class [Column (A) of said Table A], shall
89 be increased fifty-two dollars.

90 (3) The commissioner, after he has determined the maxi-
91 mum weekly benefit rate upon the basis of the formula set
92 forth in subdivision (1) above, shall establish as many ad-
93 ditional wage classes as are required, increasing the amount
94 of the base period wages required for each wage class by
95 one hundred fifty dollars, establishing the weekly benefit
96 rate for each wage class by rounded dollar amount to be
97 fifty percent of one fifty-second of the median dollar amount
98 of wages in base period for such wage class, and establishing
99 the maximum benefit for each wage class as an amount equal
100 to twenty-six times the weekly benefit rate. The maximum
101 weekly benefit rate, when computed by the commissioner, in
102 accordance with the foregoing provisions, shall be rounded
103 to the next higher dollar amount, if the computation exceeds
104 forty-nine percent of a dollar amount. Such rounding off
105 to the next higher dollar amount shall result in one additional
106 wage class, with commensurate base period wage requirement
107 of one hundred fifty dollars over the preceding wage class,
108 and with a maximum benefit increase over the preceding
109 wage class of twenty-six dollars. Such an additional wage
110 class shall be published by the foregoing provisions of this
111 section.

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112 After he has established such additional wage classes, the

113 commissioner shall prepare and publish a table setting forth
114 such information.

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

125 The computation and determination of rates as aforesaid
126 shall be completed annually before July one, and any such
127 new wage class, with its corresponding wages in base period,
128 weekly benefit rate, and maximum benefit in a benefit year
129 established by the commissioner in the foregoing manner ef-
130 fective on a July one, shall apply only to a new claim estab-
131 lished by a claimant on and after said July one, and shall not
132 apply to continued claims of a claimant based on his new claim
133 established before said July one.

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

James L. Davis
Chairman Senate Committee

Howard C. Christman
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Callahan, Jr.
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

H. B. Nathan
President of the Senate

Lewis F. McManis
Speaker House of Delegates

The within *approved* this the *26th*
March, 1976.
day of _____, 1976.

Arthur A. Braune Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/22/76

Time 11:40 a.m.