WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

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ENROLLED

Com. Sub. for

HOUSE BILL No. 1255

(By Mr. Speaker, Mr. Dee)

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Passed April 8, 1981

In Effect from Passage
AN ACT to repeal sections nine and ten-a, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one of said chapter; to amend and reenact sections five, seven and ten, article five of said chapter; to amend and reenact sections one, three and eleven, article six of said chapter; to amend and reenact sections one and five, article six-a of said chapter; to amend and reenact section seven, article seven of said chapter; and to amend and reenact section seven, article ten of said chapter; all relating to unemployment compensation; definitions; increasing the taxable wage base; initial rate of contribution; increasing rates of contribution; exceptions; adjustment of accounts and rates; experience ratings; debit balance account rates; charging of surtax of one percent retroactive to the first day of January, one thousand nine hundred eighty-one; providing for termination of the surtax; qualification for benefits; disqualification for benefits for leaving work voluntarily without good cause involving fault on the part of the employer, misconduct, failing to apply for or accept suitable work, receiving annuity, pension or other retirement pay from base period or chargeable em-
ployer, knowingly making false statements to obtain benefits; partial unemployment extended unemployment compensation benefits; definitions; disqualification for extended benefits in certain instances until individual has returned to covered employment and has been employed for at least thirty working days; comprehensive provision ineligibility for extended benefits where individual has failed to accept or apply for suitable work or has failed to actively engage in seeking work; limiting extended benefits to two weeks for person residing in a state where extended benefits are not in effect; increasing criminal penalties for false representations; and changing examiner's title to administrative law judge.

Be it enacted by the Legislature of West Virginia:

That sections nine and ten-a, article five, chapter twenty-one-a, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three, article one of said chapter be amended and reenacted; that sections five, seven and ten, article five of said chapter be amended and reenacted; that sections one, three and eleven, article six of said chapter be amended and reenacted; that sections one and five, article six-a of said chapter be amended and reenacted; that section seven, article seven of said chapter be amended and reenacted; and that section seven, article ten of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


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

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

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

"Average annual payroll" means the average of the last three annual payrolls of an employer.
"Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual benefit year.

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

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

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

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

"Board" means board of review.

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

"Commissioner" means the employment security commissioner.

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

"Employing unit" means an individual, or type of organization, including any partnership, association, trust estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political sub-
division thereof, or their instrumentalities, as provid-
ed in subdivision (9) (b) of the definition of “em-
ployment” in this section, institution of higher edu-
cation, or the receiver, trustee in bankruptcy, trustee or
successor thereof, or the legal representative of a de-
ceased person, which has on January first, one thou-
sand 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,
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 em-
ployer 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 acquisi-
tion 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 employ-
ment 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 “employ-
ment” 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 “employ-
ment” in this section, is performed after December thirty-one, one thousand nine hundred seventy-one;

(10) Any employing unit for which service in employ-
ment, 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 “employ-
ment” in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven;

(12) Any employing unit for which domestic service in em-
ployment, 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 sec-
tion, 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 hundred 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 supervised, managed, directed and controlled, is within this state;

(9) (a) Service performed after December thirty-one, one thousand nine hundred seventy-one, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their 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
thousand 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
foregoing 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 “em-
ployment” under subdivision (15) of the exclusion from em-
ployment in this section; and

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

(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 or-
ganization but only if the following conditions are met:

(a) The service is excluded from “employment” as de-
efined in the Federal Unemployment Tax Act solely by rea-
son of section 3306 (c) (8) of that act; and

(b) The organization had four or more individuals in em-
ployment for some portion of a day in each of twenty dif-
ferent 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 Jan-
uary 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 paral-
lel 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 em-
ployed at the same moment of time;

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

(c) For the purposes of the definition of employment, any
individual who is a member of a crew furnished by a crew
leader to perform service in agricultural labor for any other
person shall be treated as an employee of such crew leader
(i) if such crew leader holds a valid certificate of registration
under the Farm Labor Contractor Registration Act of 1963;
or substantially all the members of such crew operate or main-
tain tractors, mechanized harvesting or crop-dusting equip-
ment, 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 sub-
division (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 per-
form 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 em-
ployer 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 agricul-
tural labor performed for such other person;

(e) For the purposes of this subdivision (12), the term
“crew leader” means an individual who (i) furnishes indi-
duals 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 instru-
mentalities of the United States to make payments into an
unemployment fund under a state unemployment compensa-
tion law, all of the provisions of this law shall be applicable to
such instrumentalities, and to service performed for such in-
strumentalities, in the same manner, to the same extent and
on the same terms as to all other employers, employing units,
individuals and services: Provided, That if this state shall
not be certified for any year by the secretary of labor under
section 1603(c) of the Federal Internal Revenue Code, the
payments required of such instrumentalities with respect to
such year shall be refunded by the commissioner from the
fund in the same manner and within the same period as is
provided in section nineteen, article five of this chapter, with
respect to payments erroneously collected;

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

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

(a) On a farm, in the employ of any person, in connection
with cultivating the soil, or in connection with raising or
harvesting any agricultural or horticultural commodity, in-
cluding 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 fifteen (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 domestic service in a private home of the employer. As used in this subdivision (5), the term “farm” includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations,
425 ranches, greenhouses, ranges and nurseries, or other similar
426 land areas or structures used primarily for the raising of any
427 agricultural or horticultural commodities;
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429 (6) Domestic service in a private home, except as pro-
430 vided in subdivision (13) of the definition of "employment"
431 in this section;
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433 (7) Service performed by an individual in the employ of his
434 son, daughter or spouse;
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436 (8) Service performed by a child under the age of eighteen
437 years in the employ of his father or mother;
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439 (9) Service as an officer or member of a crew of an
440 American vessel, performed on or in connection with such
441 vessel, if the operating office, from which the operations of the
442 vessel operating on navigable water within or without the
443 United States are ordinarily and regularly supervised, managed,
444 directed and controlled, is without this state;
445
446 (10) Service performed by agents of mutual fund broker-
447 dealers or insurance companies, exclusive of industrial in-
448 surance agents, or by agents of investment companies, who
449 are compensated wholly on a commission basis;
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451 (11) Service performed (i) in the employ of a church or
452 convention or association of churches, or an organization
453 which is operated primarily for religious purposes and which
454 is operated, supervised, controlled or principally supported
455 by a church or convention or association of churches; or
456 (ii) by a duly ordained, commissioned or licensed minister of
457 a church in the exercise of his ministry or by a member of
458 a religious order in the exercise of duties required by such
459 order; or (iii) prior to January one, one thousand nine hundred
460 seventy-eight, in the employ of a school which is not an in-
461 stitution of higher education; or (iv) in a facility conducted for
462 the purpose of carrying out a program of rehabilitation for
463 individuals whose earning capacity is impaired by age or physi-
464 cal or mental deficiency or injury or providing remunerative
465 work for individuals who because of their impaired physical
466 or mental capacity cannot be readily absorbed in the competi-
467 tive labor market by an individual receiving such rehabilitation
or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) prior to January one, one thousand nine hundred seventy-eight, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution, and after December thirty-one, one thousand nine hundred seventy-seven, by an inmate of a custodial or penal institution;

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

(13) Service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public 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 full time work wages payable to him are less then his weekly benefit amount plus twenty-five dollars: Provided, That said individual must have earnings of at least twenty-six 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; and shall not include that part of remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year after one thousand nine hundred eighty, 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 unemploy-
ment compensation law of another state; or which as a con-
dition 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 remuner-
ation paid to an individual by an employer with respect to
employment in another state or other states upon which con-
tributions 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, or eight
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 pre-
decessors: **Provided further, That if the definition of the term
"wages" as contained in section 3306(b) of the Internal Reve-
 nue Code of 1954 as amended: (a) Effective prior to January
one, one thousand nine hundred sixty-two, to include re-
muneration in excess of three thousand dollars, or (b) effec-
tive on or after January one, one thousand nine hundred sixty-
two, to include remuneration in excess of three thousand six
hundred dollars, or (c) effective on or after January one, one
thousand nine hundred seventy-two, to include remuneration in
excess of four thousand two hundred dollars, or (d) effective
on or after January one, one thousand nine hundred seventy-
eight, to include remuneration in excess of six thousand dollars,
or (e) effective on or after January one, one thousand nine
hundred eighty, to include remuneration in excess of eight
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 remu-
neration paid in a calendar year to an individual by an em-
ployer subject to this article or his predecessor with respect
to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the Federal
Unemployment Tax Act;

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

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

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

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

(6) The payment by an employer of the tax imposed upon an employer under section 3101 of the Federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home of the employer or agricultural labor;

(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 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-5. Rate of contribution.

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

On and after July one, one thousand nine hundred eighty-one, each employer subject to this chapter shall pay contri-
butions at the rate of two and seven-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

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

Notwithstanding any other provision of this chapter to the contrary, on or after the first day of July, one thousand nine hundred seventy-one, any foreign corporation or business entity engaged in the construction trades shall pay contributions at the rate of seven and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article: Provided, That any corporation or business entity engaged in the construction trades shall make payments to the fund at the rates applicable to such employer as of January first, one thousand nine hundred eighty-one, for wages paid with respect to employment on construction contracts entered into or for which bids are submitted in this state prior to April fifteenth, one thousand nine hundred eighty-one: Provided, however, That the burden shall be on such corporation or business entity to prove that any such contract was executed or that any such bid was submitted therefor prior to April fifteenth, one thousand nine hundred eighty-one.


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

(2) Benefits paid to an eligible individual for regular and ex-
tended total or partial unemployment beginning after the effec-
tive date of this article shall be charged to the account of the last
employer with whom he has been employed as much as thirty
working days, whether or not such days are consecutive:
Provided, That no employer's account shall be charged with
benefits paid to any individual who has been separated from a
noncovered employing unit in which he was employed as much
as thirty days, whether or not such days are consecutive:
Provided, however, That no employer's account shall be charg-
ed with more than fifty percent of the benefits paid to an
eligible individual as extended benefits under the provisions of
article six-a of this chapter: Provided further, That state and
local government employers shall be charged with one hun-
dred percent of the benefits paid to an eligible individual as
extended benefits.

(3) The commissioner shall, for each calendar year here-
after, classify employers in accordance with their actual ex-
perience in the payment of contributions on their own behalf
and with respect to benefits charged against their accounts,
with a view of fixing such contribution rates as will reflect such
experiences. For the purpose of fixing such contribution rates for each calendar year, the books of the department shall be closed on July thirty-one of the preceding calendar year, and any contributions thereafter paid, as well as benefits thereafter paid with respect to compensable weeks ending on or before June thirty of the preceding calendar year, shall not be taken into account until the next annual date for fixing contribution rates: Provided, That if an employer has failed to furnish to the commissioner on or before July thirty-one of such preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate, such employer's rate shall be, if it is immediately prior to such July thirty-one, less than three and three-tenths percent, increased to three and three-tenths percent: Provided, however, That any payment made or any information necessary for the computation of a reduced rate furnished on or before the termination of an extension of time for such payment or reporting of such information granted pursuant to a regulation of the commissioner authorizing such extension, shall be taken into account for the purposes of fixing contribution rates: Provided further, That when the time for filing any report or making any payment required hereunder falls on Saturday, Sunday, or a legal holiday, the due date shall be deemed to be the next succeeding business day: And provided further, That whenever, through mistake or inadvertence, erroneous credits or charges are found to have been made to or against the reserved account of any employer, the rate shall be adjusted as of January one of the calendar year in which such mistake or inadvertence is discovered, but payments made under any rate assigned prior to January one of such year shall not be deemed to be erroneously collected.

(4) The commissioner may prescribe regulations for the establishment, maintenance and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(5) State and local government employers are hereby autho-
rized to enter into joint accounts and to maintain such joint account or accounts as if it or they constituted a single employer's account or accounts.

(6) Effective on and after July one, one thousand nine hundred eighty-one, if an employer has failed to furnish to the commissioner on or before July thirty-one of one thousand nine hundred eighty, and each year thereafter, the wage information for all past periods necessary for the computation of the contribution rate, such employer's rate shall be, if it is immediately prior to July one, one thousand nine hundred eighty-one, less than seven and five-tenths percent, increased to seven and five-tenths percent.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

On and after July one, one thousand nine hundred eighty-one, an employer's payment shall remain two and seven-tenths percent, until:

(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits.

(2) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least the percent of his average annual payroll as shown in Column B of Table II. His rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred percent but are less than one hundred twenty-five percent of the average benefit payments from the trust fund for the three preceding calendar years, an employer's rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred twenty-five percent but are less than one hundred fifty percent, an employer's
rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred fifty percent, an employer's rate shall be the amount appearing in Column F of Table II on line with the percentage in Column B.

TABLE II

<table>
<thead>
<tr>
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</tr>
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<tbody>
<tr>
<td>Rate Class</td>
<td>Percentage of Average Payroll By Which Credits Exceed Employer's Rate</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30 (1)</td>
<td>0.0 to 6.0</td>
<td>4.5</td>
<td>3.5</td>
<td>2.5</td>
<td>1.5</td>
</tr>
<tr>
<td>31 (2)</td>
<td>6.0</td>
<td>4.1</td>
<td>3.1</td>
<td>2.1</td>
<td>1.1</td>
</tr>
<tr>
<td>32 (3)</td>
<td>7.0</td>
<td>3.9</td>
<td>2.9</td>
<td>1.9</td>
<td>0.9</td>
</tr>
<tr>
<td>33 (4)</td>
<td>8.0</td>
<td>3.7</td>
<td>2.7</td>
<td>1.7</td>
<td>0.7</td>
</tr>
<tr>
<td>34 (5)</td>
<td>9.0</td>
<td>3.5</td>
<td>2.5</td>
<td>1.5</td>
<td>0.5</td>
</tr>
<tr>
<td>35 (6)</td>
<td>10.0</td>
<td>3.3</td>
<td>2.3</td>
<td>1.3</td>
<td>0.3</td>
</tr>
<tr>
<td>36 (7)</td>
<td>10.5</td>
<td>3.1</td>
<td>2.1</td>
<td>1.1</td>
<td>0.1</td>
</tr>
<tr>
<td>37 (8)</td>
<td>11.0</td>
<td>2.9</td>
<td>1.9</td>
<td>0.9</td>
<td>0.0</td>
</tr>
<tr>
<td>38 (9)</td>
<td>11.5</td>
<td>2.7</td>
<td>1.7</td>
<td>0.7</td>
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</tr>
<tr>
<td>39 (10)</td>
<td>12.0</td>
<td>2.5</td>
<td>1.5</td>
<td>0.5</td>
<td>0.0</td>
</tr>
<tr>
<td>40 (11)</td>
<td>12.5</td>
<td>2.3</td>
<td>1.3</td>
<td>0.3</td>
<td>0.0</td>
</tr>
<tr>
<td>41 (12)</td>
<td>13.0</td>
<td>2.1</td>
<td>1.1</td>
<td>0.1</td>
<td>0.0</td>
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<tr>
<td>42 (13)</td>
<td>14.0</td>
<td>1.9</td>
<td>0.9</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>43 (14)</td>
<td>16.0</td>
<td>1.7</td>
<td>0.7</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>44 (15)</td>
<td>18.0 and over</td>
<td>1.5</td>
<td>0.5</td>
<td>0.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June thirty, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-eight, and notwithstanding the provisions of subsection (1), section seven of this article relat-
ing to the noncrediting of employers' accounts with the first seven-tenths or with the first four-tenths of one percent of contributions paid; for the purpose of determining whether or not an employer shall pay contributions at a rate in excess of two and seven-tenths percent as hereinafter set forth, but not for the purpose of determining such rate, the department shall, only for the purpose set forth herein and not as a credit to such account, add to the accounts of all employers having a debit balance, contribution payments made by such employers on and after July one, one thousand nine hundred sixty-seven, which payments are not credited to employers' accounts by reason of the provisions contained in subsection (I), section seven of this article. If, after such contribution payments have been added to such employers' accounts, such accounts continue to show a debit balance, such employers shall make payments at a rate in excess of four and five-tenths percent. If, after such contribution payments have been added to such employers' accounts, such accounts show a credit balance, such employers shall make payments at the rate of four and five-tenths percent. If, under the conditions set forth in this paragraph, it is determined that an employer shall pay contributions at a rate in excess of four and five-tenths percent, the rate in excess of four and five-tenths percent at which an employer shall pay contributions shall then be determined solely under the conditions set forth in the following paragraphs of this section. The provisions contained in this paragraph shall in no way be considered as providing for the crediting to an employer's account, of amounts of employer contributions payments which are expressly not credited to employers' accounts in subsection (I), section seven of this article.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including ten percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three percent of wages paid by them with respect to
employment; except that effective on and after July one, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including five percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of five and five-tenths percent of wages paid by them with respect to employment.

Effective on or after July one, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount in excess of five percent but less than ten percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of six and five-tenths percent of wages paid by them with respect to employment.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount of ten percent or above of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment; except that effective on and after July one, one thousand nine hundred eighty-one, such payments to the unemployment compensation fund shall be at the rate of seven and five-tenths percent of wages paid by them with respect to employment or at such other rate authorized by this article.

"Debit balance account" for the purpose of this section means an account in which the benefits charged for all past years exceed the payments credited for such past years.

"Credit balance account" for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.
Once a debit balance account rate is established for an employer's account for a year, it shall apply for the entire year. “Due date” means the last day of the month next following a calendar quarter. In determining the amount in the fund on any due date, contributions received, but not benefits paid, for such month next following the end of a calendar quarter shall be included.

(b) Notwithstanding any other provision of this section, every employer subject to the provisions of this chapter shall, in addition to any other tax provided for in this section, pay contributions at the rate of one percent surtax on wages paid by him with respect to employment, beginning January first, one thousand nine hundred eighty-one, until such time that the commissioner determines that the fund assets equal or exceed the average benefits payments from the fund for the preceding three calendar years at which time such surtax shall be discontinued, and the commissioner shall so notify the employers subject to the provisions of this chapter.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

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

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

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

(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.

(4) He has been totally or partially unemployed during his benefit year for a waiting period of one week prior to the week for which he claims benefits for total or partial unemployment.
(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-6-3. Disqualification for benefits.

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

(1) For the week in which he left his most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

For the purpose of this subdivision (1), an individual shall not be deemed to have left his most recent work voluntarily without good cause involving fault on the part of the employer, if such individual leaves his work with an employer with whom he has been employed at least thirty working days or more for the purpose of returning to, and if he in fact, within a fourteen-day calendar period, does return to, employment with the last preceding employer with whom he was previously employed within the past year prior to his return to work day, and which last preceding employer, after having previously employed such individual for thirty working days or more, laid off such individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had such individual applied for such benefits. It is the intent of this paragraph to cause no disqualification for benefits for such an individual who complies with the foregoing set of requirements and conditions. Benefits paid to such individual under the provisions of this chapter shall, notwithstanding the provisions of subsection (2), section seven, article five of this chapter, and of subdivision (12) of this section three, be charged to the account of such last preceding employer with whom such individual was previously employed for thirty working days.

(2) For the week in which he was discharged from his most recent work for misconduct and the six weeks immediately
following such week; or for the week in which he was discharged from his last thirty-day employment unit for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual’s weekly benefit. However, if the claimant returns to work in covered employment for thirty days during his benefit year, whether or not such days are consecutive, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification; except that:

If he were discharged from his most recent work for one of the following reasons; or if he were discharged from his last thirty day employing unit for one of the following reasons:

Misconduct consisting of willful destruction of his employer’s property, assault upon the person of his employer or any employee of his employer, if such assault is committed at such individual’s place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; arson, theft, larceny, fraud or embezzlement in connection with his work; or any other gross misconduct; he shall be and remain disqualified for benefits until he has thereafter worked for at least thirty days in covered employment: Provided, That for the purpose of this subdivision the words “any other gross misconduct” shall include, but not be limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from such act or acts.

(3) For the week in which he failed without good cause to apply for available, suitable work, accept suitable work when offered, or return to his customary self-employment when directed to do so by the commissioner, and for the four weeks which immediately follow for such additional period as any offer of suitable work shall continue open for his acceptance. Such disqualification shall carry a reduction in the maximum benefit amount equal to four times the individual’s weekly benefit amount.

(4) For a week in which his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at
which he was last employed, unless the commissioner is satisfied that he was not (one) participating, financing, or directly interested in such dispute, and (two) did not belong to a grade or class of workers who were participating, financing, or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subdivision shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his plant or operation or dismisses his employees in order to force wage reduction, changes in hours or working conditions.

For the purpose of this subdivision, if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there shall be a rebuttable presumption that that part of the stoppage of work which exists after said period of four weeks after the termination of said labor dispute did not exist because of said labor dispute; and in such event the burden shall be upon the employer or other interested party to show otherwise.

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

(a) Wages in lieu of notice;

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

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

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

(7) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of partici-
pating in sports or athletic events or training or preparing to 
so participate, for any week which commences during the per-
iod between two successive sport seasons (or similar periods) 
if such individual performed such services in the first of such 
seasons (or similar periods) and there is a reasonable assurance 
that such individual will perform such services in the later of 
such seasons (or similar periods).

(8) (a) Benefits shall not be paid on the basis of services 
performed by an alien unless such alien is an individual who 
has been lawfully admitted for permanent residence or other-
wise is permanently residing in the United States under color 
of law (including an alien who is lawfully present in the United 
States as a result of the application of the provisions of section 
203 (a) (7) or section 212 (d) (5) of the Immigration and 
Nationality Act: Provided, That any modifications to the pro-
visions of section 3304 (a) (14) of the Federal Unemployment 
Tax Act as provided by Public Law 94-566 which specify other 
conditions or other effective date than stated herein for the 
denial of benefits based on services performed by aliens and 
which modifications are required to be implemented under 
state law as a condition for full tax credit against the tax im-
posed by the Federal Unemployment Tax Act shall be deemed 
applicable under the provisions of this section;

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

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

(9) For each week in which an individual is unemployed 
because, having voluntarily left employment to attend a school, 
college, university or other educational institution, he is at-
tending such school, college, university or other educational 
institution, or is awaiting entrance thereto or is awaiting the 
starting of a new term or session thereof, and until the indi-
vidual returns to covered employment.
(10) For each week in which he is unemployed because of his request, or that of his duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(11) For each week in which he is receiving or has received benefits under Title II of the Social Security Act or similar payments under any act of Congress and/or remuneration in the form of an annuity, pension, or other retirement pay from a base period and/or chargeable employer or from any trust or fund contributed to by a base period and/or chargeable employer. But if such remuneration for any week is less than the benefits which would otherwise be due him for such week under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: Provided, however, That there shall be no disqualification if in the individual's base period there are no wages which were paid by the base period and/or chargeable employer paying such remuneration, or by a fund into which the employer has paid during said base period. Claimant may be required to certify as to whether or not he is receiving or has been receiving remuneration in the form of an annuity, pension, or other retirement pay from a base period and/or chargeable employer or from a trust fund contributed to by a base period and/or chargeable employer.

(12) For fifty-two weeks, beginning with the date of the decision, if the commissioner finds such individual who within twenty-four calendar months immediately preceding such decision, has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this article: Provided, That disqualification under this subdivision shall not preclude prosecution under section seven, article ten of this chapter.

(13) For the purposes of this section, an employer's account shall not be charged under any of the following conditions. When benefits are paid for unemployment immediately after
the expiration of a period of disqualification for (a) discharge
for any of the causes set forth in subdivision (2) of this sec-
tion, or (b) failing without good cause to apply for available
suitable work, accept suitable work, when offered, or to return
to his customary self-employment when directed to do so by
the commissioner.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.


An eligible individual who is partially unemployed in any
week shall, upon claim therefor filed within such time and in
such manner as the commissioner may by regulation prescribe,
be paid benefits for such partial unemployment in an amount
equal to his weekly benefits rate, as determined in accordance
with section ten of this article, less that part of wages from
any source payable to him with respect to such week which
is in excess of twenty-five dollars (notwithstanding the refer-
ence to fifteen dollars in the definition of partial unemploy-
ment contained in section three, article one of this chapter):
Provided, That such amount of benefits if not a multiple of
one dollar shall be computed to the next higher multiple of one
dollar. Such partial benefits shall be paid to such individual
for the week for which he is claiming benefits without regard to
the provisions of subdivision one, section one of this article.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions

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

(A) "Extended benefit period" means a period which
(B) Begins with the third week after whichever of the fol-
      lowing weeks occurs first:
      (i) A week for which there is a national “on” indicator; or
      (ii) A week for which there is a state “on” indicator; and
      (B) Ends with either of the following weeks, whichever oc-
      curs later:
      (i) The third week after the first week for which there is
both a national “off” indicator and a state “off” indicator; or

(ii) The thirteenth consecutive week of such period.

Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state “on” indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and no extended benefits period may become effective in this state prior to the sixty-first day following the date of enactment of the Federal-State Extended Unemployment Compensation Act of 1970, and, within the period beginning on such sixty-first day and ending on December thirty-one, one thousand nine hundred seventy-one, an extended benefit period may become effective and be terminated in this state solely by reason of a state “on” and state “off” indicator, respectively.

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

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

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

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

(B) Was less than four percent.

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

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

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

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

(7) “Extended benefits” means benefits (including benefits payable to federal civilian employees and to ex-servicemen
pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

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

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

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

(C) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such bene-
fits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) “State law” means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

(12) No individual shall be entitled to extended benefits during a period of unemployment if he was disqualified under the provisions of subdivision (1), (2) or (3) of section three, article six of this chapter, which disqualification shall not be terminated until such individual has returned to covered employment and has been employed in covered employment for at least thirty working days.

(13) (A) Notwithstanding any other provisions of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the commissioner finds that during such period:

(i) He failed to accept any offer of suitable work or failed to apply for any suitable work (as defined under subdivision (13) (C) of this section, to which he was referred by the commissioner; or

(ii) He failed to actively engage in seeking work as prescribed under subdivision (13) (E).

(B) Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision (13) (A) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount;

(C) For purposes of this subdivision (13) (A) (i) of this section, the term “suitable work” means, with respect to any individual, any work which is within such individual’s capabilities: Provided, however, That the gross average weekly remuneration payable for the work must exceed the sum of:
(i) the individual's average weekly benefit amount (as determined under subdivision 13 (D) of this section plus.

(ii) the amount, if any, of supplemental unemployment benefits (as defined in section 501 (c) (17) (D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,

(iii) pays wages equal to the higher of:

(I) the minimum wages provided by section (6) (a) (1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(II) the state or local minimum wage;

(iv) Provided that no individual shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitability as described above if:

(I) the position was not offered to such individual in writing and was not listed with the employment service; or

(II) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section five, article six of this chapter, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision (13) (C) of this section; or

(III) The individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in section five, article six of this chapter, without regard to the definition specified by subdivision (13) (C) of this section.

(D) Notwithstanding the provisions of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304 (a) (5) of the Internal Revenue
(E) For the purposes of subdivision (13) (A) (II) of this section an individual shall be treated as actively engaged in seeking work during any week if:

(i) The individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(F) The employment service shall refer any claimant entitled to extended benefits under this article to any suitable work which meets the criteria prescribed in subdivision (13) (C).

(G) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or refused an offer of suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this subdivision requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

§21A-6A-5. Total extended benefit amount.

The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) Fifty percent of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(2) Eleven times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year: Provided, That an individual filing for extended benefits through the Interstate Benefit Payment Plan and residing in a state where an extended benefit period is not in effect shall be limited to payment for only the first two weeks of such extended benefits.
ARTICLE 7. CLAIM PROCEDURE.

§21A-7-7. Appeal tribunals.

1 The board shall determine the manner of hearing cases transferred or appealed from a decision of a deputy. All cases relating to labor disputes or to disqualification under subdivision (4), section three, article six of this chapter, and transferred to an appeal tribunal for initial determination, shall be heard by an appeal tribunal composed either of three administrative law judges assigned by the board, or the board itself, as the board may direct in particular cases or in particular areas. All other appeals from the decision of a deputy shall be heard by an appeal tribunal composed, as the board may direct in particular cases or in particular areas, of a single administrative law judge; a tribunal of three administrative law judges assigned by the board; a member of the board; or the board itself.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-7. False representations; penalties.

1 A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose material fact in order to obtain or increase a benefit, either for himself or another, under this chapter, or under an employment security law of any other state or of the federal government for either of which jurisdictions this state is acting as an agent, shall be guilty of a misdemeanor, and, upon conviction, punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not longer than thirty days or both. Each false statement or representation, or failure to disclose a material fact, shall constitute a separate offense.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Bayse
Chairman Senate Committee

J. E. Whitley
Chairman House Committee

Originated in the House.
Takes effect from passage.

J. C. Willis
Clerk of the Senate

J. A. Blankenship
Clerk of the House of Delegates

Warren R. McManus
President of the Senate

Chuck J. Beazley
Speaker House of Delegates

The within is approved this the 28
day of April, 1981.

John D. Shorkey
Governor