

No. 2460

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



ENROLLED

HOUSE BILL No. 2460

(By Delegate Phillips & Murphy)



Passed February 27, 1987

In Effect Ninety Days From Passage

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1997 MAR 10 PM 1:58

OFFICE OF ASST. SECRETARY
SECRETARY OF DEFENSE

ENROLLED
H. B. 2460

(By DELEGATES PHILLIPS and MURPHY)

[Passed February 27, 1987; in effect ninety days from passage.]

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, relating to employment security; definitions; and exemption from the application of the chapter of all students who are employed and also enrolled at nonprofit or public educational institution.

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 to read as follows:

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

§21A-1-3. Definitions.

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

3 "Administration fund" means the employment secur-
4 ity administration fund, from which the administrative
5 expenses under this chapter shall be paid.

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

10 "Average annual payroll" means the average of the

11 last three annual payrolls of an employer.

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

15 "Base period employer" means any employer who in
16 the base period for any benefit year paid wages to an
17 individual who filed claim for unemployment compen-
18 sation within such benefit year.

19 "Base period wages" means wages paid to an individ-
20 ual during the base period by all his base period
21 employers.

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

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

36 "Board" means board of review.

37 "Calendar quarter" means the period of three consec-
38 utive calendar months ending on March thirty-one, June
39 thirty, September thirty or December thirty-one, or the
40 equivalent thereof as the commissioner may by regula-
41 tion prescribe.

42 "Commissioner" means the employment security
43 commissioner.

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

47 "Employing unit" means an individual, or type of

48 organization, including any partnership, association,
49 trust estate, joint-stock company, insurance company,
50 corporation (domestic or foreign), state or political
51 subdivision thereof, or their instrumentalities, as
52 provided in paragraph (b), subdivision (9) of the
53 definition of "employment" in this section, institution of
54 higher education, or the receiver, trustee in bankruptcy,
55 trustee or successor thereof, or the legal representative
56 of a deceased person, which has on January first, one
57 thousand nine hundred thirty-five, or subsequent
58 thereto, had in its employ one or more individuals
59 performing service within this state.

60 "Employer" means:

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

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

72 (3) Any employing unit which has acquired or ac-
73 quires the organization, trade or business, or substan-
74 tially all the assets thereof, of an employing unit which
75 at the time of such acquisition was an employer subject
76 to this chapter;

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

86 (5) Any employing unit which, after December thirty-

87 one, one thousand nine hundred sixty-three, and until
88 January one, one thousand nine hundred seventy-two, in
89 any three-week period, in any calendar year, has in
90 employment ten or more individuals;

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

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

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

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

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

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

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

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

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

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

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

151 (4) An individual's entire service, performed within or
152 both within and without this state if: (a) The service is
153 localized in this state or (b) the service is not localized
154 in any state but some of the service is performed in this
155 state and (i) the base of operations, or, if there is no base
156 of operations, then the place from which such service is
157 directed or controlled, is in this state; or (ii) the base of
158 operations or place from which such service is directed
159 or controlled is not in any state in which some part of
160 the service is performed but the individual's residence
161 is in this state;

162 (5) Service not covered under paragraph four of this
163 subdivision and performed entirely without this state
164 with respect to no part of which contributions are

165 required and paid under an unemployment compensa-
166 tion law of any other state or of the federal government,
167 shall be deemed to be employment subject to this
168 chapter if the individual performing such services is a
169 resident of this state and the commissioner approves the
170 election of the employing unit for whom such services
171 are performed that the entire service of such individual
172 shall be deemed to be employment subject to this
173 chapter;

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

182 (7) Services performed by an individual for wages
183 shall be deemed to be employment subject to this
184 chapter unless and until it is shown to the satisfaction
185 of the commissioner that: (a) Such individual has been
186 and will continue to be free from control or direction
187 over the performance of such services, both under his
188 contract of service and in fact; and (b) such service is
189 either outside the usual course of the business for which
190 such service is performed or that such service is
191 performed outside of all the places of business of the
192 enterprise for which such service is performed; and (c)
193 such individual is customarily engaged in an independ-
194 ently established trade, occupation, profession or
195 business;

196 (8) All service performed by an officer or member of
197 the crew of an American vessel (as defined in section
198 three hundred five of an act of Congress entitled Social
199 Security Act Amendment of 1946, approved August
200 tenth, one thousand nine hundred forty-six), on or in
201 connection with such vessel, provided that the operating
202 office, from which the operations of such vessel operat-
203 ing on navigable waters within and without the United
204 States is ordinarily and regularly supervised, managed,
205 directed and controlled, is within this state;

206 (9) (a) Service performed after December thirty-one,
207 one thousand nine hundred seventy-one, by an individual
208 in the employ of this state or any of its instrumentalities
209 (or in the employ of this state and one or more other
210 states or their instrumentalities) for a hospital or
211 institution of higher education located in this state:
212 *Provided*, That such service is excluded from "employ-
213 ment" as defined in the Federal Unemployment Tax Act
214 solely by reason of section 3306 (c) (7) of that act and
215 is not excluded from "employment" under subdivision
216 (11) of the exclusion from employment.

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

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

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

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

241 (b) The organization had four or more individuals in
242 employment for some portion of a day in each of twenty
243 different weeks, whether or not such weeks were
244 consecutive, within either the current or preceding
245 calendar year, regardless of whether they were em-

246 ployed at the same moment of time;

247 (11) Service of an individual who is a citizen of the
248 United States, performed outside the United States
249 after December thirty-one, one thousand nine hundred
250 seventy-one (except in Canada and in the case of Virgin
251 Islands after December thirty-one, one thousand nine
252 hundred seventy-one, and before January one of the year
253 following the year in which the secretary of labor
254 approves for the first time an unemployment insurance
255 law submitted to him by the Virgin Islands for approval) in the employ of an American employer (other than
256 service which is deemed "employment" under the
257 provisions of subdivision (4), (5) or (6) of this definition
258 of "employment" or the parallel provisions of another
259 state's law) if:
260

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

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

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

277 An "American employer," for purposes of this subdivi-
278 sion (11), means a person who is (i) an individual who
279 is a resident of the United States; or (ii) a partnership
280 if two thirds or more of the partners are residents of
281 the United States; or (iii) a trust, if all of the trustees
282 are residents of the United States; or (iv) a corporation
283 organized under the laws of the United States or of any
284 state;

285 (12) Service performed after December thirty-one,
286 one thousand nine hundred seventy-seven, by an individ-
287 ual in agricultural labor as defined in subdivision

288 (5) of the exclusions from employment in this section
289 when:

290 (a) Such service is performed for a person who (i)
291 during any calendar quarter in either the current or the
292 preceding calendar year paid remuneration in cash of
293 twenty thousand dollars or more to individuals em-
294 ployed in agricultural labor (ii) for some portion of a day
295 in each of twenty different calendar weeks, whether or
296 not such weeks were consecutive, in either the current
297 or the preceding calendar year, employed in agricultu-
298 ral labor ten or more individuals, regardless of whether
299 they were employed at the same moment of time;

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

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

319 (d) For the purposes of this subdivision (12), in the
320 case of any individual who is furnished by a crew leader
321 to perform service in agricultural labor for any other
322 person and who is not treated as an employee of such
323 crew leader under subparagraph (c) of this subdivision
324 (12), (i) such other person and not the crew leader shall

325 be treated as the employer of such individual; and (ii)
326 such other person shall be treated as having paid cash
327 remuneration to such individual in an amount equal to
328 the amount of cash remuneration paid to such individual
329 by the crew leader (either on his own behalf or on behalf
330 of such other person) for the service in agricultural
331 labor performed for such other person;

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

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

352 Notwithstanding the foregoing definition of "employ-
353 ment," if the services performed during one half or more
354 of any pay period by an employee for the person
355 employing him constitute employment, all the services
356 of such employee for such period shall be deemed to be
357 employment; but if the services performed during more
358 than one half of any such pay period by an employee for
359 the person employing him do not constitute employment,
360 then none of the services of such employee for such
361 period shall be deemed to be employment.

362 The term "employment" shall not include:

363 (1) Service performed in the employ of this state or
364 any political subdivision thereof, or any instrumentality

365 of this state or its subdivisions, except as otherwise
366 provided herein until December thirty-one, one thou-
367 sand nine hundred seventy-seven;

368 (2) Service performed directly in the employ of
369 another state, or its political subdivisions, except as
370 otherwise provided in paragraph (a), subdivision (9) of
371 the definition of "employment," until December thirty-
372 one, one thousand nine hundred seventy-seven;

373 (3) Service performed in the employ of the United
374 States or any instrumentality of the United States
375 exempt under the constitution of the United States from
376 the payments imposed by this law, except that to the
377 extent that the Congress of the United States shall
378 permit states to require any instrumentalities of the
379 United States to make payments into an unemployment
380 fund under a state unemployment compensation law, all
381 of the provisions of this law shall be applicable to such
382 instrumentalities and to service performed for such
383 instrumentalities in the same manner, to the same
384 extent and on the same terms as to all other employers,
385 employing units, individuals and services: *Provided,*
386 That if this state shall not be certified for any year by
387 the secretary of labor under section 1603(c) of the
388 Federal Internal Revenue Code, the payments required
389 of such instrumentalities with respect to such year shall
390 be refunded by the commissioner from the fund in the
391 same manner and within the same period as is provided
392 in section nineteen, article five of this chapter, with
393 respect to payments erroneously collected;

394 (4) Service performed after June thirty, one thousand
395 nine hundred thirty-nine, with respect to which unem-
396 ployment compensation is payable under the Railroad
397 Unemployment Insurance Act and service with respect
398 to which unemployment benefits are payable under an
399 unemployment compensation system for maritime
400 employees established by an act of Congress. The
401 commissioner may enter into agreements with the
402 proper agency established under such an act of Congress
403 to provide reciprocal treatment to individuals who, after
404 acquiring potential rights to unemployment compensa-
405 tion under an act of Congress, or who have, after

406 acquiring potential rights to unemployment compensa-
407 tion under an act of Congress, acquired rights to benefit
408 under this chapter. Such agreement shall become
409 effective ten days after such publications which shall
410 comply with the general rules of the department;

411 (5) Service performed by an individual in agricultural
412 labor, except as provided in subdivision (12) of the
413 definition of "employment" in this section. For purposes
414 of this subdivision (5), the term "agricultural labor"
415 includes all services performed:

416 (a) On a farm, in the employ of any person, in
417 connection with cultivating the soil, or in connection
418 with raising or harvesting any agricultural or horticul-
419 tural commodity, including the raising, shearing,
420 feeding, caring for, training and management of
421 livestock, bees, poultry, and fur-bearing animals and
422 wildlife;

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

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

438 (d) (i) In the employ of the operator of a farm in
439 handling, planting, drying, packing, packaging, process-
440 ing, freezing, grading, storing or delivering to storage
441 or to market or to a carrier for transportation to market,
442 in its unmanufactured state, any agricultural or
443 horticultural commodity; but only if such operator
444 produced more than one half of the commodity with
445 respect to which such service is performed; or (ii) in the

446 employ of a group of operators of farms (or a cooperative
447 organization of which such operators are members) in
448 the performance of service described in clause (i), but
449 only if such operators produced more than one half of
450 the commodity with respect to which such service is
451 performed; but the provisions of clauses (i) and (ii) shall
452 not be deemed to be applicable with respect to service
453 performed in connection with commercial canning or
454 commercial freezing or in connection with any agricul-
455 tural or horticultural commodity after its delivery to a
456 terminal market for distribution for consumption;

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

466 (6) Domestic service in a private home except as
467 provided in subdivision (13) of the definition of "employ-
468 ment" in this section;

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

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

473 (9) Service as an officer or member of a crew of an
474 American vessel, performed on or in connection with
475 such vessel, if the operating office, from which the
476 operations of the vessel operating on navigable waters
477 within or without the United States are ordinarily and
478 regularly supervised, managed, directed and controlled,
479 is without this state;

480 (10) Service performed by agents of mutual fund
481 broker-dealers or insurance companies, exclusive of
482 industrial insurance agents, or by agents of investment
483 companies, who are compensated wholly on a commis-
484 sion basis;

485 (11) Service performed (i) in the employ of a church
486 or convention or association of churches, or an organi-
487 zation which is operated primarily for religious pur-
488 poses and which is operated, supervised, controlled or
489 principally supported by a church or convention or
490 association of churches; or (ii) by a duly ordained,
491 commissioned or licensed minister of a church in the
492 exercise of his ministry or by a member of a religious
493 order in the exercise of duties required by such order;
494 or (iii) prior to January one, one thousand nine hundred
495 seventy-eight, in the employ of a school which is not an
496 institution of higher education; or (iv) in a facility
497 conducted for the purpose of carrying out a program of
498 rehabilitation for individuals whose earning capacity is
499 impaired by age or physical or mental deficiency or
500 injury or providing remunerative work for individuals
501 who because of their impaired physical or mental
502 capacity cannot be readily absorbed in the competitive
503 labor market by an individual receiving such rehabil-
504 itation or remunerative work; or (v) as part of an
505 unemployment work-relief or work-training program
506 assisted or financed in whole or in part by any federal
507 agency or an agency of a state or political subdivision
508 thereof, by an individual receiving such work relief or
509 work training; or (vi) prior to January one, one thousand
510 nine hundred seventy-eight, for a hospital in a state
511 prison or other state correctional institution by an
512 inmate of the prison or correctional institution, and after
513 December thirty-one, one thousand nine hundred
514 seventy-seven, by an inmate of a custodial or penal
515 institution;

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

527 insurance;

528 (13) Service performed by an individual who is
529 enrolled at a nonprofit or public educational institution
530 which normally maintains a regular faculty and
531 curriculum and normally has a regularly organized
532 body of students in attendance at the place where its
533 educational activities are carried on as a student in a
534 full-time program, taken for credit at such institution,
535 which combines academic instruction with work expe-
536 rience, if such service is an integral part of such
537 program, and such institution has so certified to the
538 employer, except that this subdivision shall not apply to
539 service performed in a program established for or on
540 behalf of an employer or group of employers;

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

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

559 Notwithstanding the foregoing exclusions from the
560 definition of "employment," services, except agricultural
561 labor and domestic service in a private home, shall be
562 deemed to be in employment if with respect to such
563 services a tax is required to be paid under any federal
564 law imposing a tax against which credit may be taken
565 for contributions required to be paid into a state
566 unemployment compensation fund, or which as a

567 condition for full tax credit against the tax imposed by
568 the Federal Unemployment Tax Act are required to be
569 covered under this chapter.

570 "Employment office" means a free employment office
571 or branch thereof, operated by this state, or any free
572 public employment office maintained as a part of a state
573 controlled system of public employment offices in any
574 other state.

575 "Fund" means the unemployment compensation fund
576 established by this chapter.

577 "Hospital" means an institution which has been
578 licensed, certified or approved by the state department
579 of health as a hospital.

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

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

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

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

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

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

599 "Payments" means the money required to be paid or
600 that may be voluntarily paid into the state unemploy-
601 ment compensation fund as provided in article five of
602 this chapter.

603 "Separated from employment" means, for the pur-

604 poses of this chapter, the total severance, whether by
605 quitting, discharge or otherwise, of the employer-
606 employee relationship.

607 “State” includes, in addition to the states of the United
608 States, Puerto Rico, District of Columbia and the Virgin
609 Islands.

610 “Total and partial unemployment” means:

611 (1) An individual shall be deemed totally unemployed
612 in any week in which such individual is separated from
613 employment for an employing unit and during which he
614 performs no services and with respect to which no wages
615 are payable to him.

616 (2) An individual who has not been separated from
617 employment shall be deemed to be partially unemployed
618 in any week in which due to lack of full-time work
619 wages payable to him are less than his weekly benefit
620 amount plus twenty-five dollars: *Provided*, That said
621 individual must have earnings of at least twenty-six
622 dollars.

623 “Wages” means all remuneration for personal service,
624 including commissions and bonuses, and the cash value
625 of all remuneration in any medium other than cash
626 except for agricultural labor and domestic service:
627 *Provided*, That the term “wages” shall not include:

628 (1) That part of the remuneration which, after
629 remuneration equal to three thousand dollars has been
630 paid to an individual by an employer with respect to
631 employment during any calendar year, is paid after
632 December thirty-one, one thousand nine hundred thirty-
633 nine, and prior to January one, one thousand nine
634 hundred forty-seven, to such individual by such em-
635 ployer with respect to employment during such calendar
636 year; or that part of the remuneration which, after
637 remuneration equal to three thousand dollars with
638 respect to employment after one thousand nine hundred
639 thirty-eight, has been paid to an individual by an
640 employer during any calendar year after one thousand
641 nine hundred forty-six, is paid to such individual by
642 such employer during such calendar year, except that

643 for the purposes of sections one, ten, eleven and thirteen,
644 article six of this chapter, all remuneration earned by
645 an individual in employment shall be credited to the
646 individual and included in his computation of base
647 period wages: *Provided*, That notwithstanding the
648 foregoing provisions, on and after January one, one
649 thousand nine hundred sixty-two, the term "wages" shall
650 not include:

651 That part of the remuneration which, after remuner-
652 ation equal to three thousand six hundred dollars has
653 been paid to an individual by an employer with respect
654 to employment during any calendar year, is paid during
655 any calendar year after one thousand nine hundred
656 sixty-one; and shall not include that part of remunera-
657 tion which, after remuneration equal to four thousand
658 two hundred dollars is paid during a calendar year after
659 one thousand nine hundred seventy-one; and shall not
660 include that part of remuneration which, after remun-
661 eration equal to six thousand dollars is paid during a
662 calendar year after one thousand nine hundred seventy-
663 seven; and shall not include that part of remuneration
664 which, after remuneration equal to eight thousand
665 dollars is paid during a calendar year after one
666 thousand nine hundred eighty, to an individual by an
667 employer or his predecessor with respect to employment
668 during any calendar year, is paid to such individual by
669 such employer during such calendar year unless that
670 part of the remuneration is subject to a tax under a
671 federal law imposing a tax against which credit may be
672 taken for contributions required to be paid into a state
673 unemployment fund. For the purposes of this subdivi-
674 sion (1), the term "employment" shall include service
675 constituting employment under any unemployment
676 compensation law of another state; or which as a
677 condition for full tax credit against the tax imposed by
678 the Federal Unemployment Tax Act is required to be
679 covered under this chapter; and, except, that for the
680 purposes of sections one, ten, eleven and thirteen, article
681 six of this chapter, all remuneration earned by an
682 individual in employment shall be credited to the
683 individual and included in his computation of base
684 period wages: *Provided*, That the remuneration paid to

685 an individual by an employer with respect to employ-
686 ment in another state or other states upon which
687 contributions were required of and paid by such
688 employer under an unemployment compensation law of
689 such other state or states shall be included as a part of
690 the remuneration equal to the amounts of three thou-
691 sand six hundred dollars or four thousand two hundred
692 dollars or six thousand dollars or eight thousand dollars
693 herein referred to. In applying such limitation on the
694 amount of remuneration that is taxable, an employer
695 shall be accorded the benefit of all or any portion of such
696 amount which may have been paid by its predecessor
697 or predecessors: *Provided, however,* That if the definition
698 of the term "wages" as contained in section 3306(b) of
699 the Internal Revenue Code of 1954 as amended: (a)
700 Effective prior to January one, one thousand nine
701 hundred sixty-two, to include remuneration in excess of
702 three thousand dollars, or (b) effective on or after
703 January one, one thousand nine hundred sixty-two, to
704 include remuneration in excess of three thousand six
705 hundred dollars, or (c) effective on or after January one,
706 one thousand nine hundred seventy-two, to include
707 remuneration in excess of four thousand two hundred
708 dollars, or (d) effective on or after January one, one
709 thousand nine hundred seventy-eight, to include remun-
710 eration in excess of six thousand dollars, or (e) effective
711 on or after January one, one thousand nine hundred
712 eighty, to include remuneration in excess of eight
713 thousand dollars, paid to an individual by an employer
714 under the Federal Unemployment Tax Act during any
715 calendar year, wages for the purposes of this definition
716 shall include remuneration paid in a calendar year to
717 an individual by an employer subject to this article or
718 his predecessor with respect to employment during any
719 calendar year up to an amount equal to the amount of
720 remuneration taxable under the Federal Unemployment
721 Tax Act;

722 (2) The amount of any payment made after December
723 thirty-one, one thousand nine hundred fifty-two (includ-
724 ing any amount paid by an employer for insurance or
725 annuities, or into a fund, to provide for any such
726 payment), to, or on behalf of, an individual in its employ

727 or any of his dependents, under a plan or system
728 established by an employer which makes provision for
729 individuals in its employ generally (or for such individ-
730 uals and their dependents), or for a class or classes of
731 such individuals (or for a class or classes of such
732 individuals and their dependents), on account of (A)
733 retirement, or (B) sickness or accident disability, or (C)
734 medical or hospitalization expenses in connection with
735 sickness or accident disability, or (D) death;

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

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

750 (5) Any payment made after December thirty-one, one
751 thousand nine hundred fifty-two, by an employer to, or
752 on behalf of, an individual in its employ or his benefi-
753 ciary (A) from or to a trust described in section 401(a)
754 which is exempt from tax under section 501(a) of the
755 Federal Internal Revenue Code at the time of such
756 payments unless such payment is made to such individ-
757 ual as an employee of the trust as remuneration for
758 services rendered by such individual and not as a
759 beneficiary of the trust, or (B) under or to an annuity
760 plan which, at the time of such payment, is a plan
761 described in section 403(a) of the Federal Internal
762 Revenue Code;

763 (6) The payment by an employer of the tax imposed
764 upon an employer under section 3101 of the Federal
765 Internal Revenue Code with respect to remuneration
766 paid to an employee for domestic service in a private

767 home of the employer or agricultural labor;

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

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

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

784 (10) Vacation pay, severance pay or savings plans
785 received by an individual before or after becoming
786 totally or partially unemployed but earned prior to
787 becoming totally or partially unemployed: *Provided,*
788 That the term totally or partially unemployed shall not
789 be interpreted to include (1) employees who are on
790 vacation by reason of the request of the employees or
791 their duly authorized agent, for a vacation at a specific
792 time, and which request by the employees or their agent
793 is acceded to by their employer, (2) employees who are
794 on vacation by reason of the employer's request provided
795 they are so informed at least ninety days prior to such
796 vacation, or (3) employees who are on vacation by reason
797 of the employer's request where such vacation is in
798 addition to the regular vacation and the employer
799 compensates such employee at a rate equal to or
800 exceeding their regular daily rate of pay during the
801 vacation period.

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

807 The reasonable cash value of remuneration in any
808 medium other than cash shall be estimated and deter-
809 mined in accordance with rules prescribed by the
810 commissioner, except for remuneration other than cash
811 for services performed in agricultural labor and
812 domestic service.

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

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

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

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

Bernard V. Kelly
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Joseph C. Kelly
Clerk of the Senate

Donald G. Pegg
Clerk of the House of Delegates

Dan Tomlinson
President of the Senate

John A. Stahl
Speaker of the House of Delegates

The within *approved* this the *9th*
March day of _____, 1987.

Arch A. Shaw Jr.
Governor

PRESENTED TO THE

GOVERNOR

Date 3/4/87

Time 9:35 a.m.