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
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
ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


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

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

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

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

5 “Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year.

6 “Base period employer” means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

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

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

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

"Board" means board of review.

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

"Commissioner" means the employment security commissioner.

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

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

"Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed
after December thirty-one, one thousand nine hundred seventy-one, including service in interstate commerce, by any officer of a corporation;

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

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

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

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

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

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

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

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

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

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

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

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

(b) The employer has no place of business in the United States, but (i) the employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or
(c) None of the criteria of subparagraphs (a) and (b) of this subdivision (11) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

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

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

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor [not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty, by an alien referred to in subparagraph (b) of this subdivision (12)], or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty, by an alien referred to in division (ii) of this subparagraph) ten or more individuals, regardless of whether they were employed at the same moment of time;

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

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

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

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

Notwithstanding the foregoing definition of "employment," if the services performed during one half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment.

The term "employment" shall not include:

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

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

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

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

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

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

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

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

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of subparagraphs (i) and (ii) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business or is
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
or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) prior to January one, one thousand nine hundred seventy-eight, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution, and after December thirty-one, one thousand nine hundred seventy-seven, by an inmate of a custodial or penal institution;

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

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

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

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

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

"Fund" means the unemployment compensation fund established by this chapter.

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

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

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

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

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

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition, all colleges and universities in this state are institutions of higher education for purposes of this section.

"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

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

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

"Total and partial unemployment" means:

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

(2) An individual who has not been separated from employment shall be deemed to be partially unemployed in any week in which due to lack of work he performs no services and with respect to which no wages are payable to him, or in any week in which due to lack of full time work wages payable to him are less than his weekly benefit amount plus twenty-five dollars.
"Wages" means all remuneration for personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service: Provided, That the term "wages" shall not include:

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

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a calendar year after one thousand nine hundred seventy-one; and shall not include that part of remuneration which, after remuneration equal to six thousand dollars is paid during a calendar year after one thousand nine hundred seventy-seven, to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such
individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision (1), the term employment shall include service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter; and, except, that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, however, that the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand six hundred dollars or four thousand two hundred dollars or six thousand dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided further, That if the definition of the term "wages" as contained in section 3306(b) of the Internal Revenue Code of 1954 as amended: (a) Effective prior to January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective on or after January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand six hundred dollars, or effective on or after January one, one thousand nine hundred seventy-two, to include remuneration in excess of four thousand two hundred dollars, or effective on or after January one, one thousand nine hundred seventy-eight, to include remuneration in excess of six thousand dollars, paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual
by an employer subject to this article or his predecessor with
respect to employment during any calendar year up to an
amount equal to the amount of remuneration taxable under
the Federal Unemployment Tax Act;

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

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

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

(5) Any payment made after December thirty-one, one
thousand nine hundred fifty-two, by an employer to, or on
behalf of, an individual in its employ or his beneficiary (A)
from or to a trust described in section 401(a) which is exempt
from tax under section 501(a) of the Federal Internal Revenue
Code at the time of such payments unless such payment is made
to such individual as an employee of the trust as remunera-
tion for services rendered by such individual and not as a bene-
ficiary of the trust, or (B) under or to an annuity plan which,
at the time of such payment, is a plan described in section 403(a) of the Federal Internal Revenue Code;

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

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

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

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

(10) Vacation pay, severance pay, or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, That the term totally or partially unemployed shall not be interpreted to include (1) employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer, (2) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation, or (3) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

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

The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

"Week" means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the regulations prescribed by the commissioner.

"Weekly benefit rate" means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.

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

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

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

2 (1) He has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner.

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

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

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

6 (5) He has within his base period earned wages for employment equal to not less than one thousand one hundred
fifty dollars and must have earned wages in more than one 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 week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in Table A in this paragraph, on the line on which in Column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in Column (B) in Table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of twenty-five dollars as a result of odd-job or subsidiary work in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.

TABLE A

<table>
<thead>
<tr>
<th>Wage Class (Column A)</th>
<th>Wages In Base Period (Column B)</th>
<th>Weekly Benefit Rate (Column C)</th>
<th>Maximum Benefit In Benefit Year for Total and/or Partial Unemployment (Column D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Under</td>
<td>700.00</td>
<td>Ineligible</td>
</tr>
<tr>
<td>21</td>
<td>1</td>
<td>700.00</td>
<td>$12.00</td>
</tr>
<tr>
<td>22</td>
<td>2</td>
<td>800.00</td>
<td>13.00</td>
</tr>
<tr>
<td>23</td>
<td>3</td>
<td>900.00</td>
<td>14.00</td>
</tr>
<tr>
<td>24</td>
<td>4</td>
<td>1,000.00</td>
<td>15.00</td>
</tr>
<tr>
<td>25</td>
<td>5</td>
<td>1,150.00</td>
<td>16.00</td>
</tr>
<tr>
<td>26</td>
<td>6</td>
<td>1,300.00</td>
<td>17.00</td>
</tr>
</tbody>
</table>

$312.00
338.00
364.00
390.00
416.00
442.00
<table>
<thead>
<tr>
<th>Week</th>
<th>Wage</th>
<th>Weekly Benefit Rate</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>27</td>
<td>1,450.00</td>
<td>1,599.99</td>
<td>18.00</td>
</tr>
<tr>
<td>28</td>
<td>1,600.00</td>
<td>1,749.99</td>
<td>19.00</td>
</tr>
<tr>
<td>29</td>
<td>1,750.00</td>
<td>1,899.99</td>
<td>20.00</td>
</tr>
<tr>
<td>30</td>
<td>1,900.00</td>
<td>2,049.99</td>
<td>21.00</td>
</tr>
<tr>
<td>31</td>
<td>2,050.00</td>
<td>2,199.99</td>
<td>22.00</td>
</tr>
<tr>
<td>32</td>
<td>2,200.00</td>
<td>2,349.99</td>
<td>23.00</td>
</tr>
<tr>
<td>33</td>
<td>2,350.00</td>
<td>2,499.99</td>
<td>24.00</td>
</tr>
<tr>
<td>34</td>
<td>2,500.00</td>
<td>2,599.99</td>
<td>25.00</td>
</tr>
<tr>
<td>35</td>
<td>2,600.00</td>
<td>2,699.99</td>
<td>26.00</td>
</tr>
<tr>
<td>36</td>
<td>2,700.00</td>
<td>2,799.99</td>
<td>27.00</td>
</tr>
<tr>
<td>37</td>
<td>2,800.00</td>
<td>2,899.99</td>
<td>28.00</td>
</tr>
<tr>
<td>38</td>
<td>2,900.00</td>
<td>2,999.99</td>
<td>29.00</td>
</tr>
<tr>
<td>39</td>
<td>3,000.00</td>
<td>3,099.99</td>
<td>30.00</td>
</tr>
<tr>
<td>40</td>
<td>3,100.00</td>
<td>3,199.99</td>
<td>31.00</td>
</tr>
<tr>
<td>41</td>
<td>3,200.00</td>
<td>3,349.99</td>
<td>32.00</td>
</tr>
<tr>
<td>42</td>
<td>3,350.00</td>
<td>3,499.99</td>
<td>33.00</td>
</tr>
<tr>
<td>43</td>
<td>3,500.00</td>
<td>3,649.99</td>
<td>34.00</td>
</tr>
<tr>
<td>44</td>
<td>3,650.00</td>
<td>3,799.99</td>
<td>35.00</td>
</tr>
</tbody>
</table>

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

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

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

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

The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the above formula, shall establish as many additional wage classes as are re-
quired, increasing the amount of base period wages required
for each class by one hundred fifty dollars, the weekly
benefit rate for each class by one dollar, and the maximum
benefit by twenty-six dollars. The maximum weekly benefit
rate, when computed by the commissioner, in accordance
with the foregoing provisions, shall be rounded to the next
higher dollar amount, if the computation exceeds forty-nine
percent of a dollar amount. Such rounding off to the next
higher dollar amount shall result in one additional wage class,
with commensurate base period wage requirement of one
hundred fifty dollars over the preceding wage class, and
with a maximum benefit increase over the preceding wage
class of twenty-six dollars. Such an additional wage class
shall be published by the commissioner with the table re-
quired to be published by the foregoing provisions of this
section.

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

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

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

(3) The commissioner, after he has determined the maxi-
mum weekly benefit rate upon the basis of the formula set
forth in subdivision (1) above, shall establish as many addi-
tional wage classes as are required, increasing the amount of
the base period wages required for each wage class by one
hundred fifty dollars, establishing the weekly benefit rate for
each wage class by rounded dollar amount to be fifty percent
of one fifty-second of the median dollar amount of wages in
base period for such wage class, and establishing the maxi-
mum benefit for each wage class as an amount equal to
twenty-eight times the weekly benefit rate. The maximum
weekly benefit rate, when computed by the commis-
sioner, in accordance with the foregoing provisions, shall
be rounded to the next higher dollar amount, if the
computation exceeds forty-nine percent of a dollar amount.
Such rounding off to the next higher dollar amount
shall result in one additional wage class, with com-
mensurate base period wage requirement of one hundred
fifty dollars over the preceding wage class. Such an addi-
tional wage class shall be published by the foregoing pro-
visions of this section.

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

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unemployment</th>
</tr>
</thead>
<tbody>
<tr>
<td>125</td>
<td>Under $1,150.00</td>
<td>Ineligible</td>
</tr>
<tr>
<td>126 1</td>
<td>1,150.00—1,299.99</td>
<td>18.00 504.00</td>
</tr>
<tr>
<td>127 2</td>
<td>1,300.00—1,449.99</td>
<td>19.00 532.00</td>
</tr>
<tr>
<td>128 3</td>
<td>1,450.00—1,599.99</td>
<td>20.00 560.00</td>
</tr>
<tr>
<td>129 4</td>
<td>1,600.00—1,749.99</td>
<td>21.00 588.00</td>
</tr>
<tr>
<td>130 5</td>
<td>1,750.00—1,899.99</td>
<td>22.00 616.00</td>
</tr>
<tr>
<td>131 6</td>
<td>1,900.00—2,049.99</td>
<td>23.00 644.00</td>
</tr>
<tr>
<td>132 7</td>
<td>2,050.00—2,199.99</td>
<td>24.00 672.00</td>
</tr>
<tr>
<td>133 8</td>
<td>2,200.00—2,349.99</td>
<td>25.00 700.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>134</td>
<td>9</td>
<td>2,350.00</td>
</tr>
<tr>
<td>135</td>
<td>10</td>
<td>2,500.00</td>
</tr>
<tr>
<td>136</td>
<td>11</td>
<td>2,600.00</td>
</tr>
<tr>
<td>137</td>
<td>12</td>
<td>2,700.00</td>
</tr>
<tr>
<td>138</td>
<td>13</td>
<td>2,800.00</td>
</tr>
<tr>
<td>139</td>
<td>14</td>
<td>2,900.00</td>
</tr>
<tr>
<td>140</td>
<td>15</td>
<td>3,000.00</td>
</tr>
<tr>
<td>141</td>
<td>16</td>
<td>3,100.00</td>
</tr>
<tr>
<td>142</td>
<td>17</td>
<td>3,200.00</td>
</tr>
<tr>
<td>143</td>
<td>18</td>
<td>3,350.00</td>
</tr>
<tr>
<td>144</td>
<td>19</td>
<td>3,500.00</td>
</tr>
<tr>
<td>145</td>
<td>20</td>
<td>3,650.00</td>
</tr>
<tr>
<td>146</td>
<td>21</td>
<td>3,800.00</td>
</tr>
<tr>
<td>147</td>
<td>22</td>
<td>3,950.00</td>
</tr>
<tr>
<td>148</td>
<td>23</td>
<td>4,100.00</td>
</tr>
<tr>
<td>149</td>
<td>24</td>
<td>4,250.00</td>
</tr>
<tr>
<td>150</td>
<td>25</td>
<td>4,400.00</td>
</tr>
<tr>
<td>151</td>
<td>26</td>
<td>4,550.00</td>
</tr>
<tr>
<td>152</td>
<td>27</td>
<td>4,700.00</td>
</tr>
<tr>
<td>153</td>
<td>28</td>
<td>4,850.00</td>
</tr>
<tr>
<td>154</td>
<td>29</td>
<td>5,000.00</td>
</tr>
<tr>
<td>155</td>
<td>30</td>
<td>5,150.00</td>
</tr>
<tr>
<td>156</td>
<td>31</td>
<td>5,300.00</td>
</tr>
<tr>
<td>157</td>
<td>32</td>
<td>5,450.00</td>
</tr>
<tr>
<td>158</td>
<td>33</td>
<td>5,600.00</td>
</tr>
<tr>
<td>159</td>
<td>34</td>
<td>5,750.00</td>
</tr>
<tr>
<td>160</td>
<td>35</td>
<td>5,900.00</td>
</tr>
<tr>
<td>161</td>
<td>36</td>
<td>6,050.00</td>
</tr>
<tr>
<td>162</td>
<td>37</td>
<td>6,200.00</td>
</tr>
<tr>
<td>163</td>
<td>38</td>
<td>6,350.00</td>
</tr>
<tr>
<td>164</td>
<td>39</td>
<td>6,500.00</td>
</tr>
<tr>
<td>165</td>
<td>40</td>
<td>6,650.00</td>
</tr>
<tr>
<td>166</td>
<td>41</td>
<td>6,800.00</td>
</tr>
<tr>
<td>167</td>
<td>42</td>
<td>6,950.00</td>
</tr>
<tr>
<td>168</td>
<td>43</td>
<td>7,100.00</td>
</tr>
<tr>
<td>169</td>
<td>44</td>
<td>7,250.00</td>
</tr>
<tr>
<td>170</td>
<td>45</td>
<td>7,400.00</td>
</tr>
<tr>
<td>171</td>
<td>46</td>
<td>7,550.00</td>
</tr>
<tr>
<td>172</td>
<td>47</td>
<td>7,700.00</td>
</tr>
<tr>
<td>173</td>
<td>48</td>
<td>7,850.00</td>
</tr>
</tbody>
</table>
Enr. Com. Sub. for H. B. 1286 | 28

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

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

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

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

ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.

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

There is hereby created in the state treasury a fund to be known as the employment security special administration fund, which shall consist of interest collected on delinquent payments pursuant to section seventeen, article five of this chapter. The moneys deposited with this fund are hereby appropriated and made available to the order of the commissioner for the purpose of (a) replacements in the employment security administration fund as provided in section eight of this article, (b) to meet special, extraordinary, and contingent expenses not provided for in the employment security administration fund, and (c) refunds pursuant to section nineteen of article five, of interest erroneously collected, and (d) cover expenditures for which federal funds have been authorized but not yet received, subject to repayment to the fund. This fund shall be administered and disbursed in the same manner and under the same conditions as other special funds of the state treasury. Balances to the credit of the special administration fund shall not lapse at any time but shall be continuously avail-
able to the commissioner for expenditures consistent with this chapter: Provided, That (1) not more than one hundred thousand dollars shall be expended from said fund in any fiscal year for purposes (a) and (b); and that not more than five hundred thousand dollars shall be expended from said fund in any fiscal year for purpose (d); (2) that at the beginning of each calendar quarter the commissioner shall estimate the amount that may be required in that quarter for refunds of interest erroneously collected; (3) that thereupon the excess, if any, over the amounts provided to be expended under this section 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 L. Chestnut Jr.  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1979.

J. Wilson, Jr.  
Clerk of the Senate

A. H. Lankenship  
Clerk of the House of Delegates

W. T. Smith  
President of the Senate

C. A. Lee, Jr.  
Speaker House of Delegates

The within _______ approved _______ this the ______ day of March, 1979.

John L.するのが  
Governor

C-641