WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

ENROLLED
Committee Substitute for
HOUSE BILL No. 1442

(By Mr. Speaker, Mr. Kopp)

PASSED March 11, 1978
In Effect from Passage

C 641
AN ACT to amend and reenact sections one and three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article five of said chapter by adding thereto three new sections, designated sections three-b, three-c and twenty; to amend and reenact sections five and seven of said article five; to amend and reenact sections three, ten and fifteen, article six of said chapter; to amend and reenact section one, article six-a of said chapter; and to amend and reenact section eight, article seven of said chapter twenty-one-a; to amend said chapter by adding a new article thereto designated article eleven, all relating to unemployment compensation; extending unemployment compensation coverage to certain governmental employees, certain agricultural employees, certain domestic workers, and employees of non-profit schools; rate of contribution; prohibiting payments in certain situations to employees of schools and educational institutions and professional athletes; defining an agricultural crew leader as an employer under certain circumstances; increasing taxable wage base from four thousand two hundred dollars to six thousand dollars for both federal and state unemployment insurance taxes; permitting extended benefits during certain periods of high unemployment; allowing benefits to
Enr. Com. Sub. for H. B. 1442] 2

pregnant women under certain circumstances; the addition of social security benefits for disqualification purposes; allowing decisions to be sent by regular mail rather than certified mail; bringing West Virginia law into compliance with the federal unemployment compensation amendments of one thousand nine hundred seventy-six, effective after the first day of January, one thousand nine hundred seventy-eight; increasing to fifty-five percent the weekly benefit rate; designating the persons responsible for financing decisions; excluding from the average insured weekly wage certain covered service; providing for expiration of certain provisions; excluding certain items from the definition of wages; removing certain waiting period for receipt of benefits.

Be it enacted by the Legislature of West Virginia:

That sections one and three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article five of said chapter be amended by adding thereto three new sections, designated sections three-b, three-c and twenty; that sections five and seven of said article five be amended and reenacted; that sections three, ten and fifteen, article six of said chapter be amended and reenacted; that section one, article six-a of said chapter be amended and reenacted; that section eight, article seven of said chapter twenty-one-a be amended and reenacted; and that said chapter twenty-one-a be further amended by adding thereto a new article, designated article eleven, all to read as follows:

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

§21A-1-1. Purpose of chapter.

1 The purpose of this chapter is to provide reasonable and effective means for the promotion of social and economic security by reducing as far as practicable the hazards of unemployment. In the furtherance of this objective, the Legislature establishes a compulsory system of unemployment reserves in order to:

7 (1) Provide a measure of security to the families of unemployed persons.
(2) Guard against the menace to health, morals, and welfare arising from unemployment.

(3) Maintain as great purchasing power as possible, with a view to sustaining the economic system during periods of economic depression.

(4) Stimulate stability of employment as a requisite of social and economic security.

(5) Allay and prevent the debilitating consequences of poor relief assistance.

To give effect to these purposes the Legislature establishes the following system in the belief that the purposes are reasonably within the sphere of governmental control and that the agencies created for their accomplishment are the fairest and most effective devices now available.

It is the specific intent of the Legislature that the provisions of this article shall be construed as to comply with the Unemployment Compensation Amendments of 1976 (Public Law 94-566) and for that reason the provisions of this chapter are to be effective the first day of January, one thousand nine hundred seventy-eight.


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

“Administration fund” means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

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

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

“Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year.
“Base period employer” means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

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

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

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

“Board” means board of review.

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

“Commissioner” means the employment security commissioner.

“Computation date” means June thirty of the year immediately preceding the January one on which an employer’s contribution rate becomes effective.

“Employing unit” means an individual, or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in subdivision (9) (b) of the definition of “employment” in this section, institution of higher education, or the receiver, trustee in bankruptcy, trustee or
successor thereof, or the legal representative of a deceased person, which has on January first, one thousand nine hundred thirty-five, or subsequent thereto, had in its employ one or more individuals performing service within this state.

"Employer" means:

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

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

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

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

(5) Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until January one, one thousand nine hundred seventy-two, in any three-week 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) except as provided in subdivisions eleven and twelve hereof;

(8) Any employing unit for which service in employment, as defined in subdivision (9) 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 (10) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-one;

(10) Any employing unit for which service in employment, as defined in subsections (b) and (c) of subdivision (9) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven;

(11) Any employing unit for which agricultural labor, as defined in subdivision (12) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven;

(12) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven.

"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 trans-
actions;

(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 per-
formed 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 hun-
dred 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 with-
out the United States is ordinarily and regularly supervised,
managed, directed and controlled, is within this state;

(9) (a) 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 in-
strumentalities) 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 (11)
of the exclusion from employment; and

(b) Service performed after December thirty-one, one thou-
sand nine hundred seventy-seven, in the employ of this state
or any of its instrumentalities or political subdivision thereof
(Enr. Com. Sub. for H. B. 1442)

or any of its instrumentalities or any instrumentality of more
than one of the foregoing or any instrumentality of any fore-
going and one or more other states or political subdivisions:

Provided, That such service is excluded from "employment"
as defined in the Federal Unemployment Tax Act by section
3306 (c) (7) of that act and is not excluded from "employ-
ment" under subdivision (15) of the exclusion from employ-
ment in this section;

(c) Service performed after December thirty-one, one thou-
sand nine hundred seventy-seven, in the employ of a nonprofit
education institution which is not an institution of higher edu-
cation;

(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 organi-
ization but only if the following conditions are met:

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

(b) The organization had four or more individuals in 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 after December
thirty-one, one thousand nine hundred seventy-one (except in
Canada and in the case of Virgin Islands after December
thirty-one, one thousand nine hundred seventy-one, and before
January one of the year following the year in which the sec-
retary of labor approves for the first time an unemployment
insurance law submitted to him by the Virgin Islands for
approval) in the employ of an American employer (other than
service which is deemed "employment" under the provisions
of subdivisions (4), (5) or (6) of this definition of "employ-
ment" 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;

(12) Service performed after December thirty-one, one thousand nine hundred seventy-seven, by an individual in agricultural labor as defined in subdivision (5) of the exclusions from employment in this section when:

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty, by an alien referred to in subparagraph (b) of this subdivision (12)), 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, employed in agricultural labor (not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty, by an alien referred to in di-
vision (ii) of this subparagraph) ten or more individuals, re-
gardless of whether they were employed at the same moment
of time;

(b) Such service is not performed in agricultural labor if
performed before January one, one thousand nine hundred
eighty, by an individual who is an alien admitted to the
United States to perform service in agricultural labor pursuant
to sections 214 (c) and 101 (a) (15) (H) of the Immigration
and Nationality Act;

(c) For the purposes of the definition of employment, any
individual who is a member of a crew furnished by a crew
leader to perform service in agricultural labor for any other
person shall be treated as an employee of such crew leader (i)
if such crew leader holds a valid certificate of registration
under the Farm Labor Contractor Registration Act of 1963; or
substantially all the members of such crew operate or maintain
tractors, mechanized harvesting or crop-dusting equipment, or
any other mechanized equipment, which is provided by such
crew leader; and (ii) if such individual is not an employee
of such other person within the meaning of subdivision (7)
of the definition of employer;

(d) For the purposes of this subdivision (12), in the case
of any individual who is furnished by a crew leader to perform
service in agricultural labor for any other person and who is
not treated as an employee of such crew leader under sub-
paragraph (c) of this subdivision (12), (i) such other person
and not the crew leader shall be treated as the employer of
such individual; and (ii) such other person shall be treated as
having paid cash remuneration to such individual in an amount
equal to the amount of cash remuneration paid to such indi-
vidual by the crew leader (either on his own behalf or on be-
half of such other person) for the service in agricultural labor
performed for such other person;

(e) For the purposes of this subdivision (12), the term
“crew leader” means an individual who (i) furnishes individuals
to perform service in agricultural labor for any other person,
(ii) pays (either on his own behalf or on behalf of such other
person) the individuals so furnished by him for the service in
(13) The term "employment" shall include domestic service after December thirty-one, one thousand nine hundred seventy-seven, in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars or more after December thirty-one, one thousand nine hundred seventy-seven, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

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 until December thirty-one, one thousand nine hundred seventy-seven;

(2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in subdivision (9) (a) of the definition of "employment," until December thirty-one, one thousand nine hundred seventy-seven;

(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 unemployment 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 Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after such publications as comply with the general rules of the department

(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the definition of "employment" in this section. For purposes of this subdivision (5), the term "agricultural labor" includes all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and man-
agreement 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 com-
modity with respect to which such service is performed; or
(ii) in the employ of a group of operators of farms (or a co-
operative 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 per-
formed; but the provisions of subparagraphs (i) and (ii) shall
not be deemed to be applicable with respect to service per-
formed in connection with commercial canning or commercial
freezing or in connection with any agricultural or horticul-
tural 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, ranges and nurseries, or other similar land areas
or structures used primarily for the raising of any agricultural
horticultural commodities;

(6) Domestic service in a private home, except as provided
in subdivision (13) of the definition of "employment" in this
section;

(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 Ameri-
can 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, di-
rected and controlled, is without this state;

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

(11) Service performed (i) in the employ of a church or
convention or association of churches, or an organization
which is operated primarily for religious purposes and which
is operated, supervised, controlled, or principally supported
by a church or convention or association of churches; or (ii)
by a duly ordained, commissioned or licensed minister of a
church in the exercise of his ministry or by a member of a
religious order in the exercise of duties required by such
order; or (iii) prior to January one, one thousand nine hun-
dred seventy-eight in 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 phy-
ysical 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 competi-
tive 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) prior to January one, one
thousand nine hundred seventy-eight for a hospital in a state
prison or other state correctional institution by an inmate of
the prison or correctional institution, and after December
thirty-one, one thousand nine hundred seventy-seven, by an
inmate of a custodial or penal 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 educa-
tional 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 acti-
vities are carried on as a student in a full-time program, taken
for credit at such institution, which combines academic instruc-
tion 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;

(15) Service in the employ of a governmental entity re-
ferred to in subdivision (9) of the definition of "employment"
in this section if such service is performed by an individual in
the exercise of duties (i) as an elected official; (ii) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (iii) as a member of the state national guard or air national guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (v) in a position which, under or pursuant to the laws of this state, is designated as (I) a major nontenured policy-making or advisory position, or (II) a policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

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, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act are required to be covered under this chapter.

“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 twenty-five 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 except for...
agricultural labor and domestic service: Provided, That the term “wages” shall not include:

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

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a calendar year after one thousand nine hundred seventy-one; and shall not include that part of remuneration which, after remuneration equal to six thousand dollars is paid during a calendar year after one thousand nine hundred seventy-seven 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, 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 or six thousand dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided, however, That if the definition of the term "wages" as contained in section 3306(b) of the Internal Revenue Code of 1954 as amended; (a) effective prior to January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective on or after January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand six hundred dollars, or effective on or after January one, one thousand nine hundred seventy-two, to include remuneration in excess of four thousand two hundred dollars, or effective on or after January one, one thousand nine hundred seventy-eight, to include remuneration in excess of six thousand dollars, paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this article or his predecessor with respect to employment during any calendar year up to an amount equal to the amount of
remuneration taxable under the Federal Unemployment Tax Act;

(2) The amount of any payment made after December thirty-one, one thousand nine hundred fifty-two (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual in its employ or any of his dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

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

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

(5) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his beneficiary (A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) of the Federal Internal Revenue Code at the time of such payments 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 before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, however, That the term totally or partially unemployed shall not be interpreted to include employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer;

Gratuities customarily received by an individual in the course of his employment from persons other than his employing 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 accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

"Week" means a calendar week, ending at midnight Satur-
"Weekly benefit rate" means the maximum amount of benefits an eligible individual will receive for one week of total unemployment.

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-3b. Financing benefits paid to employees of government entities.

1 Benefits paid to employees of governmental entities referred to in subdivision (9) (b) of the definition of "employment" in section three, article one of this chapter, shall be financed in the same manner and in accordance with the provisions of section three-a, article five of this chapter; except that for extended benefits reimbursement shall be one hundred percent of the benefits paid.

2 Any governmental entity which, pursuant to the provisions of this chapter, is, or becomes, subject to this chapter on or after January one, one thousand nine hundred seventy-eight, shall be liable for payments and shall pay contributions in accordance with the provisions of this article and of this chapter, unless it elects to make payments in lieu of contributions as set forth in section three-a, such payments to commence on or before January one, one thousand nine hundred seventy-nine.

(2) Governmental entities electing to make payments in lieu of contributions shall be liable for the full amount of extended benefits paid for weeks of unemployment beginning after December thirty-one, one thousand nine hundred seventy-eight.


1 The governor or any person or persons he may designate shall elect whether to finance unemployment compensation for the employees of this state or any of its agencies, bureaus, commissions, departments or other instrumentalities by choos-
Nothing in this chapter shall be construed to require the state or any of its agencies, bureaus, commissions, departments or other instrumentalities to choose the same method of financing.

The county commission for each county or any of its agencies, bureaus, commissions, departments or other instrumentalities or the governing body for a municipality or any of its agencies, bureaus, commissions, departments or other instrumentalities shall elect whether to finance unemployment compensation liabilities by choosing the contribution method or the reimbursement method.

§21A-5-5. Rate of contribution.

On and after January first, one thousand nine hundred forty-one, an employer shall make payments to the unemployment compensation fund equal to two and seven-tenths percent of wages paid by him with respect to employment during each calendar year beginning with the calendar year one thousand nine hundred forty-one, subject, however, to other provisions of this article; except that on and after January first, one thousand nine hundred seventy-two, each employer subject to this chapter shall pay contributions at the rate of one and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

Notwithstanding any other provision of this chapter to the contrary, on or after the first day of July, one thousand nine hundred seventy-eight, any foreign corporation or business entity engaged in the construction trades shall pay contributions at the rate of two and seven-tenths percent of wages paid by him with respect to employment during each calendar year.


(1) The commissioner shall maintain a separate account for each employer, and shall credit his account with all contributions paid by him prior to July first, one thousand
nine hundred sixty-one. On and after July first, one
thousand nine hundred sixty-one, the commissioner shall
maintain a separate account for each employer, and shall
credit said employer's account with all contributions of
such employer in excess of seven tenths of one percent of
taxable wages; and on and after July first, one thousand
nine hundred seventy-one, the commissioner shall maintain a
separate account for each employer, and shall credit said
employer's account with all contributions of such employer
in excess of four tenths of one percent of taxable wages:
Provided, That any adjustment made in an employer's account
after the computation date shall not be used in the com-
putation of the balance of an employer until the next fol-
lowing computation date: Provided, however, That nothing
in this chapter shall be construed to grant an employer or
individual in his service prior claims or rights to the amounts
paid by him into the fund, either on his behalf or on behalf
of such individuals. The account of any employer which has
been inactive for a period of four consecutive calendar years
shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for regular
and extended total unemployment beginning after the effective
date of this act shall be charged to the account of the last
employer with whom he has been employed as much as
thirty working days, whether or not such days are consecu-
tive: Provided further, That no employer's account shall be
charged with benefits paid to any individual who has been
separated from a noncovered employing unit in which he
was employed as much as thirty days, whether or not such
days are consecutive: And provided further, That benefits
paid to an eligible individual for regular and extended partial
unemployment beginning after the effective date of this act
shall be charged to the account of the claimant's current
employer: Provided, that no employer's account shall be
charged with more than fifty percent of the benefits paid
to an eligible individual as extended benefits under the
provisions of article six-a of this chapter: Provided, however,
That state and local government employers shall be charged
with one hundred percent of the benefits paid to an eligible
individual as extended benefits.
44 (3) The commissioner shall, for each calendar year here-
45 after, classify employers in accordance with their actual
46 experience in the payment of contributions on their own
47 behalf and with respect to benefits charged against their
48 accounts, with a view of fixing such contribution rates as
49 will reflect such experiences. For the purpose of fixing such
50 contribution rates for each calendar year, the books of
51 the department shall be closed on July thirty-one of the
52 preceding calendar year, and any contributions thereafter
53 paid, as well as benefits thereafter paid with respect to
54 compensable weeks ending on or before June thirty of the
55 preceding calendar year, shall not be taken into account
56 until the next annual date for fixing contribution rates:
57 Provided, however, That if an employer has failed to furnish
58 to the commissioner on or before July thirty-one of such
59 preceding calendar year the wage information for all past
60 periods necessary for the computation of the contribution
61 rate, such employer's rate shall be, if it is immediately prior
62 to such July thirty-one, less than three and three-tenths per-
63 cent, increased to three and three-tenths percent: Provided
64 further, That any payment made or any information necessary
65 for the computation of a reduced rate furnished on or before
66 the termination of an extension of time for such payment or
67 reporting of such information granted pursuant to a regulation
68 of the commissioner authorizing such extension, shall be taken
69 into account for the purposes of fixing contribution rates:
70 And provided further, That when the time for filing any report
71 or making any payment required hereunder falls on Saturday,
72 Sunday, or a legal holiday, the due date shall be deemed to
73 be the next succeeding business day: Provided, That whenever
74 through mistake or inadvertence erroneous credits or
75 charges are found to have been made to or against the
76 reserved account of any employer, the rate shall be adjusted
77 as of January one of the calendar year in which such mistake
78 or inadvertence is discovered, but payments made under any
79 rate assigned prior to January one of such year shall not be
80 deemed to be erroneously collected.

81 (4) The commissioner may prescribe regulations for the
82 establishment, maintenance, and dissolution of joint accounts
83 by two or more employers, and shall, in accordance with such
27 [Enr. Com. Sub. for H. B. 1442

regulations and upon application by two or more employers

to establish such an account, or to merge their several indi-

dividual accounts in a joint account, maintain such joint

account as if it constituted a single employer's account.

(5) State and local government employers are hereby

authorized to enter into joint accounts and to maintain such

joint account or accounts as if it or they constituted a single

employer's account or accounts.

§21A-5-20. Qualifying wages for regular benefits of newly covered

workers during transition period on the basis of

previously uncovered services.

With respect to weeks of unemployment beginning on or

after January one, one thousand nine hundred seventy-eight,

wages for insured work shall include wages paid for previously

uncovered service. For the purposes of this section, the term

"previously uncovered services" means services:

(1) Which were not employment as defined in section

three of article one of this chapter, or by election pursuant

to section three of article five of this chapter, at any time

during the one-year period ending December thirty-one, one

thousand nine hundred seventy-five; and

(2) Which—(a) Are agricultural labor, as defined in sub-

division (12) of the definitions of "employment" in section

three of article one of this chapter, or domestic services as

defined in subdivision (13) of the definitions of "employment"

in section three, or (b) are services performed by an employee

of this state or a political subdivision thereof, or a nonprofit

educational institution as provided in subparagraphs (b) and

(c) of subdivision (9) of the definitions of "employment" in

section three of article one; except to the extent that assistance

under Title II of the Emergency Jobs and Unemployment

Assistance Act of 1974 was paid on the basis of such services.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§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 im-
mediately 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 (one) participating, financing, or directly interested in such dispute, and (two) 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) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services
in the first of such seasons (or similar periods) and there
is a reasonable assurance that such individual will perform
such services in the later of such seasons (or similar periods).

(8) (a) Benefits shall not be paid on the basis of services
performed by an alien unless such alien is an individual
who has been lawfully admitted for permanent residence or
otherwise is permanently residing in the United States under
color of law (including an alien who is lawfully present in
the United States as a result of the application of the pro-
visions of section 203 (a) (7) or section 212 (d) (5) of the
Immigration and Nationality Act: Provided, That any modi-
fications to the provisions of section 304 (a) (14) of the
Federal Unemployment Tax Act as provided by Public Law
94-566 which specify other conditions or other effective date
than stated herein for the denial of benefits based on services
performed by aliens and which modifications are required to
be implemented under state law as a condition for full tax
credit against the tax imposed by the Federal Unemployment
Tax Act, shall be deemed applicable under the provisions
of this section;

(b) Any data or information required of individuals
applying for benefits to determine whether benefits are not
payable to them because of their alien status shall be uniformly
required from all applicants for benefits;

(c) In the case of an individual whose application for
benefits would otherwise be approved, no determination that
benefits to such individual are not payable because of his
alien status shall be made except upon a preponderance of
the evidence.

(9) 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 at-
tending 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.

(10) 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.

(11) For each week in which he is receiving or has received benefits under Title II of the Social Security Act or similar payments under any act of Congress and/or 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.

(12) 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
An eligible 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.

(13) For the purposes of this section an employer's ac-
count shall not be charged under any of the following condi-
tions, 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 computa-
tion and publication of rates.

1 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 indi-
cated 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>Under $700.00</td>
<td>$799.99</td>
<td>$12.00</td>
<td>$312.00</td>
</tr>
<tr>
<td>28 1</td>
<td>700.00</td>
<td>799.99</td>
<td>12.00</td>
</tr>
<tr>
<td>29 2</td>
<td>800.00</td>
<td>899.99</td>
<td>13.00</td>
</tr>
<tr>
<td>30 3</td>
<td>900.00</td>
<td>999.99</td>
<td>14.00</td>
</tr>
<tr>
<td>31 4</td>
<td>1,000.00</td>
<td>1,149.99</td>
<td>15.00</td>
</tr>
<tr>
<td>32 5</td>
<td>1,150.00</td>
<td>1,299.99</td>
<td>16.00</td>
</tr>
<tr>
<td>33 6</td>
<td>1,300.00</td>
<td>1,449.99</td>
<td>17.00</td>
</tr>
<tr>
<td>34 7</td>
<td>1,450.00</td>
<td>1,599.99</td>
<td>18.00</td>
</tr>
<tr>
<td>35 8</td>
<td>1,600.00</td>
<td>1,749.99</td>
<td>19.00</td>
</tr>
<tr>
<td>36 9</td>
<td>1,750.00</td>
<td>1,899.99</td>
<td>20.00</td>
</tr>
<tr>
<td>37 10</td>
<td>1,900.00</td>
<td>2,049.99</td>
<td>21.00</td>
</tr>
<tr>
<td>38 11</td>
<td>2,050.00</td>
<td>2,199.99</td>
<td>22.00</td>
</tr>
<tr>
<td>39 12</td>
<td>2,200.00</td>
<td>2,349.99</td>
<td>23.00</td>
</tr>
<tr>
<td>40 13</td>
<td>2,350.00</td>
<td>2,499.99</td>
<td>24.00</td>
</tr>
<tr>
<td>41 14</td>
<td>2,500.00</td>
<td>2,599.99</td>
<td>25.00</td>
</tr>
<tr>
<td>42 15</td>
<td>2,600.00</td>
<td>2,699.99</td>
<td>26.00</td>
</tr>
<tr>
<td>43 16</td>
<td>2,700.00</td>
<td>2,799.99</td>
<td>27.00</td>
</tr>
<tr>
<td>44 17</td>
<td>2,800.00</td>
<td>2,899.99</td>
<td>28.00</td>
</tr>
<tr>
<td>45 18</td>
<td>2,900.00</td>
<td>2,999.99</td>
<td>29.00</td>
</tr>
<tr>
<td>46 19</td>
<td>3,000.00</td>
<td>3,099.99</td>
<td>30.00</td>
</tr>
<tr>
<td>47 20</td>
<td>3,100.00</td>
<td>3,199.99</td>
<td>31.00</td>
</tr>
<tr>
<td>48 21</td>
<td>3,200.00</td>
<td>3,349.99</td>
<td>32.00</td>
</tr>
<tr>
<td>49 22</td>
<td>3,350.00</td>
<td>3,499.99</td>
<td>33.00</td>
</tr>
<tr>
<td>50 23</td>
<td>3,500.00</td>
<td>3,649.99</td>
<td>34.00</td>
</tr>
<tr>
<td>51 24</td>
<td>3,650.00</td>
<td>3,799.99</td>
<td>35.00</td>
</tr>
</tbody>
</table>

52 Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred
sixty-seventy, 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.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-eight, the weekly benefit rate for each wage class by rounded dollar amount shall be fifty-five percent of one fifty-second of the median dollar amount of wages in base period for such wage class except that the weekly benefit rate for classifications one through twenty shall remain unchanged, but in any case the weekly benefit rate on or after July one, one thousand nine hundred seventy-eight, shall be in accordance with Table B below.
<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>Under $1,150.00</td>
<td>Ineligible</td>
<td>18.00</td>
<td>468.00</td>
</tr>
<tr>
<td>1</td>
<td>1,150.00 - 1,299.99</td>
<td>19.00</td>
<td>494.00</td>
</tr>
<tr>
<td>2</td>
<td>1,300.00 - 1,449.99</td>
<td>20.00</td>
<td>520.00</td>
</tr>
<tr>
<td>3</td>
<td>1,450.00 - 1,599.99</td>
<td>21.00</td>
<td>546.00</td>
</tr>
<tr>
<td>4</td>
<td>1,600.00 - 1,749.99</td>
<td>22.00</td>
<td>572.00</td>
</tr>
<tr>
<td>5</td>
<td>1,750.00 - 1,899.99</td>
<td>23.00</td>
<td>598.00</td>
</tr>
<tr>
<td>6</td>
<td>1,900.00 - 2,049.99</td>
<td>24.00</td>
<td>624.00</td>
</tr>
<tr>
<td>7</td>
<td>2,050.00 - 2,199.99</td>
<td>25.00</td>
<td>650.00</td>
</tr>
<tr>
<td>8</td>
<td>2,200.00 - 2,349.99</td>
<td>26.00</td>
<td>676.00</td>
</tr>
<tr>
<td>9</td>
<td>2,350.00 - 2,499.99</td>
<td>27.00</td>
<td>702.00</td>
</tr>
<tr>
<td>10</td>
<td>2,500.00 - 2,599.99</td>
<td>28.00</td>
<td>728.00</td>
</tr>
<tr>
<td>11</td>
<td>2,600.00 - 2,699.99</td>
<td>29.00</td>
<td>754.00</td>
</tr>
<tr>
<td>12</td>
<td>2,700.00 - 2,799.99</td>
<td>30.00</td>
<td>780.00</td>
</tr>
<tr>
<td>13</td>
<td>2,800.00 - 2,899.99</td>
<td>31.00</td>
<td>806.00</td>
</tr>
<tr>
<td>14</td>
<td>2,900.00 - 2,999.99</td>
<td>32.00</td>
<td>832.00</td>
</tr>
<tr>
<td>15</td>
<td>3,000.00 - 3,099.99</td>
<td>33.00</td>
<td>858.00</td>
</tr>
<tr>
<td>16</td>
<td>3,100.00 - 3,199.99</td>
<td>34.00</td>
<td>884.00</td>
</tr>
<tr>
<td>17</td>
<td>3,200.00 - 3,299.99</td>
<td>35.00</td>
<td>910.00</td>
</tr>
<tr>
<td>18</td>
<td>3,300.00 - 3,399.99</td>
<td>36.00</td>
<td>936.00</td>
</tr>
<tr>
<td>19</td>
<td>3,400.00 - 3,499.99</td>
<td>37.00</td>
<td>962.00</td>
</tr>
<tr>
<td>20</td>
<td>3,500.00 - 3,599.99</td>
<td>38.00</td>
<td>988.00</td>
</tr>
<tr>
<td>21</td>
<td>3,600.00 - 3,699.99</td>
<td>39.00</td>
<td>1,014.00</td>
</tr>
<tr>
<td>22</td>
<td>3,700.00 - 3,799.99</td>
<td>40.00</td>
<td>1,040.00</td>
</tr>
<tr>
<td>23</td>
<td>3,800.00 - 3,899.99</td>
<td>41.00</td>
<td>1,066.00</td>
</tr>
<tr>
<td>24</td>
<td>3,900.00 - 3,999.99</td>
<td>42.00</td>
<td>1,092.00</td>
</tr>
<tr>
<td>25</td>
<td>4,000.00 - 4,099.99</td>
<td>43.00</td>
<td>1,118.00</td>
</tr>
<tr>
<td>26</td>
<td>4,100.00 - 4,199.99</td>
<td>44.00</td>
<td>1,144.00</td>
</tr>
<tr>
<td>27</td>
<td>4,200.00 - 4,299.99</td>
<td>45.00</td>
<td>1,170.00</td>
</tr>
<tr>
<td>28</td>
<td>4,300.00 - 4,399.99</td>
<td>46.00</td>
<td>1,196.00</td>
</tr>
<tr>
<td>29</td>
<td>4,400.00 - 4,499.99</td>
<td>47.00</td>
<td>1,222.00</td>
</tr>
<tr>
<td>30</td>
<td>4,500.00 - 4,599.99</td>
<td>48.00</td>
<td>1,248.00</td>
</tr>
<tr>
<td>31</td>
<td>4,600.00 - 4,699.99</td>
<td>49.00</td>
<td>1,274.00</td>
</tr>
<tr>
<td>32</td>
<td>4,700.00 - 4,799.99</td>
<td>50.00</td>
<td>1,300.00</td>
</tr>
<tr>
<td>33</td>
<td>4,800.00 - 4,899.99</td>
<td>51.00</td>
<td>1,326.00</td>
</tr>
<tr>
<td>34</td>
<td>4,900.00 - 4,999.99</td>
<td>52.00</td>
<td>1,352.00</td>
</tr>
<tr>
<td>35</td>
<td>5,000.00 - 5,099.99</td>
<td>53.00</td>
<td>1,378.00</td>
</tr>
<tr>
<td>36</td>
<td>5,100.00 - 5,199.99</td>
<td>54.00</td>
<td>1,404.00</td>
</tr>
<tr>
<td>37</td>
<td>5,200.00 - 5,299.99</td>
<td>55.00</td>
<td>1,430.00</td>
</tr>
<tr>
<td>38</td>
<td>5,300.00 - 5,399.99</td>
<td>56.00</td>
<td>1,456.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>169</td>
<td>31</td>
<td>5,300.00</td>
<td>-</td>
</tr>
<tr>
<td>170</td>
<td>32</td>
<td>5,450.00</td>
<td>-</td>
</tr>
<tr>
<td>171</td>
<td>33</td>
<td>5,600.00</td>
<td>-</td>
</tr>
<tr>
<td>172</td>
<td>34</td>
<td>5,750.00</td>
<td>-</td>
</tr>
<tr>
<td>173</td>
<td>35</td>
<td>5,900.00</td>
<td>-</td>
</tr>
<tr>
<td>174</td>
<td>36</td>
<td>6,050.00</td>
<td>-</td>
</tr>
<tr>
<td>175</td>
<td>37</td>
<td>6,200.00</td>
<td>-</td>
</tr>
<tr>
<td>176</td>
<td>38</td>
<td>6,350.00</td>
<td>-</td>
</tr>
<tr>
<td>177</td>
<td>39</td>
<td>6,500.00</td>
<td>-</td>
</tr>
<tr>
<td>178</td>
<td>40</td>
<td>6,650.00</td>
<td>-</td>
</tr>
<tr>
<td>179</td>
<td>41</td>
<td>6,800.00</td>
<td>-</td>
</tr>
<tr>
<td>180</td>
<td>42</td>
<td>6,950.00</td>
<td>-</td>
</tr>
<tr>
<td>181</td>
<td>43</td>
<td>7,100.00</td>
<td>-</td>
</tr>
<tr>
<td>182</td>
<td>44</td>
<td>7,250.00</td>
<td>-</td>
</tr>
<tr>
<td>183</td>
<td>45</td>
<td>7,400.00</td>
<td>-</td>
</tr>
<tr>
<td>184</td>
<td>46</td>
<td>7,550.00</td>
<td>-</td>
</tr>
<tr>
<td>185</td>
<td>47</td>
<td>7,700.00</td>
<td>-</td>
</tr>
<tr>
<td>186</td>
<td>48</td>
<td>7,850.00</td>
<td>-</td>
</tr>
<tr>
<td>187</td>
<td>49</td>
<td>8,000.00</td>
<td>-</td>
</tr>
<tr>
<td>188</td>
<td>50</td>
<td>8,150.00</td>
<td>-</td>
</tr>
<tr>
<td>189</td>
<td>51</td>
<td>8,300.00</td>
<td>-</td>
</tr>
<tr>
<td>190</td>
<td>52</td>
<td>8,450.00</td>
<td>-</td>
</tr>
<tr>
<td>191</td>
<td>53</td>
<td>8,600.00</td>
<td>-</td>
</tr>
<tr>
<td>192</td>
<td>54</td>
<td>8,750.00</td>
<td>-</td>
</tr>
<tr>
<td>193</td>
<td>55</td>
<td>8,900.00</td>
<td>-</td>
</tr>
<tr>
<td>194</td>
<td>56</td>
<td>9,050.00</td>
<td>-</td>
</tr>
<tr>
<td>195</td>
<td>57</td>
<td>9,200.00</td>
<td>-</td>
</tr>
<tr>
<td>196</td>
<td>58</td>
<td>9,350.00</td>
<td>-</td>
</tr>
<tr>
<td>197</td>
<td>59</td>
<td>9,500.00</td>
<td>-</td>
</tr>
<tr>
<td>198</td>
<td>60</td>
<td>9,650.00</td>
<td>-</td>
</tr>
<tr>
<td>199</td>
<td>61</td>
<td>9,800.00</td>
<td>-</td>
</tr>
<tr>
<td>200</td>
<td>62</td>
<td>9,950.00</td>
<td>-</td>
</tr>
<tr>
<td>201</td>
<td>63</td>
<td>10,100.00</td>
<td>-</td>
</tr>
<tr>
<td>202</td>
<td>64</td>
<td>10,250.00</td>
<td>-</td>
</tr>
<tr>
<td>203</td>
<td>65</td>
<td>10,400.00</td>
<td>-</td>
</tr>
<tr>
<td>204</td>
<td>66</td>
<td>10,550.00</td>
<td>-</td>
</tr>
<tr>
<td>205</td>
<td>67</td>
<td>10,700.00</td>
<td>-</td>
</tr>
<tr>
<td>206</td>
<td>68</td>
<td>10,850.00</td>
<td>-</td>
</tr>
<tr>
<td>207</td>
<td>69</td>
<td>11,000.00</td>
<td>-</td>
</tr>
<tr>
<td>208</td>
<td>70</td>
<td>11,150.00</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>209</td>
<td>71</td>
<td>11,300.00 - 11,449.99</td>
<td>121.00</td>
</tr>
<tr>
<td>210</td>
<td>72</td>
<td>11,450.00 - 11,599.99</td>
<td>122.00</td>
</tr>
<tr>
<td>211</td>
<td>73</td>
<td>11,600.00 - 11,749.99</td>
<td>124.00</td>
</tr>
<tr>
<td>212</td>
<td>74</td>
<td>11,750.00 - 11,899.99</td>
<td>126.00</td>
</tr>
<tr>
<td>213</td>
<td>75</td>
<td>11,900.00 - 12,049.99</td>
<td>127.00</td>
</tr>
<tr>
<td>214</td>
<td>76</td>
<td>12,050.00 - 12,199.99</td>
<td>129.00</td>
</tr>
<tr>
<td>215</td>
<td>77</td>
<td>12,200.00 - 12,349.99</td>
<td>130.00</td>
</tr>
<tr>
<td>216</td>
<td>78</td>
<td>12,350.00 - 12,499.99</td>
<td>132.00</td>
</tr>
<tr>
<td>217</td>
<td>79</td>
<td>12,500.00 - 12,649.99</td>
<td>133.00</td>
</tr>
<tr>
<td>218</td>
<td>80</td>
<td>12,650.00 - 12,799.99</td>
<td>135.00</td>
</tr>
<tr>
<td>219</td>
<td>81</td>
<td>12,800.00 - 12,949.99</td>
<td>137.00</td>
</tr>
<tr>
<td>220</td>
<td>82</td>
<td>12,950.00 - 13,099.99</td>
<td>138.00</td>
</tr>
<tr>
<td>221</td>
<td>83</td>
<td>13,150.00 - and over</td>
<td>139.00</td>
</tr>
</tbody>
</table>

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

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

The computation and determination of rates as aforesaid shall be completed annually before July one, and any such new wage class, with its corresponding wages in base period, weekly benefit rate, and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on a July one, shall apply only to a new claim established by a claimant on and after said July one, and shall not apply to continued claims of a claimant based on his new claim established before said July one.
§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals and institutions of higher education, educational institutions and governmental entities.

1 (1) Benefits based on service in employment as defined in subdivisions (9) and (10) of the definition of “employment” in section three, article one of this chapter, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual’s contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

2 (2) Benefits based on service in employment defined in subdivisions (9) and (10) of the definition of “employment” in section three, article one of this chapter, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this act, except that:

a With respect to service performed after December thirty-one, one thousand nine hundred seventy-seven, in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during any holiday or vacation period, or during a period of paid sabbatical leave provided for in the individual’s contract, to any individual if such individual performs such services in the first of such academic years (or terms) or prior to the beginning of such holiday or vaca-
tion period and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or after such holiday or vacation period: Provided, That subsection (1) of this section shall apply with respect to such services prior to January one, one thousand nine hundred seventy-eight;

(b) With respect to services performed after December thirty-one, one thousand nine hundred seventy-seven, in any other capacity for an educational institution (other than an institution of higher education as defined in section three of article one), benefits shall not be paid on the basis of such services to any individual for any week which commences during any holiday or vacation period, or during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms or prior to the beginning of such holiday or vacation period and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or after such holiday or vacation periods.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


1 As used in this article, unless the context clearly requires otherwise:
2 (1) "Extended benefit period" means a period which
3 (a) Begins with the third week after whichever of the following weeks occurs first:
4 (i) A week for which there is a national "on" indicator; or
5 (ii) A week for which there is a state "on" indicator; and
6 (b) Ends with either of the following weeks, whichever occurs later:
7 (i) The third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or
8 (ii) The thirteenth consecutive week of such period.
Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state “on” indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and no extended benefit period may become effective in this state prior to the sixty-first day following the date of enactment of the Federal-State Extended Unemployment Compensation Act of 1970 and, within the period beginning on such sixty-first day and ending on December thirty-one, one thousand nine hundred seventy-one, an extended benefit period may become effective and be terminated in this state solely by reason of a state “on” and state “off” indicator, respectively.

(2) There is a national “on” indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent. The rate of insured unemployment, for the purposes of this subsection, shall be determined by the secretary of labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.

(3) There is a national “off” indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths percent. The rate of insured unemployment, for the purposes of this subsection, shall be determined by the secretary of labor by reference to the average monthly covered employment for the first four of the more recent six calendar quarters ending before the close of such period.

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

(a) Equaled or exceeded one hundred twenty percent of
the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(b) Equaled or exceeded four percent.

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

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

(b) Was less than four percent.

(6) “Rate of insured unemployment,” for purposes of subdivisions (4) and (5) of this section, means the percentage derived by dividing

(a) The average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor, by

(b) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(7) “Regular benefits” means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(8) “Extended benefits” means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his eligibility period.
(9) “Eligibility period” of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) “Exhaustee” means an individual who, with respect to any week of unemployment in his eligibility period:

(a) Has received, prior to such week, all of the regular benefits which were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-service-men under 5 U.S.C., chapter 85) in his current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits which were available to him although (i) as a result of a pending appeal with respect to wages and/or employment which were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions of section one-a, article six of this chapter; or

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

(c) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.
(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-8. Appeal from deputy's decision.

1 A claimant, last employer, or other interested party, may file an appeal from the decision of the deputy within eight calendar days after notice of the decision has been delivered or mailed to the claimant and last employer is provided in section four of this article. The period within which an appeal from the decision of the deputy may be filed shall be stated in such notice. The decision of the deputy shall be final and benefits shall be paid or denied in accordance therewith unless an appeal is filed within such time.

2 Upon appeal from the determination of a deputy, an individual shall be entitled to a fair hearing and reasonable opportunity to be heard before an appeal tribunal as provided in section seven of this article.

3 Within eight days after receipt by the board of notice of appeal from the decision of a deputy, the board shall fix the time and place for hearing such appeal, and notify the claimant, last employer, and the commissioner, ten days in advance of the date set for hearing.

4 Upon consideration of all evidence the appeal tribunal shall make a decision within twenty-one days after the date of the hearing and shall notify the claimant, last employer, and the commissioner of its findings and decision.

ARTICLE 11. LIMITATIONS ON CERTAIN PROVISIONS.

§21A-11-1. Expiration of certain provisions upon certain contingencies.

1 If United States Public Law 94-566 as enacted by the Congress of the United States or the federal acts it amends should be adjudged unconstitutional or invalid in its or their application or stayed pendente lite as to state or local employees by a court of competent jurisdiction, then the coverage of those employees under this act is automatically stayed or repealed to
the extent of the adjudged unconstitutionality, invalidity or inapplicability. The repeal shall be effective from the date of final disposition upon appeal or from the date of expiration of the right of appeal and shall apply to relevant matters pending at that time. If United States Public Law 94-566 as enacted by the Congress of the United States or those provisions thereof relating to coverage of state and local employees should at any time be repealed by the Congress of the United States then the provisions of this chapter relating to coverage of state and local employees shall be automatically repealed and of no further force and effect.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James H. Davis  
Chairman Senate Committee

Laurence L. Christman  
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. Glenn Jr.  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

W. T. Suthers Jr.  
President of the Senate

Donald L. Kopp  
Speaker House of Delegates

The within is approved this the 24th day of March, 1978.

John F. Rhodes  
Governor
APPROVED AND SIGNED BY THE GOVERNOR

Date: March 24, 1978

Time: 2:15 p.m.