

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time \_\_\_\_\_

NO: 1255

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1255

(By Mr. Speaker, Mr. Lee)



Passed April 8, 1981

In Effect From Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 1255**  
(By MR. SPEAKER, MR. SEE)

[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.**

**§21A-1-3. Definitions.**

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

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

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

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

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

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

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

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

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

33 “Board” means board of review.

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

38 “Commissioner” means the employment security commis-  
39 sioner.

40 “Computation date” means June thirty of the year immedi-  
41 ately preceding the January one on which an employer’s con-  
42 tribution rate becomes effective.

43 “Employing unit” means an individual, or type of  
44 organization, including any partnership, association, trust  
45 estate, joint-stock company, insurance company, corp-  
46 oration (domestic or foreign), state or political sub-

47 division thereof, or their instrumentalities, as provid-  
48 ed in subdivision (9) (b) of the definition of “em-  
49 ployment” in this section, institution of higher edu-  
50 cation, or the receiver, trustee in bankruptcy, trustee or  
51 successor thereof, or the legal representative of a de-  
52 ceased person, which has on January first, one thou-  
53 sand nine hundred thirty-five, or subsequent thereto,  
54 had in its employ one or more individuals performing  
55 service within this state.

56 “Employer” means:

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

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

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

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

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

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

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

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

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

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

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

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

119 "Employment," subject to the other provisions of this sec-  
120 tion, means:

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

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

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

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

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

158 (6) Service shall be deemed to be localized within a state,

159 if: (a) The service is performed entirely within such state; or  
160 (b) the service is performed both within and without such  
161 state, but the service performed without such state is incidental  
162 to the individual's service within this state, as, for example,  
163 is temporary or transitory in nature or consists of isolated trans-  
164 actions;

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

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

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

196 (b) Service performed after December thirty-one, one

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

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

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

215 (a) The service is excluded from "employment" as de-  
216 fined in the Federal Unemployment Tax Act solely by rea-  
217 son of section 3306 (c) (8) of that act; and

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

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

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

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

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

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

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

260 (a) Such service is performed for a person who (i) during  
261 any calendar quarter in either the current or the preceding cal-  
262 endar year paid remuneration in cash of twenty thousand dol-  
263 lars or more to individuals employed in agricultural labor (not  
264 taking into account service in agricultural labor performed be-  
265 fore January one, one thousand nine hundred eighty, by an alien  
266 referred to in subparagraph (b) of this subdivision (12)] or (ii)  
267 for some portion of a day in each of twenty different calendar  
268 weeks, whether or not such weeks were consecutive, in either  
269 the current or the preceding calendar year, employed in agricul-  
270 tural labor (not taking into account service in agricultural labor  
271 performed before January one, one thousand nine hundred eigh-  
272 ty, by an alien referred to in division (ii) of this subparagraph)

273 ten or more individuals, regardless of whether they were em-  
274 ployed at the same moment of time;

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

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

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

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

311 has not entered into a written agreement with such other  
312 person under which such individual is designated as an em-  
313 ployee of such other person;

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

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

332 The term "employment" shall not include:

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

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

343 (3) Service performed in the employ of the United States  
344 or an instrumentality of the United States exempt under the  
345 Constitution of the United States from the payments imposed  
346 by this law, except that to the extent that the Congress of the  
347 United States shall permit states to require any instru-

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

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

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

383 (a) On a farm, in the employ of any person, in connection  
384 with cultivating the soil, or in connection with raising or  
385 harvesting any agricultural or horticultural commodity, in-  
386 cluding the raising, shearing, feeding, caring for, training,

387 and management of livestock, bees, poultry, and fur-bearing  
388 animals and wildlife;

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

395 (c) In connection with the production or harvesting of  
396 any commodity defined as an agricultural commodity in section  
397 fifteen (g) of the Agricultural Marketing Act, as amended,  
398 or in connection with the ginning of cotton, or in connection  
399 with the operation or maintenance of ditches, canals, reser-  
400 voirs or waterways, not owned or operated for profit, used ex-  
401 clusively for supplying and storing water for farming purposes;

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

420 (e) On a farm operated for profit if such service is not in  
421 the course of the employer's trade or business or is domestic  
422 service in a private home of the employer. As used in this  
423 subdivision (5), the term "farm" includes stock, dairy, poultry,  
424 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;

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

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

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

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

441 (10) Service performed by agents of mutual fund broker-  
442 dealers or insurance companies, exclusive of industrial in-  
443 surance agents, or by agents of investment companies, who  
444 are compensated wholly on a commission basis;

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

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

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

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

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

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

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

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

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

525 "Fund" means the unemployment compensation fund estab-  
526 lished by this chapter.

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

530 "Institution of higher education" means an educational in-  
531 stitution which:

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

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

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

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

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

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

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

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

556 "Total and partial unemployment" means:

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

562 (2) An individual who has not been separated from em-  
563 ployment shall be deemed to be partially unemployed in any  
564 week in which due to lack of full time work wages payable  
565 to him are less than his weekly benefit amount plus twenty-  
566 five dollars: *Provided*, That said individual must have earnings  
567 of at least twenty-six dollars.

568 "Wages" means all remuneration for personal service, in-  
569 cluding commissions and bonuses and the cash value of all  
570 remuneration in any medium other than cash except for  
571 agricultural labor and domestic service: *Provided*, That the  
572 term "wages" shall not include:

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

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

613 purposes of this subdivision (1), the term "employment" shall  
614 include service constituting employment under any unemploy-  
615 ment compensation law of another state; or which as a con-  
616 dition for full tax credit against the tax imposed by the  
617 Federal Unemployment Tax Act is required to be covered  
618 under this chapter; and, except, that for the purposes of  
619 sections one, ten, eleven and thirteen, article six of this chapter,  
620 all remuneration earned by an individual in employment shall  
621 be credited to the individual and included in his computation  
622 of base period wages: *Provided, however,* That the remuneration  
623 paid to an individual by an employer with respect to  
624 employment in another state or other states upon which con-  
625 tributions were required of and paid by such employer under  
626 an unemployment compensation law of such other state or  
627 states shall be included as a part of the remuneration equal to  
628 the amounts of three thousand six hundred dollars or four  
629 thousand two hundred dollars or six thousand dollars, or eight  
630 thousand dollars herein referred to. In applying such limitation  
631 on the amount of remuneration that is taxable, an employer  
632 shall be accorded the benefit of all or any portion of such  
633 amount which may have been paid by its predecessor or pre-  
634 decessors: *Provided further,* That if the definition of the term  
635 "wages" as contained in section 3306(b) of the Internal Reve-  
636 nue Code of 1954 as amended: (a) Effective prior to January  
637 one, one thousand nine hundred sixty-two, to include re-  
638 muneration in excess of three thousand dollars, or (b) effec-  
639 tive on or after January one, one thousand nine hundred sixty-  
640 two, to include remuneration in excess of three thousand six  
641 hundred dollars, or (c) effective on or after January one, one  
642 thousand nine hundred seventy-two, to include remuneration in  
643 excess of four thousand two hundred dollars, or (d) effective  
644 on or after January one, one thousand nine hundred seventy-  
645 eight, to include remuneration in excess of six thousand dollars,  
646 or (e) effective on or after January one, one thousand nine  
647 hundred eighty, to include remuneration in excess of eight  
648 thousand dollars, paid to an individual by an employer under  
649 the Federal Unemployment Tax Act during any calendar year,  
650 wages for the purposes of this definition shall include remun-  
651 eration paid in a calendar year to an individual by an em-  
652 ployer subject to this article or his predecessor with respect

653 to employment during any calendar year up to an amount  
654 equal to the amount of remuneration taxable under the Federal  
655 Unemployment Tax Act;

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

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

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

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

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

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

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

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

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

711 (10) Vacation pay, severance pay, or savings plans received  
712 by an individual before or after becoming totally or partially  
713 unemployed but earned prior to becoming totally or partially  
714 unemployed: *Provided*, That the term totally or partially un-  
715 employed shall not be interpreted to include (1) employees  
716 who are on vacation by reason of the request of the employees  
717 or their duly authorized agent, for a vacation at a specific  
718 time, and which request by the employees or their agent is  
719 acceded to by their employer (2) employees who are on vaca-  
720 tion by reason of the employer's request provided they are so  
721 informed at least ninety days prior to such vacation, or (3)  
722 employees who are on vacation by reason of the employer's  
723 request where such vacation is in addition to the regular vaca-  
724 tion and the employer compensates such employee at a rate  
725 equal to or exceeding their regular daily rate of pay during  
726 the vacation period.

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

731       The reasonable cash value of remuneration in any medium  
732 other than cash shall be estimated and determined in accord-  
733 ance with rules prescribed by the commisisoner, except for  
734 remuneration other than cash for services performed in agri-  
735 cultural labor and domestic service.

736       “Week” means a calendar week, ending at midnight Satur-  
737 day, or the equivalent thereof, as determined in accordance  
738 with the regulations prescribed by the commissioner.

739       “Weekly benefit rate” means the maximum amount of bene-  
740 fit an eligible individual will receive for one week of total  
741 unemployment.

742       “Year” means a calendar year or the equivalent thereof, as  
743 determined by the commissioner.

**ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.**

**§21A-5-5. Rate of contribution.**

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

16       On and after July one, one thousand nine hundred eighty-  
17 one, each employer subject to this chapter shall pay contri-

18 butions at the rate of two and seven-tenths percent of wages  
19 paid by him with respect to employment during each calendar  
20 year until he has been an employer for not less than thirty-six  
21 consecutive months ending on the computation date; thereafter,  
22 his contribution rate shall be determined in accordance with  
23 the provisions of section ten of this article.

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

30 Notwithstanding any other provision of this chapter to the  
31 contrary, on or after the first day of July, one thousand nine  
32 hundred eighty-one, any foreign corporation or business entity  
33 engaged in the construction trades shall pay contribution at the  
34 rate of seven and five-tenths percent of wages paid by him  
35 with respect to employment during each calendar year until  
36 he has been an employer for not less than thirty-six consecu-  
37 tive months ending on the computation date; thereafter, his  
38 contribution rate shall be determined in accordance with the  
39 provisions of section ten of this article: *Provided*, That any  
40 corporation or business entity engaged in the construction  
41 trades shall make payments to the fund at the rates applicable  
42 to such employer as of January first, one thousand nine hun-  
43 dred eighty-one, for wages paid with respect to employment on  
44 construction contracts entered into or for which bids are sub-  
45 mitted in this state prior to April fifteenth, one thousand nine  
46 hundred eighty-one: *Provided, however*, That the burden shall  
47 be on such corporation or business entity to prove that any such  
48 contract was executed or that any such bid was submitted  
49 therefor prior to April fifteenth, one thousand nine hundred  
50 eighty-one.

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

1 (1) The commissioner shall maintain a separate account for  
2 each employer, and shall credit his account with all contri-  
3 butions paid by him prior to July first, one thousand nine  
4 hundred sixty-one. On and after July first, one thousand nine

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

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

39 (3) The commissioner shall, for each calendar year here-  
40 after, classify employers in accordance with their actual ex-  
41 perience in the payment of contributions on their own behalf  
42 and with respect to benefits charged against their accounts,  
43 with a view of fixing such contribution rates as will reflect such

44 experiences. For the purpose of fixing such contribution rates  
45 for each calendar year, the books of the department shall be  
46 closed on July thirty-one of the preceding calendar year, and  
47 any contributions thereafter paid, as well as benefits there-  
48 after paid with respect to compensable weeks ending on or  
49 before June thirty of the preceding calendar year, shall not be  
50 taken into account until the next annual date for fixing con-  
51 tribution rates: *Provided*, That if an employer has failed to  
52 furnish to the commissioner on or before July thirty-one of  
53 such preceding calendar year the wage information for all past  
54 periods necessary for the computation of the contribution rate,  
55 such employer's rate shall be, if it is immediately prior to such  
56 July thirty-one, less than three and three-tenths percent, in-  
57 creased to three and three-tenths percent: *Provided, however*,  
58 That any payment made or any information necessary for the  
59 computation of a reduced rate furnished on or before the  
60 termination of an extension of time for such payment or re-  
61 porting of such information granted pursuant to a regulation  
62 of the commissioner authorizing such extension, shall be taken  
63 into account for the purposes of fixing contribution rates:  
64 *Provided further*, That when the time for filing any report or  
65 making any payment required hereunder falls on Saturday, Sun-  
66 day, or a legal holiday, the due date shall be deemed to be the  
67 next succeeding business day: *And provided further*, That  
68 whenever, through mistake or inadvertence, erroneous credits  
69 or charges are found to have been made to or against the re-  
70 served account of any employer, the rate shall be adjusted as of  
71 January one of the calendar year in which such mistake or  
72 inadvertence is discovered, but payments made under any  
73 rate assigned prior to January one of such year shall not be  
74 deemed to be erroneously collected.

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

82 (5) State and local government employers are hereby autho-

83 rized to enter into joint accounts and to maintain such joint  
84 account or accounts as if it or they constituted a single em-  
85 ployer's account or accounts.

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

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

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

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

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

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

20 When the total assets of the fund as of January one of a  
21 calendar year equal or exceed one hundred twenty-five per-  
22 cent but are less than one hundred fifty percent, an employer's

23 rate shall be the amount appearing in Column E of Table II  
24 on line with the percentage in Column B.

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

29

TABLE II

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

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

51 Effective on and after the computation date of June thirty,  
52 one thousand nine hundred sixty-eight, and notwithstanding the  
53 provisions of subsection (1), section seven of this article relat-

54 ing to the noncrediting of employers' accounts with the first  
55 seven-tenths or with the first four-tenths of one percent of  
56 contributions paid; for the purpose of determining whether  
57 or not an employer shall pay contributions at a rate in excess  
58 of two and seven-tenths percent as hereinafter set forth, but  
59 not for the purpose of determining such rate, the department  
60 shall, only for the purpose set forth herein and not as a  
61 credit to such account, add to the accounts of all employers  
62 having a debit balance, contribution payments made by such  
63 employers on and after July one, one thousand nine hundred  
64 sixty-seven, which payments are not credited to employers'  
65 accounts by reason of the provisions contained in subsection  
66 (1), section seven of this article. If, after such contribution  
67 payments have been added to such employers' accounts, such  
68 accounts continue to show a debit balance, such employers  
69 shall make payments at a rate in excess of four and five-  
70 tenths percent. If, after such contribution payments have  
71 been added to such employers' accounts, such accounts show  
72 a credit balance, such employers shall make payments at the  
73 rate of four and five-tenths percent. If, under the conditions  
74 set forth in this paragraph, it is determined that an employer  
75 shall pay contributions at a rate in excess of four and five-  
76 tenths percent, the rate in excess of four and five-tenths percent  
77 at which an employer shall pay contributions shall then be  
78 determined solely under the conditions set forth in the follow-  
79 ing paragraphs of this section. The provisions contained in  
80 this paragraph shall in no way be considered as providing  
81 for the crediting to an employer's account, of amounts of  
82 employer contributions payments which are expressly not  
83 credited to employers' accounts in subsection (1), section seven  
84 of this article.

85 Effective on and after the computation date of June thirty,  
86 one thousand nine hundred sixty-seven, all employers with  
87 a debit balance account in which the benefits charged to their  
88 account for all past years exceed the payments credited to their  
89 account for such past years by an amount up to and includ-  
90 ing ten percent of their average annual payroll, shall make  
91 payments to the unemployment compensation fund at the  
92 rate of three percent of wages paid by them with respect to

93 employment; except that effective on and after July one, one  
94 thousand nine hundred eighty-one, all employers with a debit  
95 balance account in which the benefits charged to their account  
96 for all past years exceed the payments credited to their ac-  
97 count for such past years by an amount up to and including  
98 five percent of their average annual payroll, shall make  
99 payments to the unemployment compensation fund at the rate  
100 of five and five-tenths percent of wages paid by them with  
101 respect to employment.

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

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

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

128 "Credit balance account" for the purposes of this section  
129 means an account in which the payments credited for all past  
130 years exceed the benefits charged for such past years.

131 Once a debit balance account rate is established for an  
132 employer's account for a year, it shall apply for the entire year.

133 "Due date" means the last day of the month next following  
134 a calendar quarter. In determining the amount in the fund on  
135 any due date, contributions received, but not benefits paid,  
136 for such month next following the end of a calendar quarter  
137 shall be included.

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

**ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

**§21A-6-1. Eligibility qualifications.**

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

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

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

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

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

16 (5) He has within his base period earned wages for em-  
17 ployment equal to not less than one thousand one hundred fifty  
18 dollars and must have earned wages in more than one quarter  
19 of his base period.

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

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

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

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

32 (2) For the week in which he was discharged from his  
33 most recent work for misconduct and the six weeks immediately

34 following such week; or for the week in which he was dis-  
35 charged from his last thirty-day employment unit for mis-  
36 conduct and the six weeks immediately following such week.  
37 Such disqualification shall carry a reduction in the maximum  
38 benefit amount equal to six times the individual's weekly  
39 benefit. However, if the claimant returns to work in covered  
40 employment for thirty days during his benefit year, whether  
41 or not such days are consecutive, the maximum benefit  
42 amount shall be increased by the amount of the decrease  
43 imposed under the disqualification; except that:

44 If he were discharged from his most recent work for one of  
45 the following reasons; or if he were discharged from his last  
46 thirty day employing unit for one of the following reasons:  
47 Misconduct consisting of willful destruction of his employer's  
48 property, assault upon the person of his employer or any em-  
49 ployee of his employer, if such assault is committed at such  
50 individual's place of employment or in the course of employ-  
51 ment; reporting to work in an intoxicated condition, or being  
52 intoxicated while at work; arson, theft, larceny, fraud or em-  
53 bezzlement in connection with his work; or any other gross  
54 misconduct; he shall be and remain disqualified for benefits  
55 until he has thereafter worked for at least thirty days in cover-  
56 ed employment: *Provided*, That for the purpose of this sub-  
57 division the words "any other gross misconduct" shall include,  
58 but not be limited to, any act or acts of misconduct where the  
59 individual has received prior written warning that termination  
60 of employment may result from such act or acts.

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

70 (4) For a week in which his total or partial unemployment  
71 is due to a stoppage of work which exists because of a labor  
72 dispute at the factory, establishment or other premises at

73 which he was last employed, unless the commissioner is satis-  
74 fied that he was not (one) participating, financing, or directly  
75 interested in such dispute, and (two) did not belong to a grade  
76 or class of workers who were participating, financing, or di-  
77 rectly interested in the labor dispute which resulted in the  
78 stoppage of work. No disqualification under this subdivision  
79 shall be imposed if the employees are required to accept wages,  
80 hours or conditions of employment substantially less favorable  
81 than those prevailing for similar work in the locality, or if  
82 employees are denied the right of collective bargaining under  
83 generally prevailing conditions, or if an employer shuts down  
84 his plant or operation or dismisses his employees in order to  
85 force wage reduction, changes in hours or working conditions.

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

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

96 (a) Wages in lieu of notice;

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

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

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

108 (7) Benefits shall not be paid to any individual on the basis  
109 of any services, substantially all of which consist of partici-

110 pating in sports or athletic events or training or preparing to  
111 so participate, for any week which commences during the per-  
112 iod between two successive sport seasons (or similar periods)  
113 if such individual performed such services in the first of such  
114 seasons (or similar periods) and there is a reasonable assurance  
115 that such individual will perform such services in the later of  
116 such seasons (or similar periods).

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

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

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

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

149 (10) For each week in which he is unemployed because of  
150 his request, or that of his duly authorized agent, for a vaca-  
151 tion period at a specified time that would leave the employer no  
152 other alternative but to suspend operations.

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

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

185 (13) For the purposes of this section, an employer's account  
186 shall not be charged under any of the following conditions.  
187 When benefits are paid for unemployment immediately after

188 the expiration of a period of disqualification for (a) discharge  
189 for any of the causes set forth in subdivision (2) of this sec-  
190 tion, or (b) failing without good cause to apply for available  
191 suitable work, accept suitable work, when offered, or to return  
192 to his customary self-employment when directed to do so by  
193 the commissioner.

**ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

**§21A-6-11. Benefit rate—Partial unemployment.**

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

**ARTICLE 6A. EXTENDED BENEFITS PROGRAM.**

**§21A-6A-1. Definitions**

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

3 (1) “Extended benefit period” means a period which

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

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

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

8 (B) Ends with either of the following weeks, whichever oc-  
9 curs later:

10 (i) The third week after the first week for which there is

11 both a national “off” indicator and a state “off” indicator; or

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

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

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

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

44 (4) There is a “state ‘on’ indicator” for this state for a  
45 week if the commissioner determines, in accordance with the  
46 regulations of the United States secretary of labor, that for the  
47 period consisting of such week and the immediately preceding

48 twelve weeks, the rate of insured unemployment (not season-  
49 ally adjusted) under this article:

50 (A) Equaled or exceeded one hundred twenty percent of  
51 the average of such rates for the corresponding thirteen-week  
52 period ending in each of the preceding two calendar years, and

53 (B) Equaled or exceeded four percent.

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

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

63 (B) Was less than four percent.

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

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

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

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

81 (8) "Extended benefits" means benefits (including benefits  
82 payable to federal civilian employees and to ex-servicemen

83 pursuant to 5 U.S.C., chapter 85) payable to an individual  
84 under the provisions of this article for weeks of unemployment  
85 in his eligibility period.

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

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

93 (A) Has received, prior to such week, all of the regular  
94 benefits which were available to him under this chapter or any  
95 other state law (including dependents' allowances and benefits  
96 payable to federal civilian employees and ex-servicemen under  
97 5 U.S.C., chapter 85) in his current benefit year that includes  
98 such week: *Provided*, That for the purposes of this subdivision,  
99 an individual shall be deemed to have received all of the regu-  
100 lar benefits which were available to him although (i) as a re-  
101 sult of a pending appeal with respect to wages and/or em-  
102 ployment which were not considered in the original monetary  
103 determination in his benefit year, he may subsequently be de-  
104 termined to be entitled to added regular benefits, or (ii) he  
105 may be entitled to regular benefits with respect to future weeks  
106 of unemployment, but such benefits are not payable with re-  
107 spect to such week of unemployment by reason of the pro-  
108 visions of section one-a, article six of this chapter; or

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

113 (C) Has no right to unemployment benefits or allowances,  
114 as the case may be, under the Railroad Unemployment Insur-  
115 ance Act, the Trade Expansion Act of 1962, the Automotive  
116 Products Trade Act of 1965 and such other federal laws as are  
117 specified in regulations issued by the United States secretary of  
118 labor; and has not received and is not seeking unemployment  
119 benefits under the unemployment compensation law of the  
120 Virgin Islands or of Canada; but if he is seeking such bene-

121 fits and the appropriate agency finally determines that he is  
122 not entitled to benefits under such law he is considered an  
123 exhaustee.

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

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

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

138 (i) He failed to accept any offer of suitable work or failed  
139 to apply for any suitable work (as defined under subdivision  
140 (13) (C) of this section, to which he was referred by the com-  
141 missioner; or

142 (ii) He failed to actively engage in seeking work as prescrib-  
143 ed under subdivision (13) (E).

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

152 (C) For purposes of this subdivision (13) (A) (i) of this  
153 section, the term "suitable work" means, with respect to any  
154 individual, any work which is within such individual's capa-  
155 bilities: *Provided, however,* That the gross average weekly re-  
156 muneration payable for the work must exceed the sum of:

157 (i) the individual's average weekly benefit amount (as de-  
158 termined under subdivision 13 (D) of this section plus.

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

163 (iii) pays wages equal to the higher of:

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

167 (II) the state or local minimum wage;

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

171 (I) the position was not offered to such individual in writ-  
172 ing and was not listed with the employment service; or

173 (II) such failure could not result in a denial of benefits  
174 under the definition of suitable work for regular benefit claim-  
175 ants in section five, article six of this chapter, to the extent  
176 that the criteria of suitability in that section are not inconsis-  
177 tent with the provisions of this subdivision (13) (C) of this  
178 section; or

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

188 (D) Notwithstanding the provisions of this section to the  
189 contrary, no work shall be deemed to be suitable work for an  
190 individual which does not accord with the labor standard pro-  
191 visions required by section 3304 (a) (5) of the Internal Revenue

192 Code of 1954 and set forth herein under subdivision (13) (C)  
193 (iii) (I) of this section.

194 (E) For the purposes of subdivision (13) (A) (II) of this  
195 section an individual shall be treated as actively engaged in  
196 seeking work during any week if:

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

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

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

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

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

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

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

7 (2) Eleven times his weekly benefit amount which was  
8 payable to him under this chapter for a week of total unem-  
9 ployment in the applicable benefit year: *Provided*, That an  
10 individual filing for extended benefits through the Interstate  
11 Benefit Payment Plan and residing in a state where an extended  
12 benefit period is not in effect shall be limited to payment for  
13 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 trans-  
2 ferred or appealed from a decision of a deputy. All cases re-  
3 lating to labor disputes or to disqualification under subdivi-  
4 sion (4), section three, article six of this chapter, and trans-  
5 ferred to an appeal tribunal for initial determination, shall be  
6 heard by an appeal tribunal composed either of three adminis-  
7 trative law judges assigned by the board, or the board itself,  
8 as the board may direct in particular cases or in particular  
9 areas. All other appeals from the decision of a deputy shall be  
10 heard by an appeal tribunal composed, as the board may direct  
11 in particular cases or in particular areas, of a single adminis-  
12 trative law judge; a tribunal of three administrative law judges  
13 assigned by the board; a member of the board; or the board  
14 itself.

**ARTICLE 10. GENERAL PROVISIONS.**

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

1 A person who makes a false statement or representation  
2 knowing it to be false or who knowingly fails to disclose ma-  
3 terial fact in order to obtain or increase a benefit, either for  
4 himself or another, under this chapter, or under an employ-  
5 ment security law of any other state or of the federal govern-  
6 ment for either of which jurisdictions this state is acting as an  
7 agent, shall be guilty of a misdemeanor, and, upon conviction,  
8 punished by a fine of not less than one hundred dollars nor  
9 more than five hundred dollars, or by imprisonment for not  
10 longer than thirty days or both. Each false statement or re-  
11 presentation, or failure to disclose a material fact, shall con-  
12 stitute a separate offense.

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

*R. P. Bayler*  
Chairman Senate Committee

*Tommy E. Whitlow*  
Chairman House Committee

Originated in the House.

Takes effect from passage.

*Todd C. Wilks*  
Clerk of the Senate

*VA Blankenship*  
Clerk of the House of Delegates

*Walter R. Shaw*  
President of the Senate

*Clayton M. Bee, Jr.*  
Speaker House of Delegates

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

*John R. Rhyne*  
Governor

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SECY. OF STATE