

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

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1442
(By MR. SPEAKER, MR. KOPP)

[Passed March 11, 1978; in effect from passage.]

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

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
2 effective means for the promotion of social and economic
3 security by reducing as far as practicable the hazards of unem-
4 ployment. In the furtherance of this objective, the Legislature
5 establishes a compulsory system of unemployment reserves in
6 order to:

7 (1) Provide a measure of security to the families of unem-
8 ployed persons.

9 (2) Guard against the menace to health, morals, and welfare
10 arising from unemployment.

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

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

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

18 To give effect to these purposes the Legislature establishes
19 the following system in the belief that the purposes are reason-
20 ably within the sphere of governmental control and that the
21 agencies created for their accomplishment are the fairest and
22 most effective devices now available.

23 It is the specific intent of the Legislature that the provisions
24 of this article shall be construed as to comply with the Unem-
25 ployment Compensation Amendments of 1976 (Public Law
26 94-566) and for that reason the provisions of this chapter are
27 to be effective the first day of January, one thousand nine
28 hundred seventy-eight.

§21A-1-3. Definitions.

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

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

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

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

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

14 "Base period employer" means any employer who in the
15 base period for any benefit year paid wages to an individual
16 who filed claim for unemployment compensation within such
17 benefit year.

18 "Base period wages" means wages paid to an individual
19 during the base period by all his base period employers.

20 "Benefit year" with respect to an individual means the
21 fifty-two-week period beginning with the first day of the calen-
22 dar week in which a valid claim is effective, and thereafter the
23 fifty-two-week period beginning with the first day of the calen-
24 dar week in which such individual next files a valid claim
25 for benefits after the termination of his last preceeding benefit
26 year. An initial claim for benefits filed in accordance with the
27 provisions of this chapter shall be deemed to be a valid claim
28 within the purposes of this definition if the individual has been
29 paid wages in his base period sufficient to make him eligible
30 for benefits under the provisions of this chapter.

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

33 "Board" means board of review.

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

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

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

43 "Employing unit" means an individual, or type of organi-
44 zation, including any partnership, association, trust, estate,
45 joint-stock company, insurance company, corporation (do-
46 mestic or foreign), state or political subdivision thereof, or
47 their instrumentalities, as provided in subdivision (9) (b) of the
48 definition of "employment" in this section, institution of higher
49 education, or the receiver, trustee in bankruptcy, trustee or

50 successor thereof, or the legal representative of a deceased
51 person, which has on January first, one thousand nine hun-
52 dred thirty-five, or subsequent thereto, had in its employ one
53 or more individuals performing service within this state.

54 "Employer" means:

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

63 (2) Any employing unit which is or becomes a liable em-
64 ployer under any federal unemployment tax act;

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

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

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

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

85 (7) Any employing unit which, after December thirty-one,

86 one thousand nine hundred seventy-one, (i) in any calendar
87 quarter in either the current or preceding calendar year paid
88 for service in employment wages of one thousand five hundred
89 dollars or more, or (ii) for some portion of a day in each of
90 twenty different calendar weeks, whether or not such weeks
91 were consecutive, in either the current or the preceding calen-
92 dar year had in employment at least one individual (irrespec-
93 tive of whether the same individual was in employment in each
94 such day) except as provided in subdivisions eleven and twelve
95 hereof;

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

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

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

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

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

117 "Employment," subject to the other provisions of this sec-
118 tion, means:

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

122 (2) Any service performed prior to January one, one thou-
123 sand nine hundred seventy-two, which was employment as
124 defined in this section prior to such date and, subject to the
125 other provisions of this section, service performed after Dec-
126 ember thirty-one, one thousand nine hundred seventy-one, by
127 an employee, as defined in section 3306(i) of the Federal
128 Unemployment Tax Act, including service in interstate com-
129 merce;

130 (3) Any service performed prior to January one, one thou-
131 sand nine hundred seventy-two, which was employment as
132 defined in this section prior to such date and, subject to the
133 other provisions of this section, service performed after Dec-
134 ember thirty-one, one thousand nine hundred seventy-one,
135 including service in interstate commerce, by any officer of a
136 corporation;

137 (4) An individual's entire service, performed within or
138 both within and without this state if: (a) The service is localized
139 in this state; or (b) the service is not localized in any state but
140 some of the service is performed in this state and (i) the base
141 of operations, or, if there is no base of operations, then the
142 place from which such service is directed or controlled, is in
143 this state; or (ii) the base of operations or place from which
144 such service is directed or controlled is not in any state in which
145 some part of the service is performed but the individual's resi-
146 dence is in this state;

147 (5) Service not covered under paragraph four of this sub-
148 division and performed entirely without this state with respect
149 to no part of which contributions are required and paid under
150 an unemployment compensation law of any other state or of
151 the federal government, shall be deemed to be employment
152 subject to this chapter if the individual performing such ser-
153 vices is a resident of this state and the commissioner approves
154 the election of the employing unit for whom such services are
155 performed that the entire service of such individual shall be
156 deemed to be employment subject to this chapter;

157 (6) Service shall be deemed to be localized within a state,
158 if: (a) The service is performed entirely within such state; or
159 (b) the service is performed both within and without such state,

160 but the service performed without such state is incidental to
161 the individual's service within this state, as, for example, is
162 temporary or transitory in nature or consists of isolated trans-
163 actions;

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

176 (8) All service performed by an officer or member of the
177 crew of an American vessel (as defined in section three hun-
178 dred five of an act of Congress entitled Social Security Act
179 Amendment of 1946, approved August tenth, one thousand
180 nine hundred forty-six) on or in connection with such vessel,
181 provided that the operating office, from which the operations
182 of such vessel operating on navigable waters within and with-
183 out the United States is ordinarily and regularly supervised,
184 managed, directed and controlled, is within this state;

185 (9) (a) Service performed after December thirty-one, one
186 thousand nine hundred seventy-one, by an individual in the
187 employ of this state or any of its instrumentalities (or in the
188 employ of this state and one or more other states or their in-
189 strumentalities) for a hospital or institution of higher education
190 located in this state: *Provided*, That such service is excluded
191 from "employment" as defined in the Federal Unemployment
192 Tax Act solely by reason of section 3306 (c) (7) of that act
193 and is not excluded from "employment" under subdivision (11)
194 of the exclusion from employment; and

195 (b) Service performed after December thirty-one, one thou-
196 sand nine hundred seventy-seven, in the employ of this state
197 or any of its instrumentalities or political subdivision thereof

198 or any of its instrumentalities or any instrumentality of more
199 than one of the foregoing or any instrumentality of any fore-
200 going and one or more other states or political subdivisions:
201 *Provided*, That such service is excluded from "employment"
202 as defined in the Federal Unemployment Tax Act by section
203 3306 (c) (7) of that act and is not excluded from "employ-
204 ment" under subdivision (15) of the exclusion from employ-
205 ment in this section;

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

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

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

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

222 (11) Service of an individual who is a citizen of the United
223 States, performed outside the United States after December
224 thirty-one, one thousand nine hundred seventy-one (except in
225 Canada and in the case of Virgin Islands after December
226 thirty-one, one thousand nine hundred seventy-one, and before
227 January one of the year following the year in which the sec-
228 retary of labor approves for the first time an unemployment
229 insurance law submitted to him by the Virgin Islands for
230 approval) in the employ of an American employer (other than
231 service which is deemed "employment" under the provisions
232 of subdivisions (4), (5) or (6) of this definition of "employ-
233 ment" or the parallel provisions of another state's law) if:

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

236 (b) The employer has no place of business in the United
237 States, but (i) the employer is an individual who is a resident
238 of this state; or (ii) the employer is a corporation which is
239 organized under the laws of this state; or (iii) the employer is
240 a partnership or a trust and the number of the partners or
241 trustees who are residents of this state is greater than the
242 number who are residents of any one other state; or

243 (c) None of the criteria of subparagraphs (a) and (b) of
244 this subdivision (11) is met but the employer has elected cov-
245 erage in this state or, the employer having failed to elect cov-
246 erage in any state, the individual has filed a claim for benefits,
247 based on such service, under the law of this state.

248 An "American employer," for purposes of this subdivision
249 (11), means a person who is (i) an individual who is a resident
250 of the United States; or (ii) a partnership if two thirds or more
251 of the partners are residents of the United States; or (iii) a
252 trust, if all of the trustees are residents of the United States; or
253 (iv) a corporation organized under the laws of the United
254 States or of any state;

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

259 (a) Such service is performed for a person who (i) during
260 any calendar quarter in either the current or the preceding
261 calendar year paid remuneration in cash of twenty thousand
262 dollars or more to individuals employed in agricultural labor
263 [not taking into account service in agricultural labor per-
264 formed before January one, one thousand nine hundred eighty,
265 by an alien referred to in subparagraph (b) of this subdivision
266 (12)], or (ii) for some portion of a day in each of twenty dif-
267 ferent calendar weeks, whether or not such weeks were con-
268 secutive, in either the current or the preceding calendar year,
269 employed in agricultural labor (not taking into account ser-
270 vice in agricultural labor performed before January one, one
271 thousand nine hundred eighty, by an alien referred to in di-

272 vision (ii) of this subparagraph) ten or more individuals, re-
273 gardless of whether they were employed at the same moment
274 of time;

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

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

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

305 (e) For the purposes of this subdivision (12), the term
306 "crew leader" means an individual who (i) furnishes individuals
307 to perform service in agricultural labor for any other person,
308 (ii) pays (either on his own behalf or on behalf of such other
309 person) the individuals so furnished by him for the service in

310 agricultural labor performed by them, and (iii) has not entered
311 into a written agreement with such other person under which
312 such individual is designated as an employee of such other
313 person;

314 (13) The term "employment" shall include domestic service
315 after December thirty-one, one thousand nine hundred seventy-
316 seven, in a private home, local college club or local chapter
317 of a college fraternity or sorority performed for a person who
318 paid cash remuneration of one thousand dollars or more after
319 December thirty-one, one thousand nine hundred seventy-
320 seven, in any calendar quarter in the current calendar year or
321 the preceding calendar year to individuals employed in such
322 domestic service.

323 Notwithstanding the foregoing definition of "employment,"
324 if the services performed during one half or more of any pay
325 period by an employee for the person employing him consti-
326 tute employment, all the services of such employee for such
327 period shall be deemed to be employment; but if the services
328 performed during more than one half of any such pay period
329 by an employee for the person employing him do not constitute
330 employment, then none of the services of such employee for
331 such period shall be deemed to be employment.

332 The term "employment" shall not include:

333 (1) Services performed in the employ of this state or any
334 political subdivision thereof, or any instrumentality of this
335 state or its subdivisions, except as otherwise provided herein
336 until December thirty-one, one thousand nine hundred seventy-
337 seven;

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

343 (3) Service performed in the employ of the United States
344 or an instrumentality of the United States exempt under the
345 constitution of the United States from the payments imposed
346 by this law, except that to the extent that the Congress of the

347 United States shall permit states to require any instrumentali-
348 ties of the United States to make payments into an unemploy-
349 ment fund under a state unemployment compensation law, all
350 of the provisions of this law shall be applicable to such in-
351 strumentalities, and to service performed for such instrumen-
352 talities, in the same manner, to the same extent and on the
353 same terms as to all other employers, employing units, indi-
354 viduals and services: *Provided*, That if this state shall not be
355 certified for any year by the secretary of labor under section
356 1603(c) of the Federal Internal Revenue Code, the payments
357 required of such instrumentalities with respect to such year
358 shall be refunded by the commissioner from the fund in the
359 same manner and within the same period as is provided in
360 section nineteen, article five of this chapter, with respect to
361 payments erroneously collected;

362 (4) Service performed after June thirty, one thousand nine
363 hundred thirty-nine, with respect to which unemployment
364 compensation is payable under the Railroad Unemployment
365 Insurance Act and service with respect to which unemployment
366 benefits are payable under an unemployment compensation
367 system for maritime employees established by an act of Con-
368 gress. The commissioner may enter into agreements with the
369 proper agency established under such an act of Congress to
370 provide reciprocal treatment to individuals who, after ac-
371 quiring potential rights to unemployment compensation under
372 an act of Congress, or who have, after acquiring potential
373 rights to unemployment compensation under an act of Con-
374 gress, acquired rights to benefit under this chapter. Such
375 agreement shall become effective ten days after such publi-
376 cations as comply with the general rules of the department

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

382 (a) On a farm, in the employ of any person, in connection
383 with cultivating the soil, or in connection with raising or har-
384 vesting any agricultural or horticultural commodity, including
385 the raising, shearing, feeding, caring for, training, and man-

386 agement of livestock, bees, poultry, and fur-bearing animals
387 and wildlife;

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

394 (c) In connection with the production or harvesting of any
395 commodity defined as an agricultural commodity in section
396 15(g) of the Agricultural Marketing Act, as amended or in
397 connection with the ginning of cotton, or in connection with
398 the operation or maintenance of ditches, canals, reservoirs or
399 waterways, not owned or operated for profit, used exclusively
400 for supplying and storing water for farming purposes:

401 (d) (i) In the employ of the operator of a farm in handling,
402 planting, drying, packing, packaging, processing, freezing,
403 grading, storing or delivering to storage or to market or to a
404 carrier for transportation to market, in its unmanufactured
405 state, any agricultural or horticultural commodity; but only
406 if such operator produced more than one half of the com-
407 modity with respect to which such service is performed; or
408 (ii) in the employ of a group of operators of farms (or a co-
409 operative organization of which such operators are members)
410 in the performance of service described in subparagraph (i),
411 but only if such operators produced more than one half of
412 the commodity with respect to which such service is per-
413 formed; but the provisions of subparagraphs (i) and (ii) shall
414 not be deemed to be applicable with respect to service per-
415 formed in connection with commercial canning or commercial
416 freezing or in connection with any agricultural or horticul-
417 tural commodity after its delivery to a terminal market for
418 distribution for consumption;

419 (e) On a farm operated for profit if such service is not in
420 the course of the employer's trade or business or is domestic
421 service in a private home of the employer. As used in this
422 subdivision (5), the term "farm" includes stock, dairy, poultry,
423 fruit, fur-bearing animal, and truck farms, plantations, ranches,

424 greenhouses, ranges and nurseries, or other similar land areas
425 or structures used primarily for the raising of any agricultural
426 or horticultural commodities;

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

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

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

434 (9) Service as an officer or member of a crew of an Ameri-
435 can vessel, performed on or in connection with such vessel, if
436 the operating office, from which the operations of the vessel
437 operating on navigable water within or without the United
438 States are ordinarily and regularly supervised, managed, di-
439 rected and controlled, is without this state;

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

444 (11) Service performed (i) in the employ of a church or
445 convention or association of churches, or an organization
446 which is operated primarily for religious purposes and which
447 is operated, supervised, controlled, or principally supported
448 by a church or convention or association of churches; or (ii)
449 by a duly ordained, commissioned or licensed minister of a
450 church in the exercise of his ministry or by a member of a
451 religious order in the exercise of duties required by such
452 order; or (iii) prior to January one, one thousand nine hun-
453 dred seventy-eight in the employ of a school which is not an
454 institution of higher education; or (iv) in a facility conducted
455 for the purpose of carrying out a program of rehabilitation for
456 individuals whose earning capacity is impaired by age or phy-
457 sical or mental deficiency or injury or providing remunerative
458 work for individuals who because of their impaired physical
459 or mental capacity cannot be readily absorbed in the competi-
460 tive labor market by an individual receiving such rehabilitation

461 or remunerative work; or (v) as part of an unemployment
462 work-relief or work-training program assisted or financed in
463 whole or in part by any federal agency or an agency of a state
464 or political subdivision thereof, by an individual receiving such
465 work relief or work training; or (vi) prior to January one, one
466 thousand nine hundred seventy-eight for a hospital in a state
467 prison or other state correctional institution by an inmate of
468 the prison or correctional institution, and after December
469 thirty-one, one thousand nine hundred seventy-seven, by an
470 inmate of a custodial or penal institution;

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

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

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

496 (15) Service in the employ of a governmental entity re-
497 ferred to in subdivision (9) of the definition of "employment"
498 in this section if such service is performed by an individual in

499 the exercise of duties (i) as an elected official; (ii) as a member
500 of a legislative body, or a member of the judiciary, of a state
501 or political subdivision; (iii) as a member of the state national
502 guard or air national guard; (iv) as an employee serving on a
503 temporary basis in case of fire, storm, snow, earthquake, flood
504 or similar emergency; (v) in a position which, under or pur-
505 suant to the laws of this state, is designated as (I) a major
506 nontenured policy-making or advisory position, or (II) a policy-
507 making or advisory position the performance of the duties of
508 which ordinarily does not require more than eight hours per
509 week.

510 Notwithstanding the foregoing exclusions from the defini-
511 tion of "employment," services, except agricultural labor and
512 domestic service in a private home, shall be deemed to be in
513 employment if with respect to such services a tax is required
514 to be paid under any federal law imposing a tax against which
515 credit may be taken for contributions required to be paid into
516 a state unemployment compensation fund, or which as a
517 condition for full tax credit against the tax imposed by the
518 Federal Unemployment Tax Act are required to be covered
519 under this chapter.

520 "Employment office" means a free employment office or
521 branch thereof, operated by this state, or any free public
522 employment office maintained as a part of a state controlled
523 system of public employment offices in any other state.

524 "Fund" means the unemployment compensation fund es-
525 tablished by this chapter.

526 "Hospital" means an institution which has been licensed,
527 certified or approved by the state department of health as a
528 hospital.

529 "Institution of higher education" means an educational
530 institution which:

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

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

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

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

543 Notwithstanding any of the foregoing provisions of this
544 definition, all colleges and universities in this state are institu-
545 tions of higher education for purposes of this section.

546 "Payments" means the money required to be paid or that
547 may be voluntarily paid into the state unemployment comp-
548 ensation fund as provided in article five of this chapter.

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

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

555 "Total and partial unemployment" means:

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

561 (2) An individual who has not been separated from em-
562 ployment shall be deemed to be partially unemployed in any
563 week in which due to lack of work he performs no services
564 and with respect to which no wages are payable to him, or in
565 any week in which due to lack of full-time work wages pay-
566 able to him are less than his weekly benefit amount plus
567 twenty-five dollars.

568 "Wages" means all remuneration for personal service, in-
569 cluding commissions and bonuses and the cash value of all
570 remuneration in any medium other than cash except for

571 agricultural labor and domestic service: *Provided*, That the
572 term "wages" shall not include:

573 (1) That part of the remuneration which, after remuneration
574 equal to three thousand dollars has been paid to an individual
575 by an employer with respect to employment during any calen-
576 dar year, is paid after December thirty-one, one thousand nine
577 hundred thirty-nine, and prior to January one, one thousand
578 nine hundred forty-seven, to such individual by such employer
579 with respect to employment during such calendar year; or that
580 part of the remuneration which, after remuneration equal to
581 three thousand dollars with respect to employment after one
582 thousand nine hundred thirty-eight has been paid to an indi-
583 vidual by an employer during any calendar year after one
584 thousand nine hundred forty-six, is paid to such individual
585 by such employer during such calendar year, except that for
586 the purposes of sections one, ten, eleven and thirteen, article
587 six of this chapter, all remuneration earned by an individual
588 in employment shall be credited to the individual and included
589 in his computation of base period wages: *Provided*, That not-
590 withstanding the foregoing provisions, on and after January
591 one, one thousand nine hundred sixty-two, the term "wages"
592 shall not include:

593 That part of the remuneration which, after remuneration
594 equal to three thousand six hundred dollars has been paid to
595 an individual by an employer with respect to employment
596 during any calendar year, is paid during any calendar year
597 after one thousand nine hundred sixty-one; and shall not in-
598 clude that part of remuneration which, after remuneration
599 equal to four thousand two hundred dollars is paid during a
600 calendar year after one thousand nine hundred seventy-one;
601 and shall not include that part of remuneration which, after
602 remuneration equal to six thousand dollars is paid during a
603 calendar year after one thousand nine hundred seventy-seven
604 to an individual by an employer or his predecessor with re-
605 spect to employment during any calendar year, is paid to such
606 individual by such employer during such calendar year unless
607 that part of the remuneration is subject to a tax under a federal
608 law imposing a tax against which credit may be taken for
609 contributions required to be paid into a state unemployment

610 fund. For the purposes of this subdivision (1), the term "em-
611 ployment" shall include service constituting employment under
612 any unemployment compensation law of another state; or
613 which as a condition for full tax credit against the tax im-
614 posed by the Federal Unemployment Tax Act is required to
615 be covered under this chapter; and, except, that for the pur-
616 poses of sections one, ten, eleven and thirteen, article six of
617 this chapter, all remuneration earned by an individual in
618 employment shall be credited to the individual and included
619 in his computation of base period wages: *Provided*, That the
620 remuneration paid to an individual by an employer with re-
621 spect to employment in another state or other states upon
622 which contributions were required of and paid by such em-
623 ployer under an unemployment compensation law of such
624 other state or states shall be included as a part of the remun-
625 eration equal to the amounts of three thousand six hundred dol-
626 lars or four thousand two hundred dollars or six thousand dol-
627 lars herein referred to. In applying such limitation on the
628 amount of remuneration that is taxable an employer shall be
629 accorded the benefit of all or any portion of such amount
630 which may have been paid by its predecessor or predecessors:
631 *Provided, however*, That if the definition of the term "wages"
632 as contained in section 3306(b) of the Internal Revenue Code
633 of 1954 as amended; (a) effective prior to January one, one
634 thousand nine hundred sixty-two, to include remuneration in
635 excess of three thousand dollars, or (b) effective on or after
636 January one, one thousand nine hundred sixty-two, to include
637 remuneration in excess of three thousand six hundred dol-
638 lars, or effective on or after January one, one thousand nine
639 hundred seventy-two, to include remuneration in excess of
640 four thousand two hundred dollars, or effective on or after
641 January one, one thousand nine hundred seventy-eight, to
642 include remuneration in excess of six thousand dollars, paid
643 to an individual by an employer under the Federal Unem-
644 ployment Tax Act during any calendar year, wages for the
645 purposes of this definition shall include remuneration paid in
646 a calendar year to an individual by an employer subject to
647 this article or his predecessor with respect to employment dur-
648 ing any calendar year up to an amount equal to the amount of

649 remuneration taxable under the Federal Unemployment Tax
650 Act;

651 (2) The amount of any payment made after December
652 thirty-one, one thousand nine hundred fifty-two (including any
653 amount paid by an employer for insurance or annuities, or into
654 a fund, to provide for any such payment), to, or on behalf of,
655 an individual in its employ or any of his dependents, under a
656 plan or system established by an employer which makes pro-
657 vision for individuals in its employ generally (or for such
658 individuals and their dependents), or for a class or classes of
659 such individuals (or for a class or classes of such individuals
660 and their dependents), on account of (A) retirement, or (B)
661 sickness or accident disability, or (C) medical or hospitaliza-
662 tion expenses in connection with sickness or accident disability,
663 or (D) death;

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

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

676 (5) Any payment made after December thirty-one, one
677 thousand nine hundred fifty-two, by an employer to, or on
678 behalf of, an individual in its employ or his beneficiary (A)
679 from or to a trust described in section 401(a) which is exempt
680 from tax under section 501(a) of the Federal Internal Revenue
681 Code at the time of such payments unless such payment is
682 made to such individual as an employee of the trust as remun-
683 eration for services rendered by such individual and not as a
684 beneficiary of the trust, or (B) under or to an annuity plan
685 which, at the time of such payment, is a plan described in
686 section 403(a) of the Federal Internal Revenue Code;

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

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

695 (8) Any payment (other than vacation or sick pay) made
696 by an employer after December thirty-one, one thousand nine
697 hundred fifty-two, to an individual in its employ after the
698 month in which he attains the age of sixty-five, if he did
699 not work for the employer in the period for which such pay-
700 ment is made;

701 (9) Payments, not required under any contract of hire,
702 made to an individual with respect to his period of training
703 or service in the armed forces of the United States by an em-
704 ployer by which such individual was formerly employed;

705 (10) Vacation pay, severance pay, or savings plans re-
706 ceived by an individual before or after becoming totally or
707 partially unemployed but earned prior to becoming totally or
708 partially unemployed: *Provided, however,* That the term
709 totally or partially unemployed shall not be interpreted to
710 include employees who are on vacation by reason of
711 the request of the employees or their duly authorized agent,
712 for a vacation at a specific time, and which request by the
713 employees or their agent is acceded to by their employer;

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

718 The reasonable cash value of remuneration in any medium
719 other than cash shall be estimated and determined in accord-
720 ance with rules prescribed by the commissioner, except for
721 remuneration other than cash for services performed in agri-
722 cultural labor and domestic service.

723 "Week" means a calendar week, ending at midnight Satur-

724 day, or the equivalent thereof, as determined in accordance
725 with the regulations prescribed by the commissioner.

726 "Weekly benefit rate" means the maximum amount of bene-
727 fit an eligible individual will receive for one week of total
728 unemployment.

729 "Year" means a calendar year or the equivalent thereof, as
730 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 re-
2 ferred to in subdivision (9) (b) of the definition of "employ-
3 ment" in section three, article one of this chapter, shall be
4 financed in the same manner and in accordance with the
5 provisions of section three-a, article five of this chapter;
6 except that for extended benefits reimbursement shall be one
7 hundred percent of the benefits paid.

8 Any governmental entity which, pursuant to the provisions
9 of this chapter, is, or becomes, subject to this chapter on or
10 after January one, one thousand nine hundred seventy-eight,
11 shall be liable for payments and shall pay contributions in
12 accordance with the provisions of this article and of this
13 chapter, unless it elects to make payments in lieu of contribu-
14 tions as set forth in section three-a, such payments to com-
15 mence on or before January one, one thousand nine hundred
16 seventy-nine.

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

§21A-5-3c. Designating method of financing.

1 The governor or any person or persons he may designate
2 shall elect whether to finance unemployment compensation
3 for the employees of this state or any of its agencies, bureaus,
4 commissions, departments or other instrumentalities by choos-

5 ing the contribution method or the reimbursement method.
6 Nothing in this chapter shall be construed to require the state
7 or any of its agencies, bureaus, commissions, departments or
8 other instrumentalities to choose the same method of financing.

9 The county commission for each county or any of its agen-
10 cies, bureaus, commissions, departments or other instrumentali-
11 ties or the governing body for a municipality or any of its
12 agencies, bureaus, commissions, departments or other instru-
13 mentalities shall elect whether to finance unemployment com-
14 pensation liabilities by choosing the contribution method or the
15 reimbursement method.

§21A-5-5. Rate of contribution.

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

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

§21A-5-7. Joint and separate accounts.

1 (1) The commissioner shall maintain a separate account
2 for each employer, and shall credit his account with all
3 contributions paid by him prior to July first, one thousand

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

24 (2) Benefits paid to an eligible individual for regular
25 and extended total unemployment beginning after the effective
26 date of this act shall be charged to the account of the last
27 employer with whom he has been employed as much as
28 thirty working days, whether or not such days are consecu-
29 tive: *Provided further*, That no employer's account shall be
30 charged with benefits paid to any individual who has been
31 separated from a noncovered employing unit in which he
32 was employed as much as thirty days, whether or not such
33 days are consecutive: *And provided further*, That benefits
34 paid to an eligible individual for regular and extended partial
35 unemployment beginning after the effective date of this act
36 shall be charged to the account of the claimant's current
37 employer: *Provided*, That no employer's account shall be
38 charged with more than fifty percent of the benefits paid
39 to an eligible individual as extended benefits under the
40 provisions of article six-a of this chapter: *Provided, however*,
41 That state and local government employers shall be charged
42 with one hundred percent of the benefits paid to an eligible
43 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 when-
74 ever 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

84 regulations and upon application by two or more employers
85 to establish such an account, or to merge their several in-
86 dividual accounts in a joint account, maintain such joint
87 account as if it constituted a single employer's account.

88 (5) State and local government employers are hereby
89 authorized to enter into joint accounts and to maintain such
90 joint account or accounts as if it or they constituted a single
91 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.**

1 With respect to weeks of unemployment beginning on or
2 after January one, one thousand nine hundred seventy-eight,
3 wages for insured work shall include wages paid for previously
4 uncovered service. For the purposes of this section, the term
5 "previously uncovered services" means services:

6 (1) Which were not employment as defined in section
7 three of article one of this chapter, or by election pursuant
8 to section three of article five of this chapter, at any time
9 during the one-year period ending December thirty-one, one
10 thousand nine hundred seventy-five; and

11 (2) Which—(a) Are agricultural labor, as defined in sub-
12 division (12) of the definitions of "employment" in section
13 three of article one of this chapter, or domestic services as
14 defined in subdivision (13) of the definitions of "employment"
15 in section three, or (b) are services performed by an employee
16 of this state or a political subdivision thereof, or a nonprofit
17 educational institution as provided in subparagraphs (b) and
18 (c) of subdivision (9) of the definitions of "employment" in
19 section three of article one; except to the extent that assistance
20 under Title II of the Emergency Jobs and Unemployment
21 Assistance Act of 1974 was paid on the basis of such services.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

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

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

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

16 For purposes of this subdivision (1), an individual shall
17 not be deemed to have left his most recent work voluntarily
18 without good cause involving fault on the part of the em-
19 ployer, if such individual leaves his work with an employer
20 with whom he has been employed at least thirty working days
21 or more for the purpose of returning to, and if he in fact,
22 within a fourteen-day calendar period, does return to, em-
23 ployment with the last preceding employer with whom he
24 was previously employed within the past year prior to his
25 return to work day, and which last preceding employer, after
26 having previously employed such individual for thirty working
27 days or more, laid off such individual because of lack of
28 work, which layoff occasioned the payment of benefits under
29 this chapter or could have occasioned the payment of benefits
30 under this chapter had such individual applied for such bene-
31 fits. It is the intent of this paragraph to cause no disqualifica-
32 tion for benefits for such an individual who complies with the
33 foregoing set of requirements and conditions. Benefits paid
34 to such individual under the provisions of this chapter shall,
35 notwithstanding the provisions of subsection (2), section seven,
36 article five of this chapter, and of subdivision (12) of this
37 section three, be charged to the account of such last preceding
38 employer with whom such individual was previously em-
39 ployed for thirty working days.

40 (2) For the week in which he was discharged from his
41 most recent work for misconduct and the six weeks im-

42 mediately following such week; or for the week in which he
43 was discharged from his last thirty-day employing unit for
44 misconduct and the six weeks immediately following such
45 week. Such disqualification shall carry a reduction in the
46 maximum benefit amount equal to six times the individual's
47 weekly benefit. However, if the claimant returns to work in
48 covered employment for thirty days during his benefit year,
49 whether or not such days are consecutive, the maximum
50 benefit amount shall be increased by the amount of the
51 decrease imposed under the disqualification; except that:

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

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

72 (4) For a week in which his total or partial unemployment
73 is due to a stoppage of work which exists because of a labor
74 dispute at the factory, establishment or other premises at
75 which he was last employed, unless the commissioner is
76 satisfied that he was not (one) participating, financing, or
77 directly interested in such dispute, and (two) did not belong
78 to a grade or class of workers who were participating, financ-
79 ing, or directly interested in the labor dispute which resulted

80 in the stoppage of work. No disqualification under this
81 subdivision shall be imposed if the employees are required
82 to accept wages, hours or conditions of employment sub-
83 stantially less favorable than those prevailing for similar work
84 in the locality, or if employees are denied the right of
85 collective bargaining under generally prevailing conditions, or
86 if an employer shuts down his plant or operation or dismisses
87 his employees in order to force wage reduction, changes in
88 hours or working conditions.

89 For the purpose of this subdivision, if any stoppage of
90 work continues longer than four weeks after the termination of
91 the labor dispute which caused stoppage of work, there shall be
92 a rebuttable presumption that that part of the stoppage of work
93 which exists after said period^{of} of four weeks after the termina-
94 tion of said labor dispute, did not exist because of said labor
95 dispute; and in such event the burden shall be upon the em-
96 ployer or other interested party to show otherwise.

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

99 (a) Wages in lieu of notice;

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

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

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

111 (7) Benefits shall not be paid to any individual on the
112 basis of any services, substantially all of which consist of
113 participating in sports or athletic events or training or pre-
114 paring to so participate, for any week which commences
115 during the period between two successive sport seasons (or
116 similar periods) if such individual performed such services

117 in the first of such seasons (or similar periods) and there
118 is a reasonable assurance that such individual will perform
119 such services in the later of such seasons (or similar periods).

120 (8) (a) Benefits shall not be paid on the basis of services
121 performed by an alien unless such alien is an individual
122 who has been lawfully admitted for permanent residence or
123 otherwise is permanently residing in the United States under
124 color of law (including an alien who is lawfully present in
125 the United States as a result of the application of the pro-
126 visions of section 203 (a) (7) or section 212 (d) (5) of the
127 Immigration and Nationality Act: *Provided*, That any modi-
128 fications to the provisions of sections 3304 (a) (14) of the ✓ 320
129 Federal Unemployment Tax Act as provided by Public Law
130 94-566 which specify other conditions or other effective date
131 than stated herein for the denial of benefits based on services
132 performed by aliens and which modifications are required to
133 be implemented under state law as a condition for full tax
134 credit against the tax imposed by the Federal Unemployment
135 Tax Act, shall be deemed applicable under the provisions
136 of this section;

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

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

146 (9) For each week in which an individual is unemployed
147 because, having voluntarily left employment to attend a school,
148 college, university or other educational institution, he is at-
149 tending such school, college, university, or other educational
150 institution, or is awaiting entrance thereto or is awaiting the
151 starting of a new term or session thereof, and until the
152 individual returns to covered employment.

153 (10) For each week in which he is unemployed because

154 of his request, or that of his duly authorized agent, for a
155 vacation period at a specified time that would leave the
156 employer no other alternative but to suspend operations.

157 (11) For each week in which he is receiving or has re-
158 ceived benefits under Title II of the Social Security Act
159 or similar payments under any act of Congress and/or
160 remuneration in the form of an annuity, pension, or other
161 retirement pay, from an employer or from any trust or fund
162 contributed to by an employer. But if such remuneration for
163 any week is less than the benefits which would otherwise be
164 due him for such week under this chapter, he shall be
165 entitled to receive for such week, if otherwise eligible, bene-
166 fits reduced by the amount of such remuneration: *Provided*,
167 That if such amount of benefits is not a multiple of one dollar,
168 it shall be computed to the next higher multiple of one
169 dollar: *Provided, however*, That there shall be no disqualifi-
170 cation if in the individual's base period there are no wages
171 which were paid by the employer paying such remuneration,
172 or by a fund into which the employer has paid during said
173 base period. Claimant may be required to certify as to
174 whether or not he is receiving or has received remuneration
175 in the form of an annuity, pension, or other retirement pay
176 from an employer or from a trust fund contributed to by an
177 employer.

178 (12) For each week with respect to which he knowingly
179 made a false statement or representation knowing it to be
180 false or knowingly failed to disclose a material fact in order
181 to obtain or increase a benefit under this article. For each
182 week of disqualification he shall be disqualified an additional
183 five weeks and his maximum benefit amount shall be reduced
184 by an amount equal to five times his weekly benefit rate.
185 Such five weeks' disqualification periods are to run consecu-
186 tively beginning with the first week in which it is determined
187 a fraudulent claim was filed: *Provided further*, That an

188 individual shall not be disqualified under this subdivision for
 189 a period of more than fifty-two consecutive weeks: *And*
 190 *provided further*, That disqualification under this subdivision
 191 shall not preclude prosecution under section seven, article
 192 ten of this chapter.

193 (13) For the purposes of this section an employer's ac-
 194 count shall not be charged under any of the following condi-
 195 tions, When benefits are paid for unemployment immediately
 196 after the expiration of a period of disqualification for (a)
 197 leaving work voluntarily without good cause involving fault
 198 on the part of the employer, (b) discharge for any of the
 199 causes set forth in subdivision (2) of this section, (c) failing
 200 without good cause to apply for available suitable work, accept
 201 suitable work, when offered, or to return to his customary
 202 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
 2 week shall be paid benefits with respect to that week at the
 3 weekly rate appearing in Column (C) in Table A in this
 4 paragraph, on the line on which in Column (A) there is indi-
 5 cated the employee's wage class, except as otherwise provided
 6 under the term "total and partial unemployment" in section
 7 three, article one of this chapter. The employee's wage class
 8 shall be determined by his base period wages as shown in
 9 Column (B) in Table A. The right of an employee to receive
 10 benefits shall not be prejudiced nor the amount thereof be
 11 diminished by reason of failure by an employer to pay either
 12 the wages earned by the employee or the contribution due on
 13 such wages. An individual who is totally unemployed but
 14 earns in excess of twenty-five dollars as a result of odd-job or
 15 subsidiary work in any benefit week shall be paid benefits for
 16 such week in accordance with the provisions of this chapter
 17 pertaining to benefits for partial unemployment.

18

TABLE A

19					Maximum
20					Benefit in
21					Benefit Year
22					for Total
23				Weekly	and/or
24	Wage	Wages in		Benefit	Partial Un-
25	Class	Base Period		Rate	employment
26	(Column A)	(Column B)	(Column C)	(Column D)	
27		Under \$ 700.00	Ineligible		-----
28	1	700.00	799.99	\$ 12.00	\$312.00
29	2	800.00	899.99	13.00	338.00
30	3	900.00	999.99	14.00	364.00
31	4	1,000.00	1,149.99	15.00	390.00
32	5	1,150.00	1,299.99	16.00	416.00
33	6	1,300.00	1,449.99	17.00	442.00
34	7	1,450.00	1,599.99	18.00	468.00
35	8	1,600.00	1,749.99	19.00	494.00
36	9	1,750.00	1,899.99	20.00	520.00
37	10	1,900.00	2,049.99	21.00	546.00
38	11	2,050.00	2,199.99	22.00	572.00
39	12	2,200.00	2,349.99	23.00	598.00
40	13	2,350.00	2,499.99	24.00	624.00
41	14	2,500.00	2,599.99	25.00	650.00
42	15	2,600.00	2,699.99	26.00	676.00
43	16	2,700.00	2,799.99	27.00	702.00
44	17	2,800.00	2,899.99	28.00	728.00
45	18	2,900.00	2,999.99	29.00	754.00
46	19	3,000.00	3,099.99	30.00	780.00
47	20	3,100.00	3,199.99	31.00	806.00
48	21	3,200.00	3,349.99	32.00	832.00
49	22	3,350.00	3,499.99	33.00	858.00
50	23	3,500.00	3,649.99	34.00	884.00
51	24	3,650.00	3,799.99	35.00	910.00

52 Notwithstanding any of the foregoing provisions of this
53 section, on and after July one, one thousand nine hundred

54 sixty-seven, the maximum weekly benefit rate shall be forty
55 percent of the average weekly wage in West Virginia.

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

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

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

68 The commissioner, after he has determined the maximum
69 weekly benefit rate upon the basis of the above formula, shall
70 establish as many additional wage classes as are required, in-
71 creasing the amount of base period wages required for each
72 class by one hundred fifty dollars, the weekly benefit rate for
73 each class by one dollar, and the maximum benefit by twenty-
74 six dollars. The maximum weekly benefit rate, when computed
75 by the commissioner, in accordance with the foregoing pro-
76 visions, shall be rounded to the next higher dollar amount, if
77 the computation exceeds forty-nine percent of a dollar amount.
78 Such rounding off to the next higher dollar amount shall result
79 in one additional wage class, with commensurate base period
80 wage requirement of one hundred fifty dollars over the pre-
81 ceeding wage class, and with a maximum benefit increase over
82 the preceding wage class of twenty-six dollars. Such an addi-
83 tional wage class shall be published by the commissioner with
84 the table required to be published by the foregoing provisions
85 of this section.

86 Notwithstanding any of the foregoing provisions of this
87 section, including Table A, on and after July one, one thou-
88 sand nine hundred seventy-four:

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

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

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

120 Notwithstanding any of the foregoing provisions of this
121 section, on and after July one, one thousand nine hundred
122 seventy-eight, the weekly benefit rate for each wage class by
123 rounded dollar amount shall be fifty-five percent of one fifty-
124 second of the median dollar amount of wages in base period
125 for such wage class except that the weekly benefit rate for
126 classifications one through twenty shall remain unchanged,
127 but in any case the weekly benefit rate on or after July one,
128 one thousand nine hundred seventy-eight, shall be in accord-
129 ance with Table B below.

130

TABLE B

131					Maximum
132					Benefit in
133					Benefit Year
134					for Total
135				Weekly	and/or
136	Wage		Wages in	Benefit	Partial Un-
137	Class		Base Period	Rate	employment
138	Under	\$1,150.00		Ineligible	
139	1	1,150.00 -	1,299.99	18.00	468.00
140	2	1,300.00 -	1,449.99	19.00	494.00
141	3	1,450.00 -	1,599.99	20.00	520.00
142	4	1,600.00 -	1,749.99	21.00	546.00
143	5	1,750.00 -	1,899.99	22.00	572.00
144	6	1,900.00 -	2,049.99	23.00	598.00
145	7	2,050.00 -	2,199.99	24.00	624.00
146	8	2,200.00 -	2,349.99	25.00	650.00
147	9	2,350.00 -	2,499.99	26.00	676.00
148	10	2,500.00 -	2,599.99	27.00	702.00
149	11	2,600.00 -	2,699.99	28.00	728.00
150	12	2,700.00 -	2,799.99	29.00	754.00
151	13	2,800.00 -	2,899.99	30.00	780.00
152	14	2,900.00 -	2,999.99	31.00	806.00
153	15	3,000.00 -	3,099.99	32.00	832.00
154	16	3,100.00 -	3,199.99	33.00	858.00
155	17	3,200.00 -	3,349.99	35.00	910.00
156	18	3,350.00 -	3,499.99	37.00	962.00
157	19	3,500.00 -	3,649.99	38.00	988.00
158	20	3,650.00 -	3,799.99	40.00	1,040.00
159	21	3,800.00 -	3,949.99	41.00	1,066.00
160	22	3,950.00 -	4,099.99	43.00	1,118.00
161	23	4,100.00 -	4,249.99	45.00	1,170.00
162	24	4,250.00 -	4,399.99	46.00	1,196.00
163	25	4,400.00 -	4,549.99	48.00	1,248.00
164	26	4,550.00 -	4,699.99	49.00	1,274.00
165	27	4,700.00 -	4,849.99	51.00	1,326.00
166	28	4,850.00 -	4,999.99	53.00	1,378.00
167	29	5,000.00 -	5,149.99	54.00	1,404.00
168	30	5,150.00 -	5,299.99	56.00	1,456.00

169	31	5,300.00 -	5,449.99	57.00	1,482.00
170	32	5,450.00 -	5,599.99	59.00	1,534.00
171	33	5,600.00 -	5,749.99	61.00	1,586.00
172	34	5,750.00 -	5,899.99	62.00	1,612.00
173	35	5,900.00 -	6,049.99	64.00	1,664.00
174	36	6,050.00 -	6,199.99	65.00	1,690.00
175	37	6,200.00 -	6,349.99	67.00	1,742.00
176	38	6,350.00 -	6,499.99	68.00	1,768.00
177	39	6,500.00 -	6,649.99	70.00	1,820.00
178	40	6,650.00 -	6,799.99	72.00	1,872.00
179	41	6,800.00 -	6,949.99	73.00	1,898.00
180	42	6,950.00 -	7,099.99	75.00	1,950.00
181	43	7,100.00 -	7,249.99	76.00	1,976.00
182	44	7,250.00 -	7,399.99	78.00	2,028.00
183	45	7,400.00 -	7,549.99	80.00	2,080.00
184	46	7,550.00 -	7,699.99	81.00	2,106.00
185	47	7,700.00 -	7,849.99	83.00	2,158.00
186	48	7,850.00 -	7,999.99	84.00	2,184.00
187	49	8,000.00 -	8,149.99	86.00	2,236.00
188	50	8,150.00 -	8,299.99	87.00	2,262.00
189	51	8,300.00 -	8,449.99	89.00	2,314.00
190	52	8,450.00 -	8,599.99	91.00	2,366.00
191	53	8,600.00 -	8,749.99	92.00	2,392.00
192	54	8,750.00 -	8,899.99	94.00	2,444.00
193	55	8,900.00 -	9,049.99	95.00	2,470.00
194	56	9,050.00 -	9,199.99	97.00	2,522.00
195	57	9,200.00 -	9,349.99	99.00	2,574.00
196	58	9,350.00 -	9,499.99	100.00	2,600.00
197	59	9,500.00 -	9,649.99	102.00	2,652.00
198	60	9,650.00 -	9,799.99	103.00	2,678.00
199	61	9,800.00 -	9,949.99	105.00	2,730.00
200	62	9,950.00 -	10,099.99	107.00	2,782.00
201	63	10,100.00 -	10,249.99	108.00	2,808.00
202	64	10,250.00 -	10,399.99	110.00	2,860.00
203	65	10,400.00 -	10,549.99	111.00	2,886.00
204	66	10,550.00 -	10,699.99	113.00	2,938.00
205	67	10,700.00 -	10,849.99	114.00	2,964.00
206	68	10,850.00 -	10,999.99	116.00	3,016.00
207	69	11,000.00 -	11,149.99	118.00	2,068.00
208	70	11,150.00 -	11,299.99	119.00	3,094.00

209	71	11,300.00 - 11,449.99	121.00	3,146.00
210	72	11,450.00 - 11,599.99	122.00	3,172.00
211	73	11,600.00 - 11,749.00	124.00	3,224.00
212	74	11,750.00 - 11,899.99	126.00	3,276.00
213	75	11,900.00 - 12,049.99	127.00	3,302.00
214	76	12,050.00 - 12,199.99	129.00	3,354.00
215	77	12,200.00 - 12,349.99	130.00	3,380.00
216	78	12,350.00 - 12,499.99	132.00	3,432.00
217	79	12,500.00 - 12,649.99	133.00	3,458.00
218	80	12,650.00 - 12,799.99	135.00	3,510.00
219	81	12,800.00 - 12,949.99	137.00	3,562.00
220	82	12,950.00 - 13,099.99	138.00	3,588.00
221	83	13,150.00 - and over	139.00	3,614.00

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

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

235 The computation and determination of rates as aforesaid
 236 shall be completed annually before July one, and any such
 237 new wage class, with its corresponding wages in base period,
 238 weekly benefit rate, and maximum benefit in a benefit year
 239 established by the commissioner in the foregoing manner
 240 effective on a July one, shall apply only to a new claim
 241 established by a claimant on and after said July one, and
 242 shall not apply to continued claims of a claimant based on
 243 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
2 subdivisions (9) and (10) of the definition of "employment"
3 in section three, article one of this chapter, shall be payable
4 in the same amount, on the same terms and subject to the
5 same conditions as compensation payable on the basis of
6 other service subject to this chapter; except that benefits
7 based on service in an instructional, research, or principal
8 administrative capacity in an institution of higher education
9 shall not be paid to an individual for any week of unemploy-
10 ment which begins during the period between two successive
11 academic years, or during a similar period between two
12 regular terms, whether or not successive, or during a period
13 of paid sabbatical leave provided for in the individual's
14 contract, if the individual has a contract or contracts to
15 perform services in any such capacity for any institution or
16 institutions of higher education for both such academic years
17 or both such terms.

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

24 (a) With respect to service performed after December
25 thirty-one, one thousand nine hundred seventy-seven, in an
26 instructional, research, or principal administrative capacity
27 for an educational institution, benefits shall not be paid
28 based on such services for any week of unemployment com-
29 mencing during the period between two successive academic
30 years, or during a similar period between two regular but
31 not successive terms, or during any holiday or vacation period,
32 or during a period of paid sabbatical leave provided for in
33 the individual's contract, to any individual if such individual
34 performs such services in the first of such academic years
35 (or terms) or prior to the beginning of such holiday or vaca-

36 tion period and if there is a contract or a reasonable assur-
 37 ance that such individual will perform services in any such
 38 capacity for any educational institution in the second of
 39 such academic years or terms or after such holiday or vaca-
 40 tion period: *Provided*, That subsection (1) of this section
 41 shall apply with respect to such services prior to January
 42 one, one thousand nine hundred seventy-eight;

43 (b) With respect to services performed after December
 44 thirty-one, one thousand nine hundred seventy-seven, in any
 45 other capacity for an educational institution (other than an
 46 institution of higher education as defined in section three
 47 of article one), benefits shall not be paid on the basis of
 48 such services to any individual for any week which com-
 49 mences during any holiday or vacation period, or during a
 50 period between two successive academic years or terms if
 51 such individual performs such services in the first of such
 52 academic years or terms or prior to the beginning of such
 53 holiday or vacation period and there is a reasonable assur-
 54 ance that such individual will perform such services in the
 55 second of such academic years or terms or after such holiday
 56 or vacation periods.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions.

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

3 (1) "Extended benefit period" means a period which

4 (a) Begins with the third week after whichever of the fol-
 5 lowing weeks occurs first:

6 (i) A week for which there is a national "on" indicator; or

7 (ii) A week for which there is a state "on" indicator; and

8 (b) Ends with either of the following weeks, whichever
 9 occurs later:

10 (i) The third week after the first week for which there is
 11 both a national "off" indicator and a state "off" indicator; or

12 (ii) The thirteenth consecutive week of such period.

13 Notwithstanding the foregoing provisions of this section, no
14 extended benefit period may begin by reason of a state "on"
15 indicator before the fourteenth week following the end of a
16 prior extended benefit period which was in effect with respect
17 to this state, and no extended benefit period may become
18 effective in this state prior to the sixty-first day following the
19 date of enactment of the Federal-State Extended Unemploy-
20 ment Compensation Act of 1970 and, within the period be-
21 ginning on such sixty-first day and ending on December
22 thirty-one, one thousand nine hundred seventy-one, an ex-
23 tended benefit period may become effective and be terminated
24 in this state solely by reason of a state "on" and state "off"
25 indicator, respectively.

26 (2) There is a national "on" indicator for a week if, for
27 the period consisting of such week and the immediately pre-
28 ceding twelve weeks, the rate of insured unemployment (sea-
29 sonally adjusted) for all states equaled or exceeded four and
30 five-tenths percent. The rate of insured unemployment, for
31 the purposes of this subsection, shall be determined by the
32 secretary of labor by reference to the average monthly covered
33 employment for the first four of the most recent six calendar
34 quarters ending before the close of such period.

35 (3) There is a national "off" indicator for a week if, for
36 the period consisting of such week and the immediately pre-
37 ceding twelve weeks, the rate of insured unemployment (sea-
38 sonally adjusted) for all states was less than four and five-
39 tenths percent. The rate of insured unemployment, for the
40 purposes of this subsection, shall be determined by the secre-
41 tary of labor by reference to the average monthly covered
42 employment for the first four of the more recent six calendar
43 quarters ending before the close of such period.

44 (4) There is a "state 'on' indicator" for this state for a
45 week if the commissioner determines, in accordance with the
46 regulations of the United States secretary of labor, that for
47 the period consisting of such week and the immediately pre-
48 ceding twelve weeks, the rate of insured unemployment (not
49 seasonally adjusted) under this article:

50 (a) Equaled or exceeded one hundred twenty percent of

51 the average of such rates for the corresponding thirteen-week
52 period ending in each of the preceding two calendar years,
53 and

54 (b) Equaled or exceeded four percent.

55 (5) There is a "state 'off' indicator" for this state for a
56 week if the commissioner determines, in accordance with the
57 regulations of the United States secretary of labor, that for
58 the period consisting of such week and the immediately pre-
59 ceding twelve weeks, the rate of insured unemployment (not
60 seasonally adjusted) under this article:

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

64 (b) Was less than four percent.

65 (6) "Rate of insured unemployment," for purposes of sub-
66 divisions (4) and (5) of this section, means the percentage
67 derived by dividing

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

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

77 (7) "Regular benefits" means benefits payable to an indi-
78 vidual under this chapter or under any other state law (in-
79 cluding benefits payable to federal civilian employees and to
80 ex-servicemen pursuant to 5 U.S.C., chapter 85) other than
81 extended benefits.

82 (8) "Extended benefits" means benefits (including benefits
83 payable to federal civilian employees and to ex-servicemen
84 pursuant to 5 U.S.C., chapter 85) payable to an individual
85 under the provisions of this article for weeks of unemploy-
86 ment in his eligibility period.

87 (9) "Eligibility period" of an individual means the period
88 consisting of the weeks in his benefit year which begin in an
89 extended benefit period and, if his benefit year ends within
90 such extended benefit period, any weeks thereafter which be-
91 gin in such period.

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

94 (a) Has received, prior to such week, all of the regular
95 benefits which were available to him under this chapter or
96 any other state law (including dependents' allowances and
97 benefits payable to federal civilian employees and ex-service-
98 men under 5 U.S.C., chapter 85) in his current benefit year
99 that includes such week: *Provided*, That for the purposes of
100 this subdivision, an individual shall be deemed to have received
101 all of the regular benefits which were available to him al-
102 though (i) as a result of a pending appeal with respect to wages
103 and/or employment which were not considered in the original
104 monetary determination in his benefit year, he may subse-
105 quently be determined to be entitled to added regular benefits,
106 or (ii) he may be entitled to regular benefits with respect to
107 future weeks of unemployment, but such benefits are not pay-
108 able with respect to such week of unemployment by reason of
109 the provisions of section one-a, article six of this chapter; or

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

114 (c) Has no right to unemployment benefits or allowances,
115 as the case may be, under the Railroad Unemployment Insur-
116 ance Act, the Trade Expansion Act of 1962, the Automotive
117 Products Trade Act of 1965 and such other federal laws as are
118 specified in regulations issued by the United States secretary of
119 labor; and has not received and is not seeking unemployment
120 benefits under the unemployment compensation law of the
121 Virgin Islands or of Canada; but if he is seeking such benefits
122 and the appropriate agency finally determines that he is not
123 entitled to benefits under such law he is considered an ex-
124 haustee.

125 (11) "State law" means the unemployment insurance law
126 of any state, approved by the United States secretary of labor
127 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
2 file an appeal from the decision of the deputy within eight
3 calendar days after notice of the decision has been delivered
4 or mailed to the claimant and last employer is provided in
5 section four of this article. The period within which an
6 appeal from the decision of the deputy may be filed shall
7 be stated in such notice. The decision of the deputy shall be
8 final and benefits shall be paid or denied in accordance
9 therewith unless an appeal is filed within such time.

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

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

19 Upon consideration of all evidence the appeal tribunal
20 shall make a decision within twenty-one days after the date
21 of the hearing and shall notify the claimant, last employer,
22 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
2 Congress of the United States or the federal acts it amends
3 should be adjudged unconstitutional or invalid in its or their
4 application or stayed pendete lite as to state or local employees
5 by a court of competent jurisdiction, then the coverage of those
6 employees under this act is automatically stayed or repealed to

7 the extent of the adjudged unconstitutionality, invalidity or
8 inapplicability. The repeal shall be effective from the date of
9 final disposition upon appeal or from the date of expiration of
10 the right of appeal and shall apply to relevant matters pending
11 at that time. If United States Public Law 94-566 as enacted
12 by the Congress of the United States or those provisions there-
13 of relating to coverage of state and local employees should at
14 any time be repealed by the Congress of United States then
15 the provisions of this chapter relating to coverage of state and
16 local employees shall be automatically repealed and of no
17 further force and effect.

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

James L. Davis
Chairman Senate Committee

Lawrence C. Christman
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. C. Willan, Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Beuther, Jr.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

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

John J. Rhyne
Governor

APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

MAR 22 9 57 AM '78

OFFICE OF THE GOVERNOR

Date March 24, 1978

Time 2:15 p.m.

RECEIVED

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OFFICE
GOVERNOR OF STATE