

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978

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ENROLLED

*Committee Substitute for*

HOUSE BILL No. 1442

(By Mr. Speaker, Mr. Kopp )

— ● —

PASSED March 11, 1978

In Effect - from - Passage

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**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 1442**

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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 tialities, 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 remuneration  
625 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<sup>of</sup> 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					<b>Maximum</b>
132					<b>Benefit in</b>
133					<b>Benefit Year</b>
134					<b>for Total</b>
135				<b>Weekly</b>	<b>and/or</b>
136	<b>Wage</b>	<b>Wages in</b>		<b>Benefit</b>	<b>Partial Un-</b>
137	<b>Class</b>	<b>Base Period</b>		<b>Rate</b>	<b>employment</b>
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

*Laurence 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. Beatherton, 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.

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OFFICE  
GOV. OF STATE