WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987

ENROLLED

HOUSE BILL No. 2727

(By Delegate Mr. Speaker, Mr. Chambers
and Delegate Swann
[By request of the Executive]

Passed March 14, 1987

In Effect July 1, 1987
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 ten-b and seventeen, article five; sections one and fifteen, article six; and section eleven, article seven of said chapter, 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 ten-b and seventeen, article five of said chapter be amended and reenacted; that sections one and fifteen, article six; and section eleven, article seven of said chapter 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:

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

3. “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; however, if a claim is effective on the first day of a quarter, the benefit year will be fifty-three weeks, in order to prevent an overlapping of the base period wages. An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

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

“Board” means board of review.

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

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

"Employing unit" means an individual, or type of organization, including any partnership, association, trust estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political 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 employ-
ment, 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 employ-
ment, 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 employ-
ment, as defined in paragraphs (b) and (c) of subdivision
(9) of the definition of “employment” in this section, is
performed after December thirty-one, one thousand nine
hundred seventy-seven;

(11) Any employing unit for which agricultural labor, as defined in subdivision (12) of the definition of "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 compensa-
tion 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 independ-
ently 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
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242 defined in the Federal Unemployment Tax Act solely by
243 reason of section 3306(c) (8) of that act; and
244 (b) The organization had four or more individuals in
245 employment for some portion of a day in each of twenty
246 different weeks, whether or not such weeks were
247 consecutive, within either the current or preceding
248 calendar year, regardless of whether they were em-
249 ployed at the same moment of time;
250 (11) Service of an individual who is a citizen of the
251 United States, performed outside the United States
252 after December thirty-one, one thousand nine hundred
253 seventy-one (except in Canada and in the case of Virgin
254 Islands after December thirty-one, one thousand nine
255 hundred seventy-one, and before January one of the year
256 following the year in which the secretary of labor
257 approves for the first time an unemployment insurance
258 law submitted to him by the Virgin Islands for appro-
259 val) in the employ of an American employer (other than
260 service which is deemed “employment” under the
261 provisions of subdivision (4), (5) or (6) of this definition
262 of “employment” or the parallel provisions of another
263 state’s law) if:
264 (a) The employer’s principal place of business in the
265 United States is located in this state; or
266 (b) The employer has no place of business in the
267 United States, but (i) the employer is an individual who
268 is a resident of this state; or (ii) the employer is a
269 corporation which is organized under the laws of this
270 state; or (iii) the employer is a partnership or a trust
271 and the number of the partners or trustees who are
272 residents of this state is greater than the number who
273 are residents of any one other state; or
274 (c) None of the criteria of subparagraphs (a) and (b)
275 of this subdivision (11) is met but the employer has
276 elected coverage in this state or, the employer having
277 failed to elect coverage in any state, the individual has
278 filed a claim for benefits, based on such service, under
279 the law of this state.
280 An “American employer,” for purposes of this subdi-
vision (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 individ-
ual 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 em-
ployed in agricultural labor, including labor performed
by an alien referred to in paragraph (b) of this
subdivision (12); or (ii) for some portion of a day in each
of twenty different calendar weeks, whether or not such
weeks were consecutive, in either the current or the
preceding calendar year, employed in agricultural
labor, including labor performed by an alien referred
to in paragraph (b) of this subdivision (12), 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-eight 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)(II) 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 section nineteen, article five of this chapter, with respect to payments erroneously collected;

(4) Service performed after June thirty, one thousand
nine hundred thirty-nine, with respect to which unemploy-
ment 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 compensa-
tion under an act of Congress, or who have, after
acquiring potential rights to unemployment compensa-
tion 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 horticul-
tural 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 mainte-
nance 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, 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
(12) Service performed in the employ of a school, college or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college or university, and (II) such employment will not be covered by any program of unemployment insurance;

(13) Service performed by an individual 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, gratuities customarily received by an individual in the course of employment from persons other than the employing unit, as long as such gratuities equal or exceed an amount of not less than twenty dollars each month and which are required to be reported to the employer by the employee, bonuses and the cash value of all remuneration in any medium
other than cash except for agricultural labor and domestic service: Provided, That the term “wages” shall not include:

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

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year 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, is 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.
hundred dollars, or (d) effective on or after January one, one thousand nine hundred seventy-eight, to include remuneration in excess of six thousand dollars, or (e) effective on or after January one, one thousand nine hundred eighty, to include remuneration in excess of eight thousand dollars, paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include 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 payments made to an employee under an approved state workers' compensation law, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

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

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

(5) Any payment made after December thirty-one, one
thousand nine hundred fifty-two, by an employer to, or
on behalf of, an individual in its employ or his benefi-
ciary (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 individ-
ual 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 and 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 De-
cember 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
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800 totally or partially unemployed but earned prior to
801 becoming totally or partially unemployed: Provided,
802 That the term totally or partially unemployed shall not
803 be interpreted to include (1) employees who are on
804 vacation by reason of the request of the employees or
805 their duly authorized agent, for a vacation at a specific
806 time, and which request by the employees or their agent
807 is acceded to by their employer, (2) employees who are
808 on vacation by reason of the employer's request provided
809 they are so informed at least ninety days prior to such
810 vacation, or (3) employees who are on vacation by reason
811 of the employer's request where such vacation is in
812 addition to the regular vacation and the employer
813 compensates such employee at a rate equal to or
814 exceeding their regular daily rate of pay during the
815 vacation period.

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

821 The reasonable cash value of remuneration in any
822 medium other than cash shall be estimated and deter-
823 mined in accordance with rules prescribed by the
824 commissioner, except for remuneration other than cash
825 for services performed in agricultural labor and
826 domestic service.

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

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

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

If a subject employer shall transfer his entire organization, trade or business, or substantially all the assets thereof, to another employer, the commissioner shall combine the contribution records and the benefit experience records of the transferring and acquiring employers. The acquiring employer's contribution rate for the remainder of the calendar year shall not be affected by the transfer but such rate shall apply to the whole of his business, including the portion acquired by the transfer, through the following December thirty-first. If a subject employer shall make such transfer to an employing unit which is not an employer on the date of the transfer, such subject employer's rate shall continue as the rate of the acquiring employing unit until the next effective rate date. If an employing unit acquires simultaneously the entire organization, trade or business, or substantially all the assets thereof, of two or more covered employers, the successor shall be assigned as a contribution rate the then current rate of the transferring employer which had, in the calendar quarter immediately preceding the date of the transfer, the higher or highest payroll. If a subject employer shall transfer his entire organization, trade or business, or substantially all the assets thereof, to two or more employers or employing units, apportionment of the contribution records and benefit experience records of the transferring employer shall be made between the acquiring units in accordance with the ratio that the total assets acquired by each transferee bears to the total assets transferred by the transferring employer as of the date of the transfers. The current contribution rate of the transferring employer shall in such case continue as the rate of each transferee who or which is an employing unit until the next effective rate date; the current contribution rate of each transferee who or which is an employer shall continue as his or its rate until the next effective rate date. For the succeeding calendar year the rate of each transferee shall be determined as provided in section ten of this article. As to any transfers which occur prior to July thirty-first of the current calendar year such rate shall remain effective for the balance of that calendar year: Provided,
however, That if the transfers occur subsequent to July thirty-first such rate shall remain effective for the balance of that calendar year and the rate for the succeeding calendar year shall, notwithstanding anything to the contrary provided in section seven of article five of this chapter, be recomputed on the basis of the combined experience of the transferring employers as of July thirty-first of the year in which the transfers occur. In case the transferring employer is delinquent in the payment of contributions or interest thereon the acquiring employer shall not be entitled to any benefit of the contribution record of the transferring employer unless payment of such delinquent contributions and interest thereon is assumed by the acquiring employer. The commissioner shall upon joint request of the transferor and transferee furnish the transferee a statement of the amount of any contribution and interest due and unpaid by the transferor. A statement so furnished shall be controlling for the purposes of the foregoing proviso.

The provisions of this section shall not apply to any employer which is established through the assistance of any state economic development agency irrespective of the contribution rate of any related predecessor.

§21A-5-17. Interest on past-due payments.

Payments unpaid on the date on which due and payable, as prescribed by the commissioner, shall bear interest at the rate of one percent per month until payment plus accrued interest is received by the commissioner. The commissioner may waive interest on the payment of delinquent employers if payment is made on all outstanding delinquent contributions which were incurred on or before the first day of January, one thousand nine hundred eighty-seven, during the period beginning the first day of July, one thousand nine hundred eighty-seven and ending on the thirty-first day of December, one thousand nine hundred eighty-seven. Interest collected pursuant to this section shall be paid into the employment security special administration fund.
ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

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

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

2. He has made a claim for benefits in accordance with the provisions of article seven of this chapter and has furnished his social security number, or numbers if he has more than one such number;

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; and

5. He has within his base period been paid wages for employment equal to not less than two thousand two hundred dollars and must have earned wages in more than one quarter of his base period.

§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 services in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or after such holiday or vacation period.

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

(c) With respect to services described in subdivisions
(a) and (b) of this section, benefits shall not be paid to
any individual for any week which commences during
an established and customary vacation period or holiday
recess if such individual performs such services in the
period immediately before such vacation period or
holiday recess, and there is a reasonable assurance that
such individual will perform such services in the period
immediately following such vacation period or holiday
recess.

(d) On and after April one, one thousand nine
hundred eighty-four, benefits payable on the basis of
services in any such capacities as specified in subdivi-
sions (a) and (b) of this section shall be denied as
specified in subdivisions (a), (b) and (c) of this section
to any individual who performed such 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 7. CLAIM PROCEDURE.


Benefits found payable by decision of a deputy, appeal
tribunal, the board or court shall be immediately paid
in accordance therewith up to the week in which a
subsequent appellate body renders a decision, by order,
finding that benefits were not or are not payable. If, at
any appeal stage, benefits are found to be payable which
were found before such appeal stage to be not payable,
the commissioner shall immediately reinstate the
payment benefits. If the final decision in any case
determines that a claimant was not lawfully entitled to
benefits paid to him pursuant to a prior decision, such amount of benefits so paid shall be deemed overpaid. The commissioner shall recover such amount by civil action or in any manner provided in this code for the collection of past-due payment and shall withhold, in whole or in part, as determined by the commissioner, any future benefits payable to the individual and credit such amount against the overpayment until it is repaid in full. If the final decision in any case determines that the claimant was not lawfully entitled to the benefits paid to him pursuant to a prior order, any benefits so paid pursuant to such prior order, shall not be chargeable to the employer's account.

(a) Whenever the commissioner finds that a discharged employee has received back pay at his customary wage rate from his employer after reinstatement, such employee shall be liable to repay the benefits, if any, paid to such individual during the time he was unemployed. In any case in which, under this section, an employee is liable to repay benefits to the commissioner, such sum shall be collectible by civil action in the name of the commissioner.

(b) Whenever an employer subject to this chapter is required to make a payment of back pay to an individual who has received unemployment compensation benefits during the same period covered by the back pay award, the employer shall withhold an amount equal to the unemployment compensation benefits and shall repay the amount withheld to the unemployment compensation trust fund. If an employer fails to comply with this section, the commissioner shall have the right to recover from the employer the amount of unemployment compensation benefits which should have been withheld by a civil action.
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.


Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within __________________ approved this the __________ day of _______________, 1987.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/24/89
Time 2:41 p.m.