WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED

HOUSE BILL No. 1904

(By Mr. Speaker, Mr. Albright, and House)

(By request of the Executive)

Passed

April 13, 1985

In Effect

From Passage
ENROLLED

H. B. 1904

(By Mr. Speaker, Mr. Albright, and Delegate Swann)

[By request of the Executive]

[Passed April 13, 1985; in effect from passage.]

AN ACT to amend and reenact section three, article one; section ten, article five; sections one, one-b and fifteen, article six; section one, article eight; and section eleven, article ten, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the employment security generally, the unemployment compensation trust fund and the employee contributions thereto; employee eligibility for benefits and the qualifications therefor; requalification requirements; disqualification for such benefits; benefit payments for service with educational institutions; and the establishment and use of certain information provided.

Be it enacted by the Legislature of West Virginia:

That section three, article one; section ten, article five; sections one, one-b and fifteen, article six; section one, article eight; and section eleven, article ten, all of 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 otherwise:

3. “Administration fund” means the employment security
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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
commissioner.

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

"Employing unit" means an individual, or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in 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 section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

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

(8) Any employing unit for which service in employment, as defined in subdivision (9) of the definition of “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 nonprofit educational institution which is not an institution of higher education;

(10) Service performed after December thirty-one, one thousand nine hundred seventy-one, by an individual in the employ of a religious, charitable, educational or other 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 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 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 agricultural labor performed for such other person;

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

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

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

The term "employment" shall not include:

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

(2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in 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
(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 publications which shall comply with the general rules of the department;

(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the 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 provisions of clauses (i) and (ii) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision (5), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, 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 American 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, directed and controlled, is without this state;

(10) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance 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 operated, 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,
(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 remuneration for personal service, including commissions and bonuses, and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service: Provided, That the term “wages” shall not include:

1. That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment 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 employee 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
dollars, or (b) effective on or after January one, one thousand
nine hundred sixty-two, to include remuneration in excess of
three thousand six hundred dollars, or (c) effective on or after
January one, one thousand nine hundred seventy-two, to
include remuneration in excess of four thousand two hundred
dollars, or (d) effective on or after January one, one thousand
nine hundred seventy-eight, to include remuneration in excess
of six thousand dollars, or (e) effective on or after January
one, one thousand nine hundred eighty, to include remunera-
tion in excess of eight thousand dollars, paid to an individual
by an employer under the Federal Unemployment Tax Act
during any calendar year, wages for the purposes of this
definition shall include remuneration paid in a calendar year
to an individual by an employer subject to this article or his
predecessor with respect to employment during any calendar
year up to an amount equal to the amount of remuneration
taxable under the Federal Unemployment Tax Act;

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

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

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

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

(6) The payment by an employer of the tax imposed upon
an employer under section 3101 of the Federal Internal
Revenue Code with respect to remuneration paid to an
employee for domestic service in a private home of the
employer of 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 employee
or their duly authorized agent, for a vacation at a specific time,
and which request by the employees or their agent is acceded to by their employer, (2) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation, or (3) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

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

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

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

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

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

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

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

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

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

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

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

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

TABLE II

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<tbody>
<tr>
<td></td>
<td>Percentage of Average Annual Payroll By Which Credits Exceed Charges</td>
<td>Employer's Rate</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rate Class</td>
<td>0.0 to 6.0</td>
<td>4.5</td>
<td>3.5</td>
<td>2.5</td>
<td>1.5</td>
</tr>
<tr>
<td>(1)</td>
<td>6.0</td>
<td>4.1</td>
<td>3.1</td>
<td>2.1</td>
<td>1.1</td>
</tr>
<tr>
<td>(2)</td>
<td>7.0</td>
<td>3.9</td>
<td>2.9</td>
<td>1.9</td>
<td>0.9</td>
</tr>
<tr>
<td>(3)</td>
<td>8.0</td>
<td>3.7</td>
<td>2.7</td>
<td>1.7</td>
<td>0.7</td>
</tr>
<tr>
<td>(4)</td>
<td>9.0</td>
<td>3.5</td>
<td>2.5</td>
<td>1.5</td>
<td>0.5</td>
</tr>
<tr>
<td>(5)</td>
<td>10.0</td>
<td>3.3</td>
<td>2.3</td>
<td>1.3</td>
<td>0.3</td>
</tr>
<tr>
<td>(6)</td>
<td>10.5</td>
<td>3.1</td>
<td>2.1</td>
<td>1.1</td>
<td>0.1</td>
</tr>
<tr>
<td>(7)</td>
<td>11.0</td>
<td>2.9</td>
<td>1.9</td>
<td>0.9</td>
<td>0.0</td>
</tr>
<tr>
<td>(8)</td>
<td>11.5</td>
<td>2.7</td>
<td>1.7</td>
<td>0.7</td>
<td>0.0</td>
</tr>
<tr>
<td>(9)</td>
<td>12.0</td>
<td>2.5</td>
<td>1.5</td>
<td>0.5</td>
<td>0.0</td>
</tr>
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<td>(10)</td>
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All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June thirty, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June thirty, one thousand nine hundred eighty-four, the noncredited contribution identified in section seven of this article shall not be added to the employer's debit balance to determine the employer contribution rate.

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

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

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

“Credit balance account” for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.

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

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

(a) Notwithstanding any other provision of this section, every employer subject to the provisions of this chapter shall, in addition to any other tax provided for in this section, pay contributions at the rate of one percent surtax on wages paid by him with respect to employment, beginning January first, one thousand nine hundred eighty-one, until such time that the commissioner determines that the fund assets equal or exceed the average benefits payments from the fund for the preceding three calendar years at which time such surtax shall be discontinued, and the commissioner shall so notify the employers subject to the provisions of this chapter.
(b) Notwithstanding any other provision of this section, every debit balance employer subject to the provisions of this chapter, and any foreign corporation or business entity engaged in the construction trades which has not been an employer in the state of West Virginia for thirty-six consecutive months ending on the computation date, shall, in addition to any other tax provided for in this section, pay contributions at the rate of one percent surtax on wages paid by him with respect to employment for a period of three years, beginning January first, one thousand nine hundred eighty-six.

(c) Effective June thirty, one thousand nine hundred eighty-five, and each computation date thereafter, the reserve balance of a debit balance employer shall be reduced to fifteen percent if such balance exceeds fifteen percent. The amount of noncredited tax shall be reduced by an amount equal to the eliminated charges. If the eliminated charges exceed the amount of noncredited tax, the noncredited tax shall be reduced to zero.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

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

(1) He has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner, and provides accurate verification of his social security number.

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

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

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

(5) He has within his base period earned wages for employment equal to not less than two thousand two hundred dollars and must have earned wages in more than one quarter
§21A-6-1b. Requalification requirement.

An individual filing a claim for benefits which, if otherwise valid, would establish a subsequent benefit year, in order to be eligible for benefits for such subsequent benefit year, must have returned to work and earned wages in covered employment after the beginning of his previous benefit year equal to or exceeding an amount eight times his weekly benefit rate amount established for the previous benefit year, and be otherwise eligible under the provisions of this article and 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 chapter, except that:

(a) With respect to service performed after December thirty-one, one thousand nine hundred seventy-seven, in an
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25 instructional, research or principal administrative capacity for
26 an educational institution, benefits shall not be paid based on
27 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
36 individual 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
53 vacation periods, except that if compensation is denied to any
54 individual under this subsection and such individual was not
55 offered an opportunity to perform such services for the
56 educational institution for the second of such academic years
57 or terms, such individual shall be entitled to a retroactive
58 payment of compensation for each week for which the
59 individual filed a timely claim for compensation and for which
60 compensation was denied solely by reason of this clause.

61 (c) On and after April one, one thousand nine hundred
62 eighty-four, benefits shall not be payable on the basis of
63 services in any such capacities as specified in subdivisions (a)
64 and (b) of this section, to any individual who performed such
65 services in 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.

ARTICLE 8. UNEMPLOYMENT COMPENSATION FUND.

§21A-8-1. Establishment.

I There is hereby established as a special fund, separate and apart from all public moneys or funds of the state, an unemployment compensation fund. The fund shall consist of:

1. All payments collected under this chapter.
2. Interest earned upon money in the fund.
3. Property or securities acquired through the use of the fund.
4. Earnings of such property or securities.
5. Amounts transferred from the employment security special administration fund.
6. Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act, as amended.

All money in the funds shall be mingled and undivided.

Any interest required to be paid on advances under Title XII of the Social Security Act, as amended, shall be paid by the date on which such interest is due. No interest shall be paid directly or indirectly from amounts in the unemployment compensation trust fund.

§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.

The commissioner may require an employing unit to provide sworn or unsworn reports concerning:

1. The number of individuals in its employ.
2. Individually their hours of labor.
3. Individually the rate and amount of wages.
4. Such other information as is reasonably connected with
the administration of this chapter.

Information thus obtained shall not be published or be open to public inspection so as to reveal the identity of the employing unit of the individual, with the exception of information furnished to the department of welfare as required under the provisions of section sixteen, article six of this chapter, information furnished to the United States department of agriculture, information provided to the department of human services for enforcement of the Medicaid program under Title Nineteen of the Social Security Act and information furnished to the United States department of health and human services or any state or federal program operating and approved under Title One, Title Ten, Title Fourteen or Title Sixteen of the Social Security Act. However, a claimant of benefit or any other interested party shall, upon request, be supplied with information from such records to the extent necessary for the proper presentation or defense of a claim. Such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

A person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned not longer than ninety days, or both.

No action for slander or libel, either criminal or civil, shall be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ........... this the 2nd day of ........... 1985.

Governor