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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984



ENROLLED

Com. Sub. for
HOUSE BILL No. 1719

(By Mr. Del Nooton)



Passed March 10, 1984

In Effect July 1, 1984 ~~Passage~~



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1719

(By DELEGATE WOOTON)

[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.

§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
10 three 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 calen-
22 dar week in which a valid claim is effective, and thereafter the
23 fifty-two-week period beginning with the first day of the calen-
24 dar week in which such individual next files a valid claim for
25 benefits after the termination of his last preceding benefit
26 year. An initial claim for benefits filed in accordance with
27 the provision of this chapter shall be deemed to be a valid
28 claim within the purposes of this definition if the individual
29 has been paid wages in his base period sufficient to make him
30 eligible 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, Sep-
36 tember thirty or December thirty-one, or the equivalent thereof
37 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 immed-
41 iately preceding the January one on which an employer's con-
42 tribution rate becomes effective.

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

55 "Employer" means:

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

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

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

70 (4) Any employing unit which, after December thirty-one,
71 one thousand nine hundred sixty-three, and until January one,
72 one thousand nine hundred seventy-two, in any one calendar
73 quarter, in any calendar year, has in employment four or more
74 individuals and has paid wages for employment in the total

75 sum of five thousand dollars or more, or which, after such
76 date, has paid wages for employment in any calendar year in
77 the sum total of twenty thousand dollars or more;

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

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

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

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

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

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

110 (11) Any employing unit for which agricultural labor, as

111 defined in subdivision (12) of the definition of “employment”
112 in this section, is performed after December thirty-one, one
113 thousand nine hundred seventy-seven;

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

118 “Employment,” subject to the other provisions of this sec-
119 tion, means:

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

123 (2) Any service performed prior to January one, one thou-
124 sand nine hundred seventy-two, which was employment as de-
125 fined in this section prior to such date and, subject to the
126 other provisions of this section, service performed after Dec-
127 ember thirty-one, one thousand nine hundred seventy-one, by
128 an employee, as defined in section 3306(i) of the Federal
129 Unemployment Tax Act, including service in interstate com-
130 merce;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

259 (a) Such service is performed for a person who (i) during
260 any calendar quarter in either the current or the preceding
261 calendar year paid remuneration in cash of twenty thousand
262 dollars or more to individuals employed in agricultural labor
263 [not taking into account service in agricultural labor performed
264 before January one, one thousand nine hundred eighty-six, by
265 an alien referred to in paragraph (b) of this subdivision (12)]
266 or (ii) for some portion of a day in each of twenty different
267 calendar weeks, whether or not such weeks were consecutive,
268 in either the current or the preceding calendar year, employed
269 in agricultural labor (not taking into account service in agri-
270 cultural labor performed before January one, one thousand
271 nine hundred eighty-six, by an alien referred to in clause (ii) of
272 this paragraph) ten or more individuals, regardless of whether
273 they were employed at the same moment of time;

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

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

291 (d) For the purposes of this subdivision (12), in the case
292 of any individual who is furnished by a crew leader to per-
293 form service in agricultural labor for any other person and
294 who is not treated as an employee of such crew leader under
295 subparagraph (c) of this subdivision (12), (i) such other per-
296 son and not the crew leader shall be treated as the employer

297 of such individual; and (ii) such other person shall be treated
298 as having paid cash remuneration to such individual in an
299 amount equal to the amount of cash remuneration paid to
300 such individual by the crew leader (either on his own behalf
301 or on behalf of such other person) for the service in agricul-
302 tural labor performed for such other person;

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

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

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

329 The term "employment" shall not include:

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

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

340 (3) Service performed in the employ of the United States or
341 any instrumentality of the United States exempt under the
342 Constitution of the United States from the payments imposed
343 by this law, except that to the extent that the Congress of the
344 United States shall permit states to require any instrumen-
345 talities of the United States to make payments into an unem-
346 ployment fund under a state unemployment compensation law,
347 all of the provisions of this law shall be applicable to such
348 instrumentalities and to service performed for such instru-
349 mentalities, in the same manner, to the same extent and on
350 the same terms as to all other employers, employing units, in-
351 dividuals and services: *Provided*, That if this state shall
352 not be certified for any year by the secretary of labor
353 under section 1603(c) of the Federal Internal Revenue
354 Code, the payments required of such instrumentalities with
355 respect to such year shall be refunded by the commis-
356 sioner from the fund in the same manner and within
357 the same period as is provided in section nineteen, article
358 five of this chapter, with respect to payments erroneously
359 collected;

360 (4) Service performed after June thirty, one thousand nine
361 hundred thirty-nine, with respect to which unemployment
362 compensation is payable under the Railroad Unemployment
363 Insurance Act and service with respect to which unemploy-
364 ment benefits are payable under an unemployment compen-
365 sation system for maritime employees established by an act of
366 Congress. The commissioner may enter into agreements with
367 the proper agency established under such an act of Congress
368 to provide reciprocal treatment to individuals who, after ac-
369 quiring potential rights to unemployment compensation un-
370 der an act of Congress, or who have, after acquiring potential
371 rights to unemployment compensation under an act of Con-
372 gress, acquired rights to benefit under this chapter. Such
373 agreement shall become effective ten days after such publica-

374 tions which shall comply with the general rules of the depart-
375 ment;

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

381 (a) On a farm, in the employ of any person, in connection
382 with cultivating the soil, or in connection with raising or har-
383 vesting any agricultural or horticultural commodity, including
384 the raising, shearing, feeding, caring for, training, and manage-
385 ment of livestock, bees, poultry and fur-bearing animals and
386 wildlife;

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

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

400 (d) (i) In the employ of the operator of a farm in handling,
401 planting, drying, packing, packaging, processing, freezing,
402 grading, storing or delivering to storage or to market or to a
403 carrier for transportation to market, in its unmanufactured
404 state, any agricultural or horticultural commodity; but only if
405 such operator produced more than one half of the commodity
406 with respect to which such service is performed; or (ii) in the
407 employ of a group of operators of farms (or a cooperative
408 organization of which such operators are members) in the per-
409 formance of service described in clause (i), but only if such
410 operators produced more than one half of the commodity

411 with respect to which such service is performed; but the pro-
412 visions of clauses (i) and (ii) shall not be deemed to be applic-
413 able with respect to service performed in connection with
414 commercial canning or commercial freezing or in connection
415 with any agricultural or horticultural commodity after its
416 delivery to a terminal market for distribution for consump-
417 tion;

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

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

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

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

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

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

443 (11) Service performed (i) in the employ of a church or
444 convention or association of churches, or an organization which
445 is operated primarily for religious purposes and which is oper-
446 ated, supervised, controlled or principally supported by a
447 church or convention or association of churches; or (ii) by a

448 duly ordained, commissioned or licensed minister of a church
449 in the exercise of his ministry or by a member of a religious
450 order in the exercise of duties required by such order; or (iii)
451 prior to January one, one thousand nine hundred seventy-
452 eight, in the employ of a school which is not an institution of
453 higher education; or (iv) in a facility conducted for the purpose
454 of carrying out a program of rehabilitation for individuals
455 whose earning capacity is impaired by age or physical or
456 mental deficiency or injury or providing remunerative work
457 for individuals who because of their impaired physical or
458 mental capacity cannot be readily absorbed in the competi-
459 tive labor market by an individual receiving such rehabilita-
460 tion or remunerative work; or (v) as part of an unemployment
461 work-relief or work-training program assisted or financed in
462 whole or in part by any federal agency or an agency of a state
463 or political subdivision thereof, by an individual receiving such
464 work relief or work training; or (vi) prior to January one, one
465 thousand nine hundred seventy-eight, for a hospital in a state
466 prison or other state correctional institution by an inmate of
467 the prison or correctional institution, and after December
468 thirty-one, one thousand nine hundred seventy-seven, by an
469 inmate of a custodial or penal institution;

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

480 (13) Service performed by an individual under the age of
481 twenty-two who is enrolled at a nonprofit or public educational
482 institution which normally maintains a regular faculty and cur-
483 riculum and normally has a regularly organized body of students
484 in attendance at the place where its educational activities are
485 carried on as a student in a full-time program, taken for credit
486 at such institution, which combines academic instruction with

487 work experience, if such service is an integral part of such
488 program, and such institution has so certified to the employer,
489 except that this subdivision shall not apply to service perform-
490 ed in a program established for or on behalf of an employer
491 or group of employers;

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

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

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

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

523 "Fund" means the unemployment compensation fund estab-
524 lished by this chapter.

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

528 "Institution of higher education" means an educational in-
529 stitution which:

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

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

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

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

542 Notwithstanding any of the foregoing provisions of this de-
543 finition all colleges and universities in this state are institutions
544 of higher education for purposes of this section.

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

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

551 "State" includes, in addition to the states of the United
552 States, Puerto Rico, District of Columbia and the Virgin Is-
553 lands.

554 "Total and partial unemployment" means:

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

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

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

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

591 That part of the remuneration which, after remuneration
592 equal to three thousand six hundred dollars has been paid to
593 an individual by an employer with respect to employment
594 during any calendar year, is paid during any calendar year after
595 one thousand nine hundred sixty-one; and shall not include that
596 part of remuneration which, after remuneration equal to four
597 thousand two hundred dollars is paid during a calendar year

598 after one thousand nine hundred seventy-one; and shall not
599 include that part of remuneration which, after remuneration
600 equal to six thousand dollars is paid during a calendar year
601 after one thousand nine hundred seventy-seven; and shall not
602 include that part of remuneration which, after remuneration
603 equal to eight thousand dollars is paid during a calendar year
604 after one thousand nine hundred eighty, to an individual by
605 an employer or his predecessor with respect to employment
606 during any calendar year, is paid to such individual by such
607 employer during such calendar year unless that part of the
608 remuneration is subject to a tax under a federal law imposing
609 a tax against which credit may be taken for contributions re-
610 quired to be paid into a state unemployment fund. For the
611 purposes of this subdivision (1), the term "employment" shall
612 include service constituting employment under any unemploy-
613 ment compensation law of another state; or which as a condi-
614 tion for full tax credit against the tax imposed by the Federal
615 Unemployment Tax Act is required to be covered under this
616 chapter; and, except, that for the purposes of sections one, ten,
617 eleven and thirteen, article six of this chapter, all remuneration
618 earned by an individual in employment shall be credited to
619 the individual and included in his computation of base
620 period wages: *Provided*, That the remuneration paid to an
621 individual by an employer with respect to employment in
622 another state or other states upon which contributions were
623 required of and paid by such employer under an unemploy-
624 ment compensation law of such other state or states shall be
625 included as a part of the remuneration equal to the amounts
626 of three thousand six hundred dollars or four thousand two
627 hundred dollars or six thousand dollars or eight thousand dol-
628 lars herein referred to. In applying such limitation on the
629 amount of remuneration that is taxable, an employer shall be
630 accorded the benefit of all or any portion of such amount which
631 may have been paid by its predecessor or predecessors: *Pro-*
632 *vided however*, That if the definition of the term "wages" as
633 contained in section 3306(b) of the Internal Revenue Code of
634 1954, as amended: (a) Effective prior to January one, one
635 thousand nine hundred sixty-two, to include remuneration in
636 excess of three thousand dollars or (b) effective on or after
637 January one, one thousand nine hundred sixty-two, to include

638 remuneration in excess of three thousand six hundred dollars,
639 or (c) effective on or after January one, one thousand nine
640 hundred seventy-two, to include remuneration in excess of
641 four thousand two hundred dollars or (d) effective on or after
642 January one, one thousand nine hundred seventy-eight, to in-
643 clude remuneration in excess of six thousand dollars or (e)
644 effective on or after January one, one thousand nine hundred
645 eighty, to include remuneration in excess of eight thousand
646 dollars, paid to an individual by an employer under the Fed-
647 eral Unemployment Tax Act during any calendar year, wages
648 for the purposes of this definition shall include remuneration
649 paid in a calendar year to an individual by an employer sub-
650 ject to this article or his predecessor with respect to employ-
651 ment during any calendar year up to an amount equal to the
652 amount of remuneration taxable under the Federal Unemploy-
653 ment Tax Act;

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

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

672 (4) Any payment made after December thirty-one, one
673 thousand nine hundred fifty-two, by an employer on account
674 of sickness or accident disability, or medical or hospitalization
675 expenses in connection with sickness or accident disability, to,
676 or on behalf of, an individual in its employ after the expira-

677 tion of six calendar months following the last calendar month
678 in which such individual worked for such employer;

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

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

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

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

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

709 (10) Vacation pay, severance pay or savings plans received
710 by an individual before or after becoming totally or partially
711 unemployed but earned prior to becoming totally or partially
712 unemployed: *Provided*, That the term totally or partially un-
713 employed shall not be interpreted to include (1) employees who

714 are on vacation by reason of the request of the employees or
715 their duly authorized agent, for a vacation at a specific time,
716 and which request by the employees or their agent is acceded
717 to by their employer, (2) employees who are on vacation by
718 reason of the employer's request provided they are so informed
719 at least ninety days prior to such vacation, or (3) employees
720 who are on vacation by reason of the employer's request
721 where such vacation is in addition to the regular vacation and
722 the employer compensates such employee at a rate equal to
723 or exceeding their regular daily rate of pay during the vaca-
724 tion period.

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

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

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

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

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-5. Rate of contribution.

1 On or 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
8 thousand nine hundred seventy-two, each employer subject
9 to this chapter shall pay contributions at the rate of one and
10 five-tenths percent of wages paid by him with respect to
11 employment during each calendar year until he has been
12 an employer for not less than thirty-six consecutive months
13 ending on the computation date; thereafter, his contribution
14 rate shall be determined in accordance with the provisions
15 of section ten of 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 calen-
20 dar year until he has been an employer for not less than
21 thirty-six consecutive months ending on the computation
22 date; thereafter, his contribution rate shall be determined in
23 accordance with 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 eighty-one, any foreign corporation or business
27 entity engaged in the construction trades shall pay contributions
28 at the rate of seven and five-tenths percent of wages paid
29 by him with respect to employment during each calendar year
30 until he has been an employer for not less than thirty-six
31 consecutive months ending on the computation date; there-
32 after, his contribution rate shall be determined in accordance
33 with the provisions of section ten of this article.

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

1 (1) The commissioner shall maintain a separate account
2 for each employer, and shall credit his account with all con-
3 tributions paid by him prior to July first, one thousand nine
4 hundred sixty-one. On and after July first, one thousand
5 nine hundred sixty-one, the commissioner shall maintain a
6 separate account for each employer, and shall credit said
7 employer's account with all contributions of such employer
8 in excess of seven tenths of one percent of taxable wages;
9 and on and after July first, one thousand nine hundred
10 seventy-one, the commissioner shall maintain a separate ac-

11 count for each employer, and shall credit said employer's
12 account with all contributions of such employer in excess of
13 four tenths of one percent of taxable wages: *Provided*, That
14 any adjustment made in any employer's account after the
15 computation date shall not be used in the computation of
16 the balance of an employer until the next following computa-
17 tion date: *Provided, however*, That nothing in this chapter
18 shall be construed to grant an employer or individual in his
19 service prior claims or rights to the amounts paid by him
20 into the fund, either on his behalf or on behalf of such
21 individuals. The account of any employer which had been
22 inactive for a period of four consecutive calendar years shall
23 be terminated for all purposes.

24 (2) Benefits paid to an eligible individual for regular and
25 extended total or partial unemployment beginning after the
26 effective date of this article shall be charged to the account
27 of the last employer with whom he has been employed as
28 much as thirty working days, whether or not such days are
29 consecutive: *Provided*, That no employer's account shall be
30 charged with benefits paid to any individual who has been
31 separated from a noncovered employing unit in which he
32 was employed as much as thirty days, whether or not such
33 days are consecutive: *Provided, however*, That no employer's
34 account shall be charged with more than fifty percent of the
35 benefits paid to an eligible individual as extended benefits
36 under the provisions of article six-a of this chapter: *Provided*
37 *further*, That state and local government employers shall be
38 charged with one hundred percent of the benefits paid to
39 an eligible individual as extended benefits. Beginning on
40 July one, one thousand nine hundred eighty-four, benefits
41 paid to an individual are to be charged to the accounts of
42 his employers in the base period, the amount of such charges,
43 chargeable to the account of each such employer, to be that
44 portion of the total benefits paid such individual as the
45 wages paid him by such employer in the base period are to
46 the total wages paid him during his base period for insured
47 work by all his employers in the base period. For the pur-
48 poses of this section, no base period employer's account
49 shall be charged for benefits paid under this chapter to a
50 former employee, provided such base period employer fur-

51 nishes separation information within fourteen days from the
52 date the notice was mailed or delivered, which results in a
53 disqualification under the provision set forth in subsection
54 one, section three, article six or subsection two, section three,
55 article six of this chapter or would have resulted in a dis-
56 qualification under such subsection except for a subsequent
57 period of covered employment by another employing unit.
58 One half of extended benefits paid to an individual after
59 July one, one thousand nine hundred eighty-four, and sub-
60 sequent years are to be charged to the accounts of his em-
61 ployers, except state and local government employers, in the
62 base period in the same manner provided for the charging
63 of regular benefits.

64 (3) The commissioner shall, for each calendar year here-
65 after, classify employers in accordance with their actual ex-
66 perience in the payment of contributions on their own behalf
67 and with respect to benefits charged against their accounts,
68 with a view of fixing such contribution rates as will reflect
69 such experiences. For the purpose of fixing such contribution
70 rates for each calendar year, the books of the department shall
71 be closed on July thirty-one of the preceding calendar year;
72 and any contributions thereafter paid, as well as benefits
73 thereafter paid with respect to compensable weeks ending on
74 or before June thirty of the preceding calendar year, shall
75 not be taken into account until the next annual date for
76 fixing contribution rates: *Provided*, That if an employer has
77 failed to furnish to the commissioner on or before July thirty-
78 one of such preceding calendar year the wage information
79 for all past periods necessary for the computation of the
80 contribution rate, such employer's rate shall be, if it is im-
81 mediately prior to such July thirty-one, less than three and
82 three-tenths percent, increased to three and three-tenths per-
83 cent: *Provided, however*, That any payment made or any
84 information necessary for the computation of a reduced rate
85 furnished on or before the termination of an extension of
86 time for such payment or reporting of such information
87 granted pursuant to a regulation of the commissioner autho-
88 rizing such extension, shall be taken into account for the
89 purposes of fixing contribution rates: *Provided further*, That
90 when the time for filing any report or making any payment

91 required hereunder falls on Saturday, Sunday or a legal
 92 holiday, the due date shall be deemed to be the next suc-
 93 ceeding business day: *And provided further*, That whenever,
 94 through mistake or inadvertence, erroneous credits or charges
 95 are found to have been made to or against the reserved ac-
 96 count of any employer, the rate shall be adjusted as of
 97 January one of the calendar year in which such mistake or
 98 inadvertence is discovered, but payments, made under any
 99 rate assigned prior to January one of such year shall not
 100 be deemed to be erroneously collected.

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

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

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

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

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

1 Upon the determination of the facts by the commissioner, an
 2 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
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-

43 mitted at such individual's place of employment or in the
44 course of employment; reporting to work in an intoxicated
45 condition, or being intoxicated while at work; arson, theft,
46 larceny, fraud or embezzlement in connection with his work;
47 or any other gross misconduct; he shall be and remain dis-
48 qualified for benefits until he has thereafter worked for at
49 least thirty days in covered employment: *Provided*, That for
50 the purpose of this subdivision the words "any other gross
51 misconduct" shall include, but not be limited to, any act
52 or acts of misconduct where the individual has received
53 prior written warning that termination of employment may
54 result from such act or acts.

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

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

81 For the purpose of this subdivision, if any stoppage of

82 work continues longer than four weeks after the termination
83 of the labor dispute which caused stoppage of work, there
84 shall be a rebuttable presumption that part of the stoppage
85 of work which exists after said period of four weeks after
86 the termination of said labor dispute did not exist because
87 of said labor dispute; and in such event the burden shall be
88 upon the employer or other interested party to show other-
89 wise.

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

92 (a) Wages in lieu of notice;

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

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

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

104 (7) Benefits shall not be paid to any individual on the
105 basis of any services, substantially all of which consist of
106 participating in sports or athletic events or training or prepar-
107 ing to so participate, for any week which commences during
108 the period between two successive sport seasons (or similar
109 periods) if such individual performed such services in the
110 first of such seasons (or similar periods) and there is a rea-
111 sonable assurance that such individual will perform such
112 services in the later of such seasons (or similar periods).

113 (8) (a) Benefits shall not be paid on the basis of services
114 performed by an alien unless such alien is an individual who
115 has been lawfully admitted for permanent residence or other-
116 wise is permanently residing in the United States under color
117 of law (including an alien who is lawfully present in the
118 United States as a result of the application of the provisions

119 of section 203 (a) (7) or section 212 (d) (5) of the Immigra-
120 tion and Nationality Act: *Provided*, That any modifications
121 to the provisions of section 3304 (a) (14) of the Federal
122 Unemployment Tax Act as provided by Public Law 94-566
123 which specify other conditions or other effective date than
124 stated herein for the denial of benefits based on services
125 performed by aliens and which modifications are required to
126 be implemented under state law as a condition for full tax
127 credit against the tax imposed by the Federal Unemployment
128 Tax Act shall be deemed applicable under the provisions of
129 this section;

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

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

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

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

150 (11) For each week in which he is receiving or has received
151 benefits under Title II of the Social Security Act or similar
152 payments under any act of Congress and/or remuneration
153 in the form of an annuity, pension or other retirement pay
154 from a base period and/or chargeable employer or from
155 any trust or fund contributed to by a base period and/or
156 chargeable employer. But if such remuneration for any week

157 is less than the benefits which would otherwise be due him
158 for such week under this chapter, he shall be entitled to
159 receive for such week, if otherwise eligible, benefits reduced
160 by the amount of such remuneration: *Provided*, That if such
161 amount of benefits is not a multiple of one dollar, it shall
162 be computed to the next lowest multiple of one dollar:
163 *Provided, however*, That there shall be no disqualification if
164 in the individual's base period there are no wages which
165 were paid by the base period and/or chargeable employer
166 paying such remuneration, or by a fund into which the em-
167 ployer has paid during said base period. Claimant may be
168 required to certify as to whether or not he is receiving or has
169 been receiving remuneration in the form of an annuity,
170 pension or other retirement pay from a base period and/or
171 chargeable employer or from a trust fund contributed to by
172 a base period and/or chargeable employer.

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

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

1 (1) Benefits based on service in employment as defined in
2 subdivisions (9) and (10) of the definition of "employment"
3 in section three, article one of this chapter, shall be payable
4 in the same amount, on the same terms and subject to the
5 same conditions as compensation payable on the basis of
6 other service subject to this chapter; except that benefits based
7 on service in an instructional, research or principal adminis-
8 trative capacity in an institution of higher education shall not
9 be paid to an individual for any week of unemployment which
10 begins during the period between two successive academic
11 years, or during a similar period between two regular terms,

12 whether or not successive, or during a period of paid sabbati-
13 cal leave provided for in the individual's contract, if the indi-
14 vidual has a contract or contracts to perform services in any
15 such capacity for any institution or institutions of higher edu-
16 cation for both such academic years or both such terms.

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

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

42 (b) With respect to services performed after April one, one
43 thousand nine hundred eighty-three, in any other capacity for
44 an educational institution, benefits shall not be paid on the
45 basis of such services to any individual for any week which
46 commences during any holiday or vacation period, or during
47 a period between two successive academic years or terms if
48 such individual performs such services in the first of such
49 academic years or terms or prior to the beginning of such

50 holiday or vacation period and there is a reasonable assurance
51 that such individual will perform such services in the second
52 of such academic years or terms or after such holiday or vaca-
53 tion periods, except that if compensation is denied to any in-
54 dividual under this subsection and such individual was not
55 offered an opportunity to perform such services for the edu-
56 cational institution for the second of such academic years or
57 terms, such individual shall be entitled to a retroactive pay-
58 ment of compensation for each week for which the individual
59 filed a timely claim for compensation and for which compen-
60 sation was denied solely by reason of this clause.

61 (c) With respect to any services performed after April one,
62 one thousand nine hundred eighty-four, described in subdivi-
63 sions (a) and (b) of this section, benefits shall not be payable
64 on the basis of services in any such capacities as specified in
65 subdivisions (a) and (b) of this section, to any individual who
66 performed such services for or on behalf of an educational in-
67 stitution while in the employ of an educational service agency.
68 For purposes of this subdivision the term "educational service
69 agency" means a governmental agency or governmental en-
70 tity which is established and operated exclusively for the pur-
71 pose of providing such services to one or more educational in-
72 stitutions.

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

Harold E. ...
Chairman Senate Committee

Donald Anello
Chairman House Committee

Originating in the House.

Takes effect July 1, 1984.

Todd C. Wilks
Clerk of the Senate

Donald L. Hopp
Clerk of the House of Delegates

Wanda P. ...
President of the Senate

W. M. Lee, Jr.
Speaker House of Delegates

The within is approved this the 30
day of March, 1984.

John D. ...
Governor

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