

APPROVED AND SIGNED BY THE GOVERNOR

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979



ENROLLED

Committee Substitute for

HOUSE BILL No. 1286

(By Mr. Chambers and Mr. Holmes)



Passed March 10, 1979

In Effect July 1, 1979 Passage



No. 1286

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1286

(By MR. CHAMBERS and MR. HOLMES)

[Passed March 10, 1979; in effect July 1, 1979]

AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and sections one and ten, article six; and section five-a, article nine, all of said chapter; all relating to unemployment compensation; definitions; excluding certain employees from the terms totally or partially unemployed as they relate to vacation pay; requiring that to qualify for benefits an unemployed individual do that which a reasonably prudent person in his circumstances would do in seeking work; requiring that to qualify for benefits an unemployed individual earn wages in more than one quarter; changing the maximum benefit to an amount equal to twenty-eight times the weekly benefit rate; changing the maximum weekly benefit rate to seventy percent of the average weekly wage in West Virginia; and increasing the allowable expenditure from the employment security special administration fund to five hundred thousand dollars in any fiscal year where those expenditures are to cover federal funds authorized but not yet received and subject to repayment to the fund.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter twenty-one-a of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, and sections one and ten, article six; and section five-a, article nine, all of said chapter, be amended and reenacted to read as follows:

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

§21A-1-3. Definitions.

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

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

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

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

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

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

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

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

30 period sufficient to make him eligible for benefits under the
31 provisions of this chapter.

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

34 "Board" means board of review.

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

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

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

44 "Employing unit" means an individual, or type of organi-
45 zation, including any partnership, association, trust, estate,
46 joint-stock company, insurance company, corporation (do-
47 mestic or foreign), state or political subdivision thereof,
48 or their instrumentalities, as provided in subdivision (9) (b)
49 of the definition of "employment" in this section, institution
50 of higher education, or the receiver, trustee in bankruptcy,
51 trustee or successor thereof, or the legal representative of
52 a deceased person, which has on January first, one thousand
53 nine hundred thirty-five, or subsequent thereto, had in its
54 employ one or more individuals performing service within
55 this state.

56 "Employer" means:

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

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

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

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

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

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

88 (7) Any employing unit which, after December thirty-
89 one, one thousand nine hundred seventy-one (i) in any calendar
90 quarter in either the current or preceding calendar year paid
91 for service in employment wages of one thousand five hundred
92 dollars or more, or (ii) for some portion of a day in each of
93 twenty different calendar weeks, whether or not such weeks
94 were consecutive, in either the current or the preceding
95 calendar year had in employment at least one individual (ir-
96 respective of whether the same individual was in employment
97 in each such day) except as provided in subdivisions eleven
98 and twelve hereof;

99 (8) Any employing unit for which service in employment,
100 as defined in subdivision (9) of the definition of "em-

101 ployment” in this section, is performed after December
102 thirty-one, one thousand nine hundred seventy-one;

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

107 (10) Any employing unit for which service in employment,
108 as defined in paragraphs (b) and (c) of subdivision (9) of
109 the definition of “employment” in this section, is performed
110 after December thirty-one, one thousand nine hundred seventy-
111 seven;

112 (11) Any employing unit for which agricultural labor,
113 as defined in subdivision (12) of the definition of “employ-
114 ment” in this section, is performed after December thirty-one,
115 one thousand nine hundred seventy-seven;

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

120 “Employment,” subject to the other provisions of this
121 section, means:

122 (1) Service, including service in interstate commerce,
123 performed for wages or under any contract of hire, written
124 or oral, express or implied;

125 (2) Any service performed prior to January one, one
126 thousand nine hundred seventy-two, which was employment as
127 defined in this section prior to such date and, subject to
128 the other provisions of this section, service performed
129 after December thirty-one, one thousand nine hundred
130 seventy-one, by an employee, as defined in section 3306(i)
131 of the Federal Unemployment Tax Act, including service in
132 interstate commerce;

133 (3) Any service performed prior to January one, one
134 thousand nine hundred seventy-two, which was employment
135 as defined in this section prior to such date and, subject to
136 the other provisions of this section, service performed

137 after December thirty-one, one thousand nine hundred seventy-
138 one, including service in interstate commerce, by any officer
139 of a corporation;

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

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

162 (6) Service shall be deemed to be localized within a state,
163 if: (a) The service is performed entirely within such state; or
164 (b) the service is performed both within and without such
165 state, but the service performed without such state is incidental
166 to the individual's service within this state, as, for example,
167 is temporary or transitory in nature or consists of isolated trans-
168 actions;

169 (7) Services performed by an individual for wages shall
170 be deemed to be employment subject to this chapter unless
171 and until it is shown to the satisfaction of the commissioner
172 that: (a) Such individual has been and will continue to be
173 free from control or direction over the performance of such
174 services, both under his contract of service and in fact; and

175 (b) such service is either outside the usual course of the
176 business for which such service is performed or that such
177 service is performed outside of all the places of business of
178 the enterprise for which such service is performed; and
179 (c) such individual is customarily engaged in an independently
180 established trade, occupation, profession or business;

181 (8) All service performed by an officer or member of the
182 crew of an American vessel (as defined in section three hun-
183 dred five of an act of Congress entitled Social Security Act
184 amendment of 1946, approved August tenth, one thousand
185 nine hundred forty-six) on or in connection with such vessel,
186 provided that the operating office, from which the operations
187 of such vessel operating on navigable waters within and
188 without the United States is ordinarily and regularly super-
189 vised, managed, directed and controlled, is within this state;

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

200 (b) Service performed after December thirty-one, one thou-
201 sand nine hundred seventy-seven, in the employ of this state
202 or any of its instrumentalities or political subdivisions thereof
203 or any of its instrumentalities or any instrumentality of more
204 than one of the foregoing or any instrumentality of any fore-
205 going and one or more other states or political subdivisions:
206 *Provided*, That such service is excluded from "employment"
207 as defined in the Federal Unemployment Tax Act by section
208 3306(c) (7) of that act and is not excluded from "employment"
209 under subdivision (15) of the exclusion from employment in
210 this section; and

211 (c) Service performed after December thirty-one, one thou-
212 sand nine hundred seventy-seven, in the employ of a non-

213 profit educational institution which is not an institution of
214 higher education;

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

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

222 (b) The organization had four or more individuals in em-
223 ployment for some portion of a day in each of twenty differ-
224 ent weeks, whether or not such weeks were consecutive, with-
225 in either the current or preceding calendar year, regardless of
226 whether they were employed at the same moment of time;

227 (11) Service of an individual who is a citizen of the United
228 States, performed outside the United States after Decem-
229 ber thirty-one, one thousand nine hundred seventy-one (ex-
230 cept in Canada and in the case of Virgin Islands after Dec-
231 ember thirty-one, one thousand nine hundred seventy-one,
232 and before January one of the year following the year in
233 which the secretary of labor approves for the first time
234 an unemployment insurance law submitted to him by the
235 Virgin Islands for approval) in the employ of an Ameri-
236 can employer (other than service which is deemed "em-
237 ployment" under the provisions of subdivision (4), (5) or
238 (6) of this definition of "employment" or the parallel pro-
239 visions of another state's law) if:

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

242 (b) The employer has no place of business in the Unit-
243 ed States, but (i) the employer is an individual who is a
244 resident of this state; or (ii) the employer is a corporation
245 which is organized under the laws of this state; or (iii) the
246 employer is a partnership or a trust and the number of the
247 partners or trustees who are residents of this state is greater
248 than the number who are residents of any one other state;
249 or

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

255 An "American employer," for purposes of this subdivision
256 (11), means a person who is (i) an individual who is a
257 resident of the United States; or (ii) a partnership if
258 two-thirds or more of the partners are residents of
259 the United States; or (iii) a trust, if all of the trustees
260 are residents of the United States; or (iv) a corpora-
261 tion organized under the laws of the United States or of any
262 state;

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

267 (a) Such service is performed for a person who (i) dur-
268 ing any calendar quarter in either the current or the pre-
269 ceding calendar year paid remuneration in cash of twenty
270 thousand dollars or more to individuals employed in agricul-
271 tural labor [not taking into account service in agricultural
272 labor performed before January one, one thousand nine
273 hundred eighty, by an alien referred to in subparagraph (b)
274 of this subdivision (12)], or (ii) for some portion of a day
275 in each of twenty different calendar weeks, whether or not
276 such weeks were consecutive, in either the current or the
277 preceding calendar year, employed in agricultural labor (not
278 taking into account service in agricultural labor performed
279 before January one, one thousand nine hundred eighty, by an
280 alien referred to in division (ii) of this subparagraph) ten
281 or more individuals, regardless of whether they were employed
282 at the same moment of time;

283 (b) Such service is not performed in agricultural labor
284 if performed before January one, one thousand nine hundred
285 eighty, by an individual who is an alien admitted to the
286 United States to perform service in agricultural labor pur-

287 suant to sections 214(c) and 101(a) (15)(H) of the Immi-
288 gration and Nationality Act;

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

301 (d) For the purposes of this subdivision (12), in the
302 case of any individual who is furnished by a crew leader
303 to perform service in agricultural labor for any other person
304 and who is not treated as an employee of such crew leader
305 under subparagraph (c) of this subdivision (12), (i) such
306 other person and not the crew leader shall be treated as
307 the employer of such individual; and (ii) such other person
308 shall be treated as having paid cash remuneration to such
309 individual in an amount equal to the amount of cash re-
310 muneration paid to such individual by the crew leader
311 (either on his own behalf or on behalf of such other person)
312 for the service in agricultural labor performed for such other
313 person;

314 (e) For the purposes of this subdivision (12), the term
315 "crew leader" means an individual who (i) furnishes in-
316 dividuals to perform service in agricultural labor for any
317 other person, (ii) pays (either on his own behalf or on
318 behalf of such other person) the individuals so furnished
319 by him for the service in agricultural labor performed
320 by them, and (iii) has not entered into a written agreement
321 with such other person under which such individual is desig-
322 nated as an employee of such other person;

323 (13) The term "employment" shall include domestic service
324 after December thirty-one, one thousand nine hundred seventy-

325 seven, in a private home, local college club or local chapter
326 of a college fraternity or sorority performed for a person
327 who paid cash remuneration of one thousand dollars or
328 more after December thirty-one, one thousand nine hundred
329 seventy-seven, in any calendar quarter in the current calendar
330 year or the preceding calendar year to individuals employed
331 in such domestic service.

332 Notwithstanding the foregoing definition of "employ-
333 ment," if the services performed during one half or more
334 of any pay period by an employee for the person employ-
335 ing him constitute employment, all the services of such
336 employee for such period shall be deemed to be employment;
337 but if the services performed during more than one half
338 of any such pay period by an employee for the person em-
339 ploying him do not constitute employment, then none of the
340 services of such employee for such period shall be deemed
341 to be employment.

342 The term "employment" shall not include:

343 (1) Service performed in the employ of this state or
344 any political subdivision thereof, or any instrumentality of
345 this state or its subdivisions, except as otherwise provided
346 herein until December thirty-one, one thousand nine hundred
347 seventy-seven;

348 (2) Service performed directly in the employ of another
349 state, or its political subdivisions, except as otherwise pro-
350 vided in subdivision (9) (a) of the definition of "employ-
351 ment," until December thirty-one, one thousand nine hundred
352 seventy-seven;

353 (3) Service performed in the employ of the United States
354 or an instrumentality of the United States exempt under
355 the constitution of the United States from the payments
356 imposed by this law, except that to the extent that
357 the Congress of the United States shall permit states to
358 require any instrumentalities of the United States to make
359 payments into an unemployment fund under a state unem-
360 ployment compensation law, all of the provisions of this
361 law shall be applicable to such instrumentalities, and

362 to service performed for such instrumentalities, in the
363 same manner, to the same extent and on the same
364 terms as to all other employers, employing units, individuals
365 and services: *Provided*, That if this state shall not
366 be certified for any year by the secretary of labor under
367 section 1603(c) of the Federal Internal Revenue Code,
368 the payments required of such instrumentalities with
369 respect to such year shall be refunded by the commissioner
370 from the fund in the same manner and within the
371 same period as is provided in section nineteen, article
372 five of this chapter, with respect to payments erroneously
373 collected;

374 (4) Service performed after June thirty, one thousand
375 nine hundred thirty-nine, with respect to which unem-
376 ployment compensation is payable under the Railroad
377 Unemployment Insurance Act and service with respect to
378 which unemployment benefits are payable under an un-
379 employment compensation system for maritime employees
380 established by an act of Congress. The commissioner may
381 enter into agreements with the proper agency established
382 under such an act of Congress to provide reciprocal treat-
383 ment to individuals who, after acquiring potential rights
384 to unemployment compensation under an act of Con-
385 gress, or who have, after acquiring potential rights to
386 unemployment compensation under an act of Congress, ac-
387 quired rights to benefit under this chapter. Such agree-
388 ment shall become effective ten days after such publica-
389 tions which shall comply with the general rules of the
390 department;

391 (5) Service performed by an individual in agricultural
392 labor, except as provided in subdivision (12) of the defini-
393 tion of "employment" in this section. For purposes of
394 this subdivision (5), the term "agricultural labor" includes
395 all services performed:

396 (a) On a farm, in the employ of any person, in connec-
397 tion with cultivating the soil, or in connection with raising
398 or harvesting any agricultural or horticultural commodity,
399 including the raising, shearing, feeding, caring for, training,

400 and management of livestock, bees, poultry, and fur-bearing
401 animals and wildlife;

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

409 (c) In connection with the production or harvesting of
410 any commodity defined as an agricultural commodity in
411 section 15(g) of the Agricultural Marketing Act, as amended,
412 or in connection with the ginning of cotton, or in con-
413 nection with the operation or maintenance of ditches, canals,
414 reservoirs or waterways, not owned or operated for profit,
415 used exclusively for supplying and storing water for farming
416 purposes;

417 (d) (i) In the employ of the operator of a farm in
418 handling, planting, drying, packing, packaging, processing,
419 freezing, grading, storing or delivering to storage or to
420 market or to a carrier for transportation to market, in
421 its unmanufactured state, any agricultural or horticul-
422 tural commodity; but only if such operator produced
423 more than one half of the commodity with respect
424 to which such service is performed; or (ii) in the employ
425 of a group of operators of farms (or a cooperative organi-
426 zation of which such operators are members) in the per-
427 formance of service described in subparagraph (i), but
428 only if such operators produced more than one half of
429 the commodity with respect to which such service is per-
430 formed; but the provisions of subparagraphs (i) and (ii) shall
431 not be deemed to be applicable with respect to service
432 performed in connection with commercial canning or com-
433 mercial freezing or in connection with any agricultural or
434 horticultural commodity after its delivery to a terminal market
435 for distribution for consumption;

436 (e) On a farm operated for profit if such service is not
437 in the course of the employer's trade or business or is

438 domestic service in a private home of the employer. As
439 used in this subdivision (5), the term "farm" includes stock,
440 dairy, poultry, fruit, fur-bearing animals, and truck farms,
441 plantations, ranches, greenhouses, ranges and nurseries,
442 or other similar land areas or structures used primari-
443 ly for the raising of any agricultural or horticultural
444 commodities;

445 (6) Domestic service in a private home, except as pro-
446 vided in subdivision (13) of the definition of "employment"
447 in this section;

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

450 (8) Service performed by a child under the age of eigh-
451 teen years in the employ of his father or mother;

452 (9) Service as an officer or member of a crew of an Ameri-
453 can vessel, performed on or in connection with such vessel,
454 if the operating office, from which the operations of the vessel
455 operating on navigable water within or without the United
456 States are ordinarily and regularly supervised, managed, direc-
457 ted and controlled, is without this state;

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

462 (11) Service performed (i) in the employ of a church or
463 convention or association of churches, or an organization
464 which is operated primarily for religious purposes and which
465 is operated, supervised, controlled or principally supported by
466 a church or convention or association of churches; or (ii) by a
467 duly ordained, commissioned or licensed minister of a church
468 in the exercise of his ministry or by a member of a religious
469 order in the exercise of duties required by such order; or
470 (iii) prior to January one, one thousand nine hundred seventy-
471 eight, in the employ of a school which is not an institution
472 of higher education; or (iv) in a facility conducted for the
473 purpose of carrying out a program of rehabilitation for indi-
474 viduals whose earning capacity is impaired by age or physical

475 or mental deficiency or injury or providing remunerative
476 work for individuals who because of their impaired physical
477 or mental capacity cannot be readily absorbed in the competi-
478 tive labor market by an individual receiving such rehabilitation
479 or remunerative work; or (v) as part of an unemployment work-
480 relief or work-training program assisted or financed in whole
481 or in part by any federal agency or an agency of a state or
482 political subdivision thereof, by an individual receiving such
483 work relief or work training; or (vi) prior to January one,
484 one thousand nine hundred seventy-eight, for a hospital in a
485 state prison or other state correctional institution by an in-
486 mate of the prison or correctional institution, and after Dec-
487 ember thirty-one, one thousand nine hundred seventy-seven,
488 by an inmate of a custodial or penal institution;

489 (12) Service performed in the employ of a school, college
490 or university, if such service is performed (i) by a student who
491 is enrolled and is regularly attending classes at such school,
492 college or university, or (ii) by the spouse of such a student, if
493 such spouse is advised, at the time such spouse commences to
494 perform such service, that (I) the employment of such spouse
495 to perform such service is provided under a program to pro-
496 vide financial assistance to such student by such school,
497 college or university, and (II) such employment will not be
498 covered by any program of unemployment insurance;

499 (13) Service performed by an individual under the age of
500 twenty-two who is enrolled at a nonprofit or public educational
501 institution which normally maintains a regular faculty and
502 curriculum and normally has a regularly organized body of
503 students in attendance at the place where its educational ac-
504 tivities are carried on as a student in a full-time program,
505 taken for credit at such institution, which combines academic
506 instruction with work experience, if such service is an integral
507 part of such program, and such institution has so certified
508 to the employer, except that this subdivision shall not apply
509 to service performed in a program established for or on be-
510 half of an employer or group of employers;

511 (14) Service performed in the employ of a hospital, if such
512 service is performed by a patient of the hospital, as defined in
513 this section.

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

528 Notwithstanding the foregoing exclusions from the definition
529 of "employment," services, except agricultural labor and do-
530 mestic service in a private home, shall be deemed to be in
531 employment if with respect to such services a tax is required
532 to be paid under any federal law imposing a tax against which
533 credit may be taken for contributions required to be paid into
534 a state unemployment compensation fund, or which as a
535 condition for full tax credit against the tax imposed by the
536 Federal Unemployment Tax Act are required to be covered
537 under this chapter.

538 "Employment office" means a free employment office or
539 branch thereof, operated by this state, or any free public
540 employment office maintained as a part of a state controlled
541 system of public employment offices in any other state.

542 "Fund" means the unemployment compensation fund estab-
543 lished by this chapter.

544 "Hospital" means an institution which has been licensed,
545 certified or approved by the state department of health as a
546 hospital.

547 "Institution of higher education" means an educational in-
548 stitution which:

549 (1) Admits as regular students only individuals having a

550 certificate of graduation from a high school, or the recognized
551 equivalent of such a certificate;

552 (2) Is legally authorized in this state to provide a pro-
553 gram of education beyond high school;

554 (3) Provides an educational program for which it awards
555 a bachelor's or higher degree, or provides a program which
556 is acceptable for full credit toward such a degree, or provides
557 a program of post-graduate or post-doctoral studies, or pro-
558 vides a program of training to prepare students for gainful
559 employment in a recognized occupation; and

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

561 Notwithstanding any of the foregoing provisions of this
562 definition, all colleges and universities in this state are insti-
563 tutions of higher education for purposes of this section.

564 "Payments" means the money required to be paid or that
565 may be voluntarily paid into the state unemployment compen-
566 sation fund as provided in article five of this chapter.

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

570 "State" includes, in addition to the states of the United
571 States, Puerto Rico, District of Columbia and the Virgin
572 Islands.

573 "Total and partial unemployment" means:

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

578 (2) An individual who has not been separated from em-
579 ployment shall be deemed to be partially unemployed in any
580 week in which due to lack of work he performs no services
581 and with respect to which no wages are payable to him, or
582 in any week in which due to lack of full time work wages
583 payable to him are less than his weekly benefit amount plus
584 twenty-five dollars.

585 "Wages" means all remuneration for personal service, in-
586 cluding commissions and bonuses and the cash value of all
587 remuneration in any medium other than cash except for
588 agricultural labor and domestic service: *Provided*, That the
589 term "wages" shall not include:

590 (1) That part of the remuneration which, after remu-
591 neration equal to three thousand dollars has been paid to
592 an individual by an employer with respect to employment
593 during any calendar year, is paid after December thirty-one,
594 one thousand nine hundred thirty-nine, and prior to January
595 one, one thousand nine hundred forty-seven, to such indi-
596 vidual by such employer with respect to employment during
597 such calendar year; or that part of the remuneration which,
598 after remuneration equal to three thousand dollars with
599 respect to employment after one thousand nine hundred
600 thirty-eight has been paid to an individual by an employer
601 during any calendar year after one thousand nine hundred
602 forty-six, is paid to such individual by such employer during
603 such calendar year, except that for the purposes of sections
604 one, ten, eleven and thirteen, article six of this chapter, all
605 remuneration earned by an individual in employment shall
606 be credited to the individual and included in his com-
607 putation of base period wages: *Provided*, That notwith-
608 standing the foregoing provisions, on and after January
609 one, one thousand nine hundred sixty-two, the term
610 "wages" shall not include:

611 That part of the remuneration which, after remuneration
612 equal to three thousand six hundred dollars has been paid to
613 an individual by an employer with respect to employment
614 during any calendar year, is paid during any calendar year
615 after one thousand nine hundred sixty-one; and shall not
616 include that part of remuneration which, after remuneration
617 equal to four thousand two hundred dollars is paid during a
618 calendar year after one thousand nine hundred seventy-one;
619 and shall not include that part of remuneration which, after
620 remuneration equal to six thousand dollars is paid during a
621 calendar year after one thousand nine hundred seventy-seven,
622 to an individual by an employer or his predecessor with respect
623 to employment during any calendar year, is paid to such

624 individual by such employer during such calendar year unless
625 that part of the remuneration is subject to a tax under a
626 federal law imposing a tax against which credit may be taken
627 for contributions required to be paid into a state unemploy-
628 ment fund. For the purposes of this subdivision (1), the
629 term employment shall include service constituting employ-
630 ment under any unemployment compensation law of another
631 state; or which as a condition for full tax credit against the
632 tax imposed by the Federal Unemployment Tax Act is required
633 to be covered under this chapter; and, except, that for the
634 purposes of sections one, ten, eleven and thirteen, article
635 six of this chapter, all remuneration earned by an individual
636 in employment shall be credited to the individual and included
637 in his computation of base period wages: *Provided, however,*
638 That the remuneration paid to an individual by an employer
639 with respect to employment in another state or other states
640 upon which contributions were required of and paid by such
641 employer under an unemployment compensation law of such
642 other state or states shall be included as a part of the remunera-
643 tion equal to the amounts of three thousand six hundred dollars
644 or four thousand two hundred dollars or six thousand dollars
645 herein referred to. In applying such limitation on the amount of
646 remuneration that is taxable, an employer shall be accorded
647 the benefit of all or any portion of such amount which may
648 have been paid by its predecessor or predecessors: *Provided*
649 *further,* That if the definition of the term "wages" as contained
650 in section 3306(b) of the Internal Revenue Code of 1954 as
651 amended: (a) Effective prior to January one, one thousand
652 nine hundred sixty-two, to include remuneration in excess of
653 three thousand dollars, or (b) effective on or after January one,
654 one thousand nine hundred sixty-two, to include remuneration
655 in excess of three thousand six hundred dollars, or effective
656 on or after January one, one thousand nine hundred seventy-
657 two, to include remuneration in excess of four thousand two
658 hundred dollars, or effective on or after January one, one
659 thousand nine hundred seventy-eight, to include remuneration
660 in excess of six thousand dollars, paid to an individual by an
661 employer under the Federal Unemployment Tax Act during any
662 calendar year, wages for the purposes of this definition shall
663 include remuneration paid in a calendar year to an individual

664 by an employer subject to this article or his predecessor with
665 respect to employment during any calendar year up to an
666 amount equal to the amount of remuneration taxable under
667 the Federal Unemployment Tax Act;

668 (2) The amount of any payment made after December
669 thirty-one, one thousand nine hundred fifty-two (including
670 any amount paid by an employer for insurance or annuities, or
671 into a fund, to provide for any such payment), to, or on be-
672 half of, an individual in its employ or any of his dependents,
673 under a plan or system established by an employer which
674 makes provision for individuals in its employ generally (or
675 for such individuals and their dependents), or for a class or
676 classes of such individuals (or for a class or classes of such
677 individuals and their dependents), on account of (A) retire-
678 ment, or (B) sickness or accident disability, or (C) medical
679 or hospitalization expenses in connection with sickness or
680 accident disability, or (D) death;

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

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

693 (5) Any payment made after December thirty-one, one
694 thousand nine hundred fifty-two, by an employer to, or on
695 behalf of, an individual in its employ or his beneficiary (A)
696 from or to a trust described in section 401(a) which is exempt
697 from tax under section 501(a) of the Federal Internal Revenue
698 Code at the time of such payments unless such payment is made
699 to such individual as an employee of the trust as remunera-
700 tion for services rendered by such individual and not as a bene-
701 ficiary of the trust, or (B) under or to an annuity plan which,

702 at the time of such payment, is a plan described in section
703 403(a) of the Federal Internal Revenue Code;

704 (6) The payment by an employer (without deduction from
705 the remuneration of the individual in its employ) of the tax
706 imposed upon an individual in its employ under section 3101
707 of the Federal Internal Revenue Code;

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

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

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

722 (10) Vacation pay, severance pay, or savings plans re-
723 ceived by an individual before or after becoming totally or
724 partially unemployed but earned prior to becoming totally or
725 partially unemployed: *Provided*, That the term totally or par-
726 tially unemployed shall not be interpreted to include (1) em-
727 ployees who are on vacation by reason of the request of the
728 employees or their duly authorized agent, for a vacation at a
729 specific time, and which request by the employees or their
730 agent is acceded to by their employer, (2) employees who are
731 on vacation by reason of the employer's request provided they
732 are so informed at least ninety days prior to such vacation,
733 or (3) employees who are on vacation by reason of the em-
734 ployer's request where such vacation is in addition to the
735 regular vacation and the employer compensates such employee
736 at a rate equal to or exceeding their regular daily rate of pay
737 during the vacation period.

738 Gratuities customarily received by an individual in the

739 course of his employment from persons other than his em-
740 ploying unit shall be treated as wages paid by his employing
741 unit, if accounted for and reported to such employing unit.

742 The reasonable cash value of remuneration in any medium
743 other than cash shall be estimated and determined in accord-
744 ance with rules prescribed by the commissioner, except for re-
745 muneration other than cash for services performed in agri-
746 cultural labor and domestic service.

747 "Week" means a calendar week, ending at midnight Satur-
748 day, or the equivalent thereof, as determined in accordance
749 with the regulations prescribed by the commissioner.

750 "Weekly benefit rate" means the maximum amount of bene-
751 fit an eligible individual will receive for one week of total
752 unemployment.

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

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive
2 benefits only if the commissioner finds that:

3 (1) He has registered for work at and thereafter con-
4 tinues to report at an employment office in accordance with
5 the regulations of the commissioner.

6 (2) He has made a claim for benefits in accordance with
7 the provisions of article seven of this chapter.

8 (3) He is able to work and is available for full-time
9 work for which he is fitted by prior training or experience
10 and is doing that which a reasonably prudent person in his
11 circumstances would do in seeking work.

12 (4) He has been totally unemployed during his benefit
13 year for a waiting period of one week prior to the week for
14 which he claims benefits for total unemployment.

15 (5) He has within his base period earned wages for
16 employment equal to not less than one thousand one hundred

17 fifty dollars and must have earned wages in more than one
18 quarter of his base period.

§21A-6-10. Benefit rate—Total unemployment; annual computation 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
3 the weekly rate appearing in Column (C) in Table A in
4 this paragraph, on the line on which in Column (A) there
5 is indicated the employee's wage class, except as otherwise
6 provided under the term "total and partial unemployment"
7 in section three, article one of this chapter. The employee's
8 wage class shall be determined by his base period wages
9 as shown in Column (B) in Table A. The right of an em-
10 ployee to receive benefits shall not be prejudiced nor the
11 amount thereof be diminished by reason of failure by an
12 employer to pay either the wages earned by the employee
13 or the contribution due on such wages. An individual who is
14 totally unemployed but earns in excess of twenty-five dollars
15 as a result of odd-job or subsidiary work in any benefit week
16 shall be paid benefits for such week in accordance with the
17 provisions of this chapter pertaining to benefits for partial
18 unemployment.

19

TABLE A

	Wage Class	Wages In Base Period		Weekly Benefit Rate	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment
	(Column A)	(Column B)		(Column C)	(Column D)
20		Under	\$ 700.00	Ineligible	-----
21	1	700.00	799.99	\$ 12.00	\$312.00
22	2	800.00	899.99	13.00	338.00
23	3	900.00	999.99	14.00	364.00
24	4	1,000.00	1,149.99	15.00	390.00
25	5	1,150.00	1,299.99	16.00	416.00
26	6	1,300.00	1,449.99	17.00	442.00

27	7	1,450.00	1,599.99	18.00	468.00
28	8	1,600.00	1,749.99	19.00	494.00
29	9	1,750.00	1,899.99	20.00	520.00
30	10	1,900.00	2,049.99	21.00	546.00
31	11	2,050.00	2,199.99	22.00	572.00
32	12	2,200.00	2,349.99	23.00	598.00
33	13	2,350.00	2,499.99	24.00	624.00
34	14	2,500.00	2,599.99	25.00	650.00
35	15	2,600.00	2,699.99	26.00	676.00
36	16	2,700.00	2,799.99	27.00	702.00
37	17	2,800.00	2,899.99	28.00	728.00
38	18	2,900.00	2,999.99	29.00	754.00
39	19	3,000.00	3,099.99	30.00	780.00
40	20	3,100.00	3,199.99	31.00	806.00
41	21	3,200.00	3,349.99	32.00	832.00
42	22	3,350.00	3,499.99	33.00	858.00
43	23	3,500.00	3,649.99	34.00	884.00
44	24	3,650.00	3,799.99	35.00	910.00

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

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

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

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

61 The commissioner, after he has determined the maximum
 62 weekly benefit rate upon the basis of the above formula,
 63 shall establish as many additional wage classes as are re-

64 quired, increasing the amount of base period wages required
65 for each class by one hundred fifty dollars, the weekly
66 benefit rate for each class by one dollar, and the maximum
67 benefit by twenty-six dollars. The maximum weekly benefit
68 rate, when computed by the commissioner, in accordance
69 with the foregoing provisions, shall be rounded to the next
70 higher dollar amount, if the computation exceeds forty-nine
71 percent of a dollar amount. Such rounding off to the next
72 higher dollar amount shall result in one additional wage class,
73 with commensurate base period wage requirement of one
74 hundred fifty dollars over the preceding wage class, and
75 with a maximum benefit increase over the preceding wage
76 class of twenty-six dollars. Such an additional wage class
77 shall be published by the commissioner with the table re-
78 quired to be published by the foregoing provisions of this
79 section.

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

83 (1) The maximum weekly benefit rate shall be seventy
84 percent of the average weekly wage in West Virginia.

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

92 (3) The commissioner, after he has determined the maxi-
93 mum weekly benefit rate upon the basis of the formula set
94 forth in subdivision (1) above, shall establish as many addi-
95 tional wage classes as are required, increasing the amount of
96 the base period wages required for each wage class by one
97 hundred fifty dollars, establishing the weekly benefit rate for
98 each wage class by rounded dollar amount to be fifty percent
99 of one fifty-second of the median dollar amount of wages in
100 base period for such wage class, and establishing the maxi-
101 mum benefit for each wage class as an amount equal to

102 twenty-eight times the weekly benefit rate. The maximum
 103 weekly benefit rate, when computed by the commis-
 104 sioner, in accordance with the foregoing provisions, shall
 105 be rounded to the next higher dollar amount, if the
 106 computation exceeds forty-nine percent of a dollar amount.
 107 Such rounding off to the next higher dollar amount
 108 shall result in one additional wage class, with com-
 109 mensurate base period wage requirement of one hundred
 110 fifty dollars over the preceding wage class. Such an addi-
 111 tional wage class shall be published by the foregoing pro-
 112 visions of this section.

113 Notwithstanding any of the foregoing provisions of this
 114 section, on and after July one, one thousand nine hundred
 115 seventy-nine the weekly benefit rate for each wage class
 116 by rounded dollar amount shall be fifty-five percent of
 117 one fifty-second of the median dollar amount of wages
 118 in base period for such wage class except that the
 119 weekly benefit rate for classifications one through twenty
 120 shall remain unchanged, but in any case the weekly
 121 benefit rate on or after July one, one thousand nine
 122 hundred seventy-nine, shall be in accordance with Table
 123 B below.

124

TABLE B

Wage Class	Wages in Base Period	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment	
		Weekly Benefit Rate	
125 Under \$1,150.00		Ineligible	
126 1	1,150.00— 1,299.99	18.00	504.00
127 2	1,300.00— 1,449.99	19.00	532.00
128 3	1,450.00— 1,599.99	20.00	560.00
129 4	1,600.00— 1,749.99	21.00	588.00
130 5	1,750.00— 1,899.99	22.00	616.00
131 6	1,900.00— 2,049.99	23.00	644.00
132 7	2,050.00— 2,199.99	24.00	672.00
133 8	2,200.00— 2,349.99	25.00	700.00

134	9	2,350.00—	2,499.99	26.00	728.00
135	10	2,500.00—	2,599.99	27.00	756.00
136	11	2,600.00—	2,699.99	28.00	784.00
137	12	2,700.00—	2,799.99	29.00	812.00
138	13	2,800.00—	2,899.99	30.00	840.00
139	14	2,900.00—	2,999.99	31.00	868.00
140	15	3,000.00—	3,099.99	32.00	896.00
141	16	3,100.00—	3,199.99	33.00	924.00
142	17	3,200.00—	3,349.99	35.00	980.00
143	18	3,350.00—	3,499.99	37.00	1,036.00
144	19	3,500.00—	3,649.99	38.00	1,064.00
145	20	3,650.00—	3,799.99	40.00	1,120.00
146	21	3,800.00—	3,949.99	41.00	1,148.00
147	22	3,950.00—	4,099.99	43.00	1,204.00
148	23	4,100.00—	4,249.99	45.00	1,260.00
149	24	4,250.00—	4,399.99	46.00	1,288.00
150	25	4,400.00—	4,549.99	48.00	1,344.00
151	26	4,550.00—	4,699.99	49.00	1,372.00
152	27	4,700.00—	4,849.99	51.00	1,428.00
153	28	4,850.00—	4,999.99	53.00	1,484.00
154	29	5,000.00—	5,149.99	54.00	1,512.00
155	30	5,150.00—	5,299.99	56.00	1,568.00
156	31	5,300.00—	5,449.99	57.00	1,596.00
157	32	5,450.00—	5,599.99	59.00	1,652.00
158	33	5,600.00—	5,749.99	61.00	1,708.00
159	34	5,750.00—	5,899.99	62.00	1,736.00
160	35	5,900.00—	6,049.99	64.00	1,792.00
161	36	6,050.00—	6,199.99	65.00	1,820.00
162	37	6,200.00—	6,349.99	67.00	1,876.00
163	38	6,350.00—	6,499.99	68.00	1,904.00
164	39	6,500.00—	6,649.99	70.00	1,960.00
165	40	6,650.00—	6,799.99	72.00	2,016.00
166	41	6,800.00—	6,949.99	73.00	2,044.00
167	42	6,950.00—	7,099.99	75.00	2,100.00
168	43	7,100.00—	7,249.99	76.00	2,128.00
169	44	7,250.00—	7,399.99	78.00	2,184.00
170	45	7,400.00—	7,549.99	80.00	2,240.00
171	46	7,550.00—	7,699.99	81.00	2,268.00
172	47	7,700.00—	7,849.99	83.00	2,324.00
173	48	7,850.00—	7,999.99	84.00	2,352.00

174	49	8,000.00—	8,149.99	86.00	2,408.00
175	50	8,150.00—	8,299.99	87.00	2,436.00
176	51	8,300.00—	8,449.99	89.00	2,492.00
177	52	8,450.00—	8,599.99	91.00	2,548.00
178	53	8,600.00—	8,749.99	92.00	2,576.00
179	54	8,750.00—	8,899.99	94.00	2,632.00
180	55	8,900.00—	9,049.99	95.00	2,660.00
181	56	9,050.00—	9,199.99	97.00	2,716.00
182	57	9,200.00—	9,349.99	99.00	2,772.00
183	58	9,350.00—	9,499.99	100.00	2,800.00
184	59	9,500.00—	9,649.99	102.00	2,856.00
185	60	9,650.00—	9,799.99	103.00	2,884.00
186	61	9,800.00—	9,949.99	105.00	2,940.00
187	62	9,950.00—	10,099.99	107.00	2,996.00
188	63	10,100.00—	10,249.99	108.00	3,024.00
189	64	10,250.00—	10,399.99	110.00	3,080.00
190	65	10,400.00—	10,549.99	111.00	3,108.00
191	66	10,550.00—	10,699.99	113.00	3,164.00
192	67	10,700.00—	10,849.99	114.00	3,192.00
193	68	10,850.00—	10,999.99	116.00	3,248.00
194	69	11,000.00—	11,149.99	118.00	3,304.00
195	70	11,150.00—	11,299.99	119.00	3,332.00
196	71	11,300.00—	11,449.99	121.00	3,388.00
197	72	11,450.00—	11,599.99	122.00	3,416.00
198	73	11,600.00—	11,749.99	124.00	3,472.00
199	74	11,750.00—	11,899.99	126.00	3,528.00
200	75	11,900.00—	12,049.99	127.00	3,556.00
201	76	12,050.00—	12,199.99	129.00	3,612.00
202	77	12,200.00—	12,349.99	130.00	3,640.00
203	78	12,350.00—	12,499.99	132.00	3,696.00
204	79	12,500.00—	12,649.99	133.00	3,724.00
205	80	12,650.00—	12,799.99	135.00	3,780.00
206	81	12,800.00—	12,949.99	137.00	3,836.00
207	82	12,950.00—	13,099.99	138.00	3,864.00
208	83	13,100.00—	and over	139.00	3,892.00

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

212 Average weekly wage shall be computed by dividing the

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

222 The computation and determination of rates as aforesaid
 223 shall be completed annually before July one, and any such
 224 new wage class, with its corresponding wages in base period,
 225 weekly benefit rate, and maximum benefit in a benefit year
 226 established by the commissioner in the foregoing manner
 227 effective on a July one, shall apply only to a new claim
 228 established by a claimant on and after said July one, and
 229 shall not apply to continued claims of a claimant based
 230 on his new claim established before said July one.

ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.

§21A-9-5a. Special administration fund.

1 There is hereby created in the state treasury a fund to
 2 be known as the employment security special administration
 3 fund, which shall consist of interest collected on delinquent
 4 payments pursuant to section seventeen, article five of this
 5 chapter. The moneys deposited with this fund are hereby
 6 appropriated and made available to the order of the commis-
 7 sioner for the purpose of (a) replacements in the employment
 8 security administration fund as provided in section eight of this
 9 article, (b) to meet special, extraordinary, and contingent ex-
 10 penses not provided for in the employment security adminis-
 11 tration fund, and (c) refunds pursuant to section nineteen of
 12 article five, of interest erroneously collected, and (d) cover
 13 expenditures for which federal funds have been authorized but
 14 not yet received, subject to repayment to the fund. This fund
 15 shall be administered and disbursed in the same manner and
 16 under the same conditions as other special funds of the state
 17 treasury. Balances to the credit of the special administration
 18 fund shall not lapse at any time but shall be continuously avail-

19 able to the commissioner for expenditures consistent with this
20 chapter: *Provided*, That (1) not more than one hundred thou-
21 sand dollars shall be expended from said fund in any fiscal
22 year for purposes (a) and (b); and that not more than five hun-
23 dred thousand dollars shall be expended from said fund in any
24 fiscal year for purpose (d); (2) that at the beginning of each
25 calendar quarter the commissioner shall estimate the amount
26 that may be required in that quarter for refunds of interest
27 erroneously collected; (3) that thereupon the excess, if any,
28 over the amounts provided to be expended under this section
29 shall be paid into the unemployment compensation trust fund.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chestnut Jr.
Chairman House Committee

Originated in the House.

Takes effect July 1, 1979.

J. C. Willou. Jr.
Clerk of the Senate

W. J. Hankenship
Clerk of the House of Delegates

W. H. Bullock Jr.
President of the Senate

Lyde N. See, Jr.
Speaker House of Delegates

The within *is approved* this the *27*
day of *March*, 1979.

John R. Rhyne
Governor

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OFFICE OF THE GOVERNOR

STATE OF MICHIGAN

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