WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

ENROLLED

Comm. Sub. for
HOUSE BILL No. 1719

(By Mr. Del. Mooton)

Passed March 10, 1984

In Effect July 1, 1984
AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and seven, article five of said chapter; and to amend and reenact sections three and fifteen, article six of said chapter twenty-one-a, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


1 As used in this chapter, unless the context clearly requires
2 otherwise:
"Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

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

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

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

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

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

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

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

"Board" means board of review.

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

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

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

“Employer” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) An individual's entire service, performed within or both within and without this state if: (a) The service is localized in this state or (b) the service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;
(5) Service not covered under paragraph four of this subdivision and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter;

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

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

(8) All service performed by an officer or member of the crew of an American vessel (as defined in section three hundred five of an act of Congress entitled Social Security Act Amendment of 1946, approved August tenth, one thousand nine hundred forty-six) on or in connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within and without the United States is ordinarily and regularly supervised, managed, directed and controlled, is within this state.
(9) (a) Service performed after December thirty-one, one thousand nine hundred seventy-one, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state: Provided, That such service is excluded from “employment” as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (7) of that act and is not excluded from “employment” under subdivision (11) of the exclusion from employment;

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

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

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

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

(b) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;
(11) Service of an individual who is a citizen of the United States, performed outside the United States after December thirty-one, one thousand nine hundred seventy-one, (except in Canada and in the case of Virgin Islands after December thirty-one, one thousand nine hundred seventy-one, and before January one of the year following the year in which the secretary of labor approves for the first time an unemployment insurance law submitted to him by the Virgin Islands for approval) in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivision (4), (5) or (6) of this definition of "employment" or the parallel provisions of another state's law) if:

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

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

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

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

(12) Service performed after December thirty-one, one thousand nine hundred seventy-seven, by an individual in agricultural labor as defined in subdivision (5) of the exclusions from employment in this section when:
(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor [not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty-six, by an alien referred to in paragraph (b) of this subdivision (12)] or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty-six, by an alien referred to in clause (ii) of this paragraph) ten or more individuals, regardless of whether they were employed at the same moment of time;

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

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

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

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

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

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

The term "employment" shall not include:

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

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

(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after such publica-
(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the definition of “employment” in this section. For purposes of this subdivision (5), the term “agricultural labor” includes all services performed:

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

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

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

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

(e) On a farm operated for profit if such service is not in
the course of the employer's trade or business or is domestic
service in a private home of the employer. As used in this
subdivision (5), the term "farm" includes stock, dairy, poultry,
fruit, fur-bearing animals, and truck farms, plantations,
ranches, greenhouses, ranges and nurseries, or other similar
land areas or structures used primarily for the raising of any
agricultural or horticultural commodities;

(6) Domestic service in a private home, except as provided
in subdivision (13) of the definition of "employment" in this
section;

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

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

(9) Service as an officer or member of a crew of an Ameri-
can vessel, performed on or in connection with such vessel, if
the operating office, from which the operations of the vessel
operating on navigable waters within or without the United
States are ordinarily and regularly supervised, managed, direct-
ed and controlled, is without this state;

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

(11) Service performed (i) in the employ of a church or
convention or association of churches, or an organization which
is operated primarily for religious purposes and which is oper-
ated, supervised, controlled or principally supported by a
church or convention or association of churches; or (ii) by a
duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) prior to January one, one thousand nine hundred seventy-eight, in the employ of a school which is not an institution of higher education; or (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) prior to January one, one thousand nine hundred seventy-eight, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution, and after December thirty-one, one thousand nine hundred seventy-seven, by an inmate of a custodial or penal institution;

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

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

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

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

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

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

“Fund” means the unemployment compensation fund established by this chapter.
"Hospital" means an institution which has been licensed, certified or approved by the state department of health as a hospital.

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

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

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

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

(4) Is a public or other nonprofit institution.

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

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

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

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

"Total and partial unemployment" means:

(1) An individual shall be deemed totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.
(2) An individual who has not been separated from employment shall be deemed to be partially unemployed in any week in which due to lack of full time work wages payable to him are less than his weekly benefit amount plus twenty-five dollars: Provided, That said individual must have earnings of at least twenty-six dollars.

"Wages" means all remunerations for personal service, including commissions and bonuses and the cash value of all remunerations in any medium other than cash except for agricultural labor and domestic service: Provided, That the term "wages" shall not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Weekly benefit rate" means the maximum amount of bene-
fit an eligible individual will receive for one week of total un-
employment.

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-5. Rate of contribution.

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

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

Notwithstanding any other provision of this chapter to the
contrary, on or after the first day of July, one thousand nine
hundred eighty-one, any foreign corporation or business
entity engaged in the construction trades shall pay contribu-
tions at the rate of seven and five-tenths percent of wages paid
by him with respect to employment during each calendar year
until he has been an employer for not less than thirty-six
consecutive months ending on the computation date; there-
after, his contribution rate shall be determined in accordance
with the provisions of section ten of this article.


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

(2) Benefits paid to an eligible individual for regular and extended total or partial unemployment beginning after the effective date of this article shall be charged to the account of the last employer with whom he has been employed as much as thirty working days, whether or not such days are consecutive: Provided, That no employer’s account shall be charged with benefits paid to any individual who has been separated from a noncovered employing unit in which he was employed as much as thirty days, whether or not such days are consecutive: Provided, however, That no employer’s account shall be charged with benefits paid to an eligible individual as extended benefits under the provisions of article six-a of this chapter: Provided further, That state and local government employers shall be charged with one hundred percent of the benefits paid to an eligible individual as extended benefits. Beginning on July one, one thousand nine hundred eighty-four, benefits paid to an individual are to be charged to the accounts of his employers in the base period, the amount of such charges, chargeable to the account of each such employer, to be that portion of the total benefits paid such individual as the wages paid him by such employer in the base period are to the total wages paid him during his base period for insured work by all his employers in the base period. For the purposes of this section, no base period employer’s account shall be charged for benefits paid under this chapter to a former employee, provided such base period employer fur-
nishes separation information within fourteen days from the
date the notice was mailed or delivered, which results in a
disqualification under the provision set forth in subsection
one, section three, article six or subsection two, section three,
article six of this chapter or would have resulted in a dis-
qualification under such subsection except for a subsequent
period of covered employment by another employing unit.
One half of extended benefits paid to an individual after
July one, one thousand nine hundred eighty-four, and sub-
sequent years are to be charged to the accounts of his em-
ployers, except state and local government employers, in the
base period in the same manner provided for the charging
of regular benefits.

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

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

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

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

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

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

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

(1) For the week in which he left his most recent work
4 voluntarily without good cause involving fault on the part of
5 the employer and until the individual returns to covered
6 employment and has been employed in covered employment
7 at 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 em-
11 ployer, if such individual leaves his most recent work with
12 an employer and if he in fact, within a fourteen-day calendar
13 period, does return to employment with the last preceding
14 employer with whom he was previously employed within the
15 past year prior to his return to work day, and which last
16 preceding employer, after having previously employed such
17 individual for thirty working days or more, laid off such
18 individual because of lack of work, which layoff occasioned
19 the payment of benefits under this chapter or could have
20 occasioned the payment of benefits under this chapter had
21 such individual applied for such benefits. It is the intent of
22 this paragraph to cause no disqualification for benefits for
23 such an individual who complies with the foregoing set of
24 requirements and conditions.

25 (2) For the week in which he was discharged from his
26 most recent work for misconduct and the six weeks imme-
27 diately following such week; or for the week in which he
28 was discharged from his last thirty-day employing unit for
29 misconduct and the six weeks immediately following such
30 week. Such disqualification shall carry a reduction in the
31 maximum benefit amount equal to six times the individual's
32 weekly benefit. However, if the claimant returns to work in
33 covered employment for thirty days during his benefit year,
34 whether or not such days are consecutive, the maximum
35 benefit amount shall be increased by the amount of the de-
36 crease imposed under the disqualification; except that:

37 If he were discharged from his most recent work for one
38 of the following reasons, or if he were discharged from his
39 last thirty days employing unit for one of the following
40 reasons: Misconduct consisting of willful destruction of his
41 employer's property; assault upon the person of his employer
42 or any employee of his employer; if such assault is com-
mitted at such individual's place of employment or in the
course of employment; reporting to work in an intoxicated
condition, or being intoxicated while at work; arson, theft,
larceny, fraud or embezzlement in connection with his work;
or any other gross misconduct; he shall be and remain dis-
qualified for benefits until he has thereafter worked for at
least thirty days in covered employment: Provided, That for
the purpose of this subdivision the words "any other gross
misconduct" shall include, but not be limited to, any act
or acts of misconduct where the individual has received
prior written warning that termination of employment may
result from such act or acts.

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

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

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

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

(a) Wages in lieu of notice;

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

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

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

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

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

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

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

(9) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university or other educational institution, he is attending such school, college, university or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(10) For each week in which he is unemployed because of his quest, or that of his duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

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

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

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

(1) Benefits based on service in employment as defined in subdivisions (9) and (10) of the definition of "employment" in section three, article one of this chapter, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms,
whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

(2) Benefits based on service in employment defined in subdivisions (9) and (10) of the definition of "employment" in section three, article one of this chapter, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this act, except that:

(a) With respect to service performed after December thirty-one, one thousand nine hundred seventy-seven, in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during any holiday or vacation period, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) or prior to the beginning of such holiday or vacation period and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or after such holiday or vacation period: Provided, That subsection (1) of this section shall apply with respect to such services prior to January one, one thousand nine hundred seventy-eight;

(b) With respect to services performed after April one, one thousand nine hundred eighty-three, in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during any holiday or vacation period, or during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms or prior to the beginning of such
holiday or vacation period and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or after such holiday or vacation periods, except that if compensation is denied to any individual under this subsection and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause.

(c) With respect to any services performed after April one, one thousand nine hundred eighty-four, described in subdivisions (a) and (b) of this section, benefits shall not be payable on the basis of services in any such capacities as specified in subdivisions (a) and (b) of this section, to any individual who performed such services for or on behalf of an educational institution while in the employ of an educational service agency. For purposes of this subdivision the term “educational service agency” means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect July 1, 1984.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 50 day of [Month], 1984.

[Signature]
Governor