WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

ENROLLED
Committee Substitute for

HOUSE BILL No. 1472

(By Mr. Holmes and Mr. Tompkins)

PASSED 1976

In Effect Passage

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/9/76
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 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.


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

3 “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 immedi-
extly preceding the January one on which an employer’s
contribution rate becomes effective.

“Employing unit” means an individual, or type of or-
ganization, including any partnership, association, trust, estate,
joint-stock company, insurance company, corporation (domes-
tic 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 irre-
spective 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 “employment” as defined in the “Federal Unemployment Tax Act” solely by reason of section 3306(c) (7) of that act, and is not excluded from “employment” under subdivision eleven of the exclusions from the term “employment”;

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

(a) The service is excluded from “employment” as de-
fined in the "Federal Unemployment Tax Act" solely by
reason of section 3306(c) (8) of that act; and

(b) The organization had four or more individuals in em-
ployment 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 constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals, and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603(c) of the “Federal Internal Revenue Code,” the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;

(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the “Railroad Unemployment Insurance Act” and service with respect to
which unemployment benefits are payable under an un-
employment compensation system for maritime employees
established by an act of Congress. The commissioner may
enter into agreements with the proper agency established
under such an act of Congress to provide reciprocal
treatment to individuals who, after acquiring potential
rights to unemployment compensation under an act of Con-
gress, or who have, after acquiring potential rights to un-
employment compensation under an act of Congress, acquired
rights to benefit under this chapter. Such agreement shall
become effective ten days after such publications as comply
with the general rules of the department;

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

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

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

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

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

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

(13) Service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public
An 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
the term "wages" shall not include:

(1) That part of the remuneration which, after remunera-
tion 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 indi-
vidual 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 em-
ployment shall be credited to the individual and included
in his computation of base period wages: Provided, That
notwithstanding the foregoing provisions, on and after Jan-
uary 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 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 ap-
plying 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 Jan-
uary one, one thousand nine hundred sixty-two, to include
remuneration in excess of three thousand six hundred dol-
ars, 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 de-
pendents, under a plan or system established by an em-
ployer which makes provision for individuals in its employ
generally (or for such individuals and their dependents), or
for a class or classes of such individuals (or for a class
or classes of such individuals and their dependents), on
account of (A) retirement, or (B) sickness or accident dis-
ability, or (C) medical or hospitalization expenses in con-
nection with sickness or accident disability, or (D) death;

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

(4) Any payment made after December thirty-one, one
thousand nine hundred fifty-two, by an employer on account
of sickness or accident disability, or medical or hospitaliza-
tion expenses in connection with sickness or accident dis-
ability, 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 service in the armed forces of the United States by an
employer by which such individual was formerly employed;

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

Gratuities customarily received by an individual in the
course of his employment from persons other than his em-
ploying 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 ac-
cordance with rules prescribed by the commissioner.

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

“Weekly benefit rate” means the maximum amount of
benefit an eligible individual will receive for one week of total
unemployment.
“Year” means a calendar year or the equivalent thereof, as determined by the commissioner.

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

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

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

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

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

If he were discharged from his most recent work for one of the following reasons; or if he were discharged from his last thirty-day employing unit for one of the following reasons:

Misconduct consisting of willful destruction of his employer's property, assault upon the person of his employer or any employee of his employer, if such assault is committed at such individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; arson, theft, larceny, fraud or embezzlement in connection with his work; or any other gross misconduct; he shall be and remain disqualified for benefits until he has thereafter worked for at least thirty days in covered employment.

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

(4) For a week in which his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he was last employed, unless the commissioner is satisfied that he was not participating, financing, or directly

74 interested in such dispute, and ( ) did not belong to a grade or class of workers who were participating, financing, or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subdivision shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his plant or operation or dismisses his employees in order to force wage reduction, changes in hours or working conditions. For the purpose of this subdivision, if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there shall be a rebuttable presumption that that part of the stoppage of work which exists after said period of four weeks after the termination of said labor dispute, did not exist because of said labor dispute; and in such event the burden shall be upon the employer or other interested party to show otherwise.

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

(a) Wages in lieu of notice;

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

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

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

(7) For the week in which an individual:

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

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

(8) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university, or other educational institution, he is attending such school, college, university, or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

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

(10) For each week in which he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay, from an employer or from any trust or fund contributed to by an employer. But if such remuneration for any week is less than the benefits which would otherwise be due him for such week under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: Provided, however, That there shall be no disqualification if in the individual's base period there are no wages which were paid by the employer paying such remuneration, or by a fund into which
the employer has paid during said base period. Claimant may be required to certify as to whether or not he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay from an employer or from a trust fund contributed to by an employer.

(11) For each week with respect to which he knowingly made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact in order to obtain or increase a benefit under this article. For each week of disqualification he shall be disqualified an additional five weeks and his maximum benefit amount shall be reduced by an amount equal to five times his weekly benefit rate. Such five weeks’ disqualification periods are to run consecutively beginning with the first week in which it is determined a fraudulent claim was filed: Provided further, That an individual shall not be disqualified under this subdivision for a period of more than fifty-two consecutive weeks: And provided further, That disqualification under this subdivision shall not preclude prosecution under section seven, article ten of this chapter.

(12) For the purposes of this section an employer’s account shall not be charged under any of the following conditions: When benefits are paid for unemployment immediately after the expiration of a period of disqualification for (a) leaving work voluntarily without good cause involving fault on the part of the employer, (b) discharge for any of the causes set forth in subdivision (2) of this section, (c) failing without good cause to apply for available suitable work, accept suitable work, when offered, or to return to his customary self-employment when directed to do so by the commissioner.

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

Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in Table A in this paragraph, on the line on which in Column (A) there is indicated the employee’s wage class, except as otherwise provided under the term “total and partial unemployment” in
section three, article one of this chapter. The employee’s wage
class shall be determined by his base period wages as shown
in Column (B) in Table A. The right of an employee to
receive benefits shall not be prejudiced nor the amount thereof
be diminished by reason of failure by an employer to pay
either the wages earned by the employee or the contribution
due on such wages. An individual who is totally unemployed
but earns in excess of twenty-five 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</th>
<th>Wages in Base Period</th>
<th>Weekly Benefit Rate</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unemployment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Column A)</td>
<td>(Column B)</td>
<td>(Column C)</td>
<td>(Column D)</td>
</tr>
<tr>
<td>18</td>
<td>Under $ 700.00</td>
<td>Ineligible</td>
<td>.................</td>
</tr>
<tr>
<td>19 1</td>
<td>700.00</td>
<td>799.99</td>
<td>$ 12.00</td>
</tr>
<tr>
<td>20 2</td>
<td>800.00</td>
<td>899.99</td>
<td>13.00</td>
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<tr>
<td>21 3</td>
<td>900.00</td>
<td>999.99</td>
<td>14.00</td>
</tr>
<tr>
<td>22 4</td>
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<td>25 7</td>
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<td>26 8</td>
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<td>27 9</td>
<td>1,750.00</td>
<td>1,899.99</td>
<td>20.00</td>
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<td>28 10</td>
<td>1,900.00</td>
<td>2,049.99</td>
<td>21.00</td>
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<tr>
<td>29 11</td>
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<tr>
<td>38 20</td>
<td>3,100.00</td>
<td>3,199.99</td>
<td>31.00</td>
</tr>
</tbody>
</table>
(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

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

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

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

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.

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.

Notwithstanding any of the foregoing provisions of this section, including Table A, on and after July one, one thousand nine hundred seventy-four:

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

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

(3) The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the formula set forth in subdivision (1) above, shall establish as many additional wage classes as are required, increasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty percent of one fifty-second of the median dollar amount of wages in base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate. 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 foregoing provisions of this section.

After he has established such additional wage classes, the
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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Dorris  
Chairman Senate Committee

Originated in the House.
Takes effect ninety days from passage.

John Glenn Jr.  
Clerk of the Senate

C.B. Blankenship  
Clerk of the House of Delegates

W.E. Billingsley  
President of the Senate

Speaker House of Delegates

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

Aubrey D. Moore  
Governor
PRESENTED TO THE
GOVERNOR

Date 3/22/76
Time 11:40 a.m.