

4513

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

Com. Sub. for
HOUSE BILL No. 4513.

(By Mr. Speaker, Mr. Chambers & Del. Swann)
[By request of the Executive]



Passed March 12, 1988

In Effect From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 4513

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE SWANN)
[By request of the Executive]

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AN ACT to amend and reenact section three, article one; section seven, article five; sections three, ten and eleven, article six; and sections four and five, article six-a, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

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

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

39 "Board" means board of review.

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

44 tion prescribe.

45 “Commissioner” means the employment security
46 commissioner.

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

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

63 “Employer” means:

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

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

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

80 (4) Any employing unit which, after December thirty-
81 one, one thousand nine hundred sixty-three, and until

82 January one, one thousand nine hundred seventy-two, in
83 any one calendar quarter, in any calendar year, has in
84 employment four or more individuals and has paid
85 wages for employment in the total sum of five thousand
86 dollars or more, or which, after such date, has paid
87 wages for employment in any calendar year in the sum
88 total of twenty thousand dollars or more;

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

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

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

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

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

119 (10) Any employing unit for which service in employ-
120 ment, as defined in paragraphs (b) and (c) of subdivision

121 (9) of the definition of "employment" in this section, is
122 performed after December thirty-one, one thousand nine
123 hundred seventy-seven;

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

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

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

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

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

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

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

160 directed or controlled, is in this state; or (ii) the base of
161 operations or place from which such service is directed
162 or controlled is not in any state in which some part of
163 the service is performed but the individual's residence
164 is in this state;

165 (5) Service not covered under paragraph (4) of this
166 subdivision and performed entirely without this state
167 with respect to no part of which contributions are
168 required and paid under an unemployment compensa-
169 tion law of any other state or of the federal government,
170 shall be deemed to be employment subject to this
171 chapter if the individual performing such services is a
172 resident of this state and the commissioner approves the
173 election of the employing unit for whom such services
174 are performed that the entire service of such individual
175 shall be deemed to be employment subject to this
176 chapter;

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

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

199 (8) All service performed by an officer or member of

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

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

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

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

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

240 are met:

241 (a) The service is excluded from "employment" as
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 subdivi-
281 sion (11), means a person who is (i) an individual who
282 is a resident of the United States; or (ii) a partnership
283 if two thirds or more of the partners are residents of
284 the United States; or (iii) a trust, if all of the trustees
285 are residents of the United States; or (iv) a corporation
286 organized under the laws of the United States or of any
287 state;

288 (12) Service performed after December thirty-one,
289 one thousand nine hundred seventy-seven, by an individ-
290 ual in agricultural labor as defined in subdivision (5) of
291 the exclusions from employment in this section when:

292 (a) Such service is performed for a person who (i)
293 during any calendar quarter in either the current or the
294 preceding calendar year paid remuneration in cash of
295 twenty thousand dollars or more to individuals em-
296 ployed in agricultural labor including labor performed
297 by an alien referred to in paragraph (b) of this
298 subdivision (12); or (ii) for some portion of a day in each
299 of twenty different calendar weeks, whether or not such
300 weeks were consecutive, in either the current or the
301 preceding calendar year, employed in agricultural
302 labor, including labor performed by an alien referred
303 to in paragraph (b) of this subdivision (12), ten or more
304 individuals, regardless of whether they were employed
305 at the same moment of time;

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

312 (c) For the purposes of the definition of employment,
313 any individual who is a member of a crew furnished by
314 a crew leader to perform service in agricultural labor
315 for any other person shall be treated as an employee of
316 such crew leader (i) if such crew leader holds a valid
317 certificate of registration under the Migrant and
318 Seasonal Agricultural Worker Protection Act; or

319 substantially all the members of such crew operate or
320 maintain tractors, mechanized harvesting or crop-
321 dusting equipment, or any other mechanized equipment,
322 which is provided by such crew leader; and (ii) if such
323 individual is not an employee of such other person
324 within the meaning of subdivision (7) of the definition
325 of employer;

326 (d) For the purposes of this subdivision (12), in the
327 case of any individual who is furnished by a crew leader
328 to perform service in agricultural labor for any other
329 person and who is not treated as an employee of such
330 crew leader under subparagraph (c) of this subdivision
331 (12), (i) such other person and not the crew leader shall
332 be treated as the employer of such individual; and (ii)
333 such other person shall be treated as having paid cash
334 remuneration to such individual in an amount equal to
335 the amount of cash remuneration paid to such individual
336 by the crew leader (either on his own behalf or on behalf
337 of such other person) for the service in agricultural
338 labor performed for such other person;

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

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

359 Notwithstanding the foregoing definition of “employ-
360 ment,” if the services performed during one half or more
361 of any pay period by an employee for the person
362 employing him constitute employment, all the services
363 of such employee for such period shall be deemed to be
364 employment; but if the services performed during more
365 than one half of any such pay period by an employee for
366 the person employing him do not constitute employment,
367 then none of the services of such employee for such
368 period shall be deemed to be employment.

369 The term “employment” shall not include:

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

375 (2) Service performed directly in the employ of
376 another state, or its political subdivisions, except as
377 otherwise provided in paragraph (a), subdivision (9) of
378 the definition of “employment,” until December thirty-
379 one, one thousand nine hundred seventy-seven;

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

399 in section nineteen, article five of this chapter, with
400 respect to payments erroneously collected;

401 (4) Service performed after June thirty, one thousand
402 nine hundred thirty-nine, with respect to which unem-
403 ployment compensation is payable under the Railroad
404 Unemployment Insurance Act and service with respect
405 to which unemployment benefits are payable under an
406 unemployment compensation system for maritime
407 employees established by an act of Congress. The
408 commissioner may enter into agreements with the
409 proper agency established under such an act of Congress
410 to provide reciprocal treatment to individuals who, after
411 acquiring potential rights to unemployment compensa-
412 tion under an act of Congress, or who have, after
413 acquiring potential rights to unemployment compensa-
414 tion under an act of Congress, acquired rights to benefit
415 under this chapter. Such agreement shall become
416 effective ten days after such publications which shall
417 comply with the general rules of the department;

418 (5) Service performed by an individual in agricultural
419 labor, except as provided in subdivision (12) of the
420 definition of "employment" in this section. For purposes
421 of this subdivision (5), the term "agricultural labor"
422 includes all services performed:

423 (a) On a farm, in the employ of any person, in
424 connection with cultivating the soil, or in connection
425 with raising or harvesting any agricultural or hortical-
426 tural commodity, including the raising, shearing,
427 feeding, caring for, training and management of
428 livestock, bees, poultry, and fur-bearing animals and
429 wildlife;

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

437 (c) In connection with the production or harvesting of
438 any commodity defined as an agricultural commodity in

439 section fifteen (g) of the Agricultural Marketing Act, as
440 amended, or in connection with the ginning of cotton,
441 or in connection with the operation or maintenance of
442 ditches, canals, reservoirs or waterways, not owned or
443 operated for profit, used exclusively for supplying and
444 storing water for farming purposes;

445 (d) (i) In the employ of the operator of a farm in
446 handling, planting, drying, packing, packaging, process-
447 ing, freezing, grading, storing or delivering to storage
448 or to market or to a carrier for transportation to market,
449 in its unmanufactured state, any agricultural or
450 horticultural commodity; but only if such operator
451 produced more than one half of the commodity with
452 respect to which such service is performed; or (ii) in the
453 employ of a group of operators of farms (or a cooperative
454 organization of which such operators are members) in
455 the performance of service described in clause (i), but
456 only if such operators produced more than one half of
457 the commodity with respect to which such service is
458 performed; but the provisions of clauses (i) and (ii) shall
459 not be deemed to be applicable with respect to service
460 performed in connection with commercial canning or
461 commercial freezing or in connection with any agricul-
462 tural or horticultural commodity after its delivery to a
463 terminal market for distribution for consumption;

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

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

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

478 (8) Service performed by a child under the age of

479 eighteen years in the employ of his father or mother;

480 (9) Service as an officer or member of a crew of an
481 American vessel, performed on or in connection with
482 such vessel, if the operating office, from which the
483 operations of the vessel operating on navigable waters
484 within or without the United States are ordinarily and
485 regularly supervised, managed, directed and controlled,
486 is without this state;

487 (10) Service performed by agents of mutual fund
488 broker-dealers or insurance companies, exclusive of
489 industrial insurance agents, or by agents of investment
490 companies, who are compensated wholly on a commis-
491 sion basis;

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

520 December thirty-one, one thousand nine hundred
521 seventy-seven, by an inmate of a custodial or penal
522 institution;

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

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

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

551 (15) Service in the employ of a governmental entity
552 referred to in subdivision (9) of the definition of
553 "employment" in this section if such service is per-
554 formed by an individual in the exercise of duties (i) as
555 an elected official; (ii) as a member of a legislative body,
556 or a member of the judiciary, of a state or political
557 subdivision; (iii) as a member of the state national guard
558 or air national guard; (iv) as an employee serving on a
559 temporary basis in case of fire, storm, snow, earthquake,

560 flood or similar emergency; (v) in a position which,
561 under or pursuant to the laws of this state, is designated
562 as (I) a major nontenured policy-making or advisory
563 position, or (II) a policy-making or advisory position the
564 performance of the duties of which ordinarily does not
565 require more than eight hours per week.

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

577 "Employment office" means a free employment office
578 or branch thereof, operated by this state, or any free
579 public employment office maintained as a part of a state
580 controlled system of public employment offices in any
581 other state.

582 "Fund" means the unemployment compensation fund
583 established by this chapter.

584 "Hospital" means an institution which has been
585 licensed, certified or approved by the state department
586 of health as a hospital.

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

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

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

594 (3) Provides an educational program for which it
595 awards a bachelor's or higher degree, or provides a
596 program which is acceptable for full credit toward such
597 a degree, or provides a program of post-graduate or

598 post-doctoral studies, or provides a program of training
599 to prepare students for gainful employment in a
600 recognized occupation; and

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

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

606 "Payments" means the money required to be paid or
607 that may be voluntarily paid into the state unemploy-
608 ment compensation fund as provided in article five of
609 this chapter.

610 "Separated from employment" means, for the pur-
611 poses of this chapter, the total severance, whether by
612 quitting, discharge or otherwise, of the employer-
613 employee relationship.

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

617 "Total and partial unemployment" means:

618 (1) An individual shall be deemed totally unemployed
619 in any week in which such individual is separated from
620 employment for an employing unit and during which he
621 performs no services and with respect to which no wages
622 are payable to him.

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

630 "Wages" means all remuneration for personal service,
631 including commissions, gratuities customarily received
632 by an individual in the course of employment from
633 persons other than the employing unit, as long as such
634 gratuities equal or exceed an amount of not less than
635 twenty dollars each month and which are required to

636 be reported to the employer by the employee, bonuses,
637 and the cash value of all remuneration in any medium
638 other than cash except for agricultural labor and
639 domestic service: *Provided*, That the term "wages" shall
640 not include:

641 (1) That part of the remuneration which, after
642 remuneration equal to three thousand dollars has been
643 paid to an individual by an employer with respect to
644 employment during any calendar year, is paid after
645 December thirty-one, one thousand nine hundred thirty-
646 nine, and prior to January one, one thousand nine
647 hundred forty-seven, to such individual by such em-
648 ployer with respect to employment during such calendar
649 year; or that part of the remuneration which, after
650 remuneration equal to three thousand dollars with
651 respect to employment after one thousand nine hundred
652 thirty-eight, has been paid to an individual by an
653 employer during any calendar year after one thousand
654 nine hundred forty-six, is paid to such individual by
655 such employer during such calendar year, except that
656 for the purposes of sections one, ten, eleven and thirteen,
657 article six of this chapter, all remuneration earned by
658 an individual in employment shall be credited to the
659 individual and included in his computation of base
660 period wages: *Provided*, That notwithstanding the
661 foregoing provisions, on and after January one, one
662 thousand nine hundred sixty-two, the term "wages" shall
663 not include:

664 That part of the remuneration which, after remuner-
665 ation equal to three thousand six hundred dollars has
666 been paid to an individual by an employer with respect
667 to employment during any calendar year, is paid during
668 any calendar year after one thousand nine hundred
669 sixty-one; and shall not include that part of remunera-
670 tion which, after remuneration equal to four thousand
671 two hundred dollars is paid during a calendar year after
672 one thousand nine hundred seventy-one; and shall not
673 include that part of remuneration which, after remun-
674 eration equal to six thousand dollars is paid during a
675 calendar year after one thousand nine hundred seventy-
676 seven; and shall not include that part of remuneration

677 which, after remuneration equal to eight thousand
678 dollars is paid during a calendar year after one
679 thousand nine hundred eighty, to an individual by an
680 employer or his predecessor with respect to employment
681 during any calendar year, is paid to such individual by
682 such employer during such calendar year unless that
683 part of the remuneration is subject to a tax under a
684 federal law imposing a tax against which credit may be
685 taken for contributions required to be paid into a state
686 unemployment fund. For the purposes of this subdivi-
687 sion (1), the term "employment" shall include service
688 constituting employment under any unemployment
689 compensation law of another state; or which as a
690 condition for full tax credit against the tax imposed by
691 the Federal Unemployment Tax Act is required to be
692 covered under this chapter; and, except, that for the
693 purposes of sections one, ten, eleven and thirteen, article
694 six of this chapter, all remuneration earned by an
695 individual in employment shall be credited to the
696 individual and included in his computation of base
697 period wages: *Provided*, That the remuneration paid to
698 an individual by an employer with respect to employ-
699 ment in another state or other states upon which
700 contributions were required of and paid by such
701 employer under an unemployment compensation law of
702 such other state or states shall be included as a part of
703 the remuneration equal to the amounts of three thou-
704 sand six hundred dollars or four thousand two hundred
705 dollars or six thousand dollars or eight thousand dollars
706 herein referred to. In applying such limitation on the
707 amount of remuneration that is taxable, an employer
708 shall be accorded the benefit of all or any portion of such
709 amount which may have been paid by its predecessor
710 or predecessors: *Provided, however*, That if the definition
711 of the term "wages" as contained in section 3306(b) of
712 the Internal Revenue Code of 1954 as amended, is
713 amended: (a) Effective prior to January one, one
714 thousand nine hundred sixty-two, to include remunera-
715 tion in excess of three thousand dollars, or (b) effective
716 on or after January one, one thousand nine hundred
717 sixty-two, to include remuneration in excess of three
718 thousand six hundred dollars, or (c) effective on or after

719 January one, one thousand nine hundred seventy-two, to
720 include remuneration in excess of four thousand two
721 hundred dollars, or (d) effective on or after January one,
722 one thousand nine hundred seventy-eight, to include
723 remuneration in excess of six thousand dollars, or (e)
724 effective on or after January one, one thousand nine
725 hundred eighty, to include remuneration in excess of
726 eight thousand dollars, paid to an individual by an
727 employer under the Federal Unemployment Tax Act
728 during any calendar year, wages for the purposes of this
729 definition shall include remuneration paid in a calendar
730 year to an individual by an employer subject to this
731 article or his predecessor with respect to employment
732 during any calendar year up to an amount equal to the
733 amount of remuneration taxable under the Federal
734 Unemployment Tax Act;

735 (2) The amount of any payment made after December
736 thirty-one, one thousand nine hundred fifty-two (includ-
737 ing any amount paid by an employer for insurance or
738 annuities, or into a fund, to provide for any such
739 payment), to, or on behalf of, an individual in its employ
740 or any of his dependents, under a plan or system
741 established by an employer which makes provision for
742 individuals in its employ generally (or for such individ-
743 uals and their dependents), or for a class or classes of
744 such individuals (or for a class or classes of such
745 individuals and their dependents), on account of (A)
746 retirement, or (B) sickness or accident disability
747 payments made to an employee under an approved state
748 workers' compensation law, or (C) medical or hospital-
749 ization expenses in connection with sickness or accident
750 disability, or (D) death;

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

757 (4) Any payment made after December thirty-one, one
758 thousand nine hundred fifty-two, by an employer on
759 account of sickness or accident disability, or medical or

760 hospitalization expenses in connection with sickness or
761 accident disability, to, or on behalf of, an individual in
762 its employ after the expiration of six calendar months
763 following the last calendar month in which such
764 individual worked for such employer;

765 (5) Any payment made after December thirty-one, one
766 thousand nine hundred fifty-two, by an employer to, or
767 on behalf of, an individual in its employ or his benefi-
768 ciary (A) from or to a trust described in section 401(a)
769 which is exempt from tax under section 501(a) of the
770 Federal Internal Revenue Code at the time of such
771 payments unless such payment is made to such individ-
772 ual as an employee of the trust as remuneration for
773 services rendered by such individual and not as a
774 beneficiary of the trust, or (B) under or to an annuity
775 plan which, at the time of such payment, is a plan
776 described in section 403(a) of the Federal Internal
777 Revenue Code;

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

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

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

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

799 (10) Vacation pay, severance pay or savings plans
800 received by an individual before or after becoming
801 totally or partially unemployed but earned prior to
802 becoming totally or partially unemployed: *Provided,*
803 That the term totally or partially unemployed shall not
804 be interpreted to include (1) employees who are on
805 vacation by reason of the request of the employees or
806 their duly authorized agent, for a vacation at a specific
807 time, and which request by the employees or their agent
808 is acceded to by their employer, (2) employees who are
809 on vacation by reason of the employer's request provided
810 they are so informed at least ninety days prior to such
811 vacation, or (3) employees who are on vacation by reason
812 of the employer's request where such vacation is in
813 addition to the regular vacation and the employer
814 compensates such employee at a rate equal to or
815 exceeding their regular daily rate of pay during the
816 vacation period.

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

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

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

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

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

1 (1) The commissioner shall maintain a separate
2 account for each employer, and shall credit his account
3 with all contributions paid by him prior to July first,
4 one thousand nine hundred sixty-one. On and after July

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

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

47 to the account of each such employer, to be that portion
48 of the total benefits paid such individual as the wages
49 paid him by such employer in the base period are to the
50 total wages paid him during his base period for insured
51 work by all his employers in the base period. For the
52 purposes of this section, no base period employer's
53 account shall be charged for benefits paid under this
54 chapter to a former employee, provided such base period
55 employer furnishes separation information within
56 fourteen days from the date the notice was mailed or
57 delivered, which results in a disqualification under the
58 provision set forth in subsection one, section three,
59 article six or subsection two, section three, article six of
60 this chapter or would have resulted in a disqualification
61 under such subsection except for a subsequent period of
62 covered employment by another employing unit.
63 Further, no contributory base period employer's expe-
64 rience rating account shall be charged for benefits paid
65 under this chapter to an individual who has been
66 continuously employed by that employer on a part-time
67 basis, if the part-time employment continues while the
68 individual is separated from other employment and is
69 otherwise eligible for benefits. One half of extended
70 benefits paid to an individual after July one, one
71 thousand nine hundred eighty-four, and subsequent
72 years are to be charged to the accounts of his employers,
73 except state and local government employers, in the
74 base period in the same manner provided for the
75 charging of regular benefits. Effective the first day of
76 January, one thousand nine hundred eighty-eight, the
77 entire state share of extended benefits paid to an
78 individual shall be charged to the accounts of his base
79 period employers.

80 (3) The commissioner shall, for each calendar year
81 hereafter, classify employers in accordance with their
82 actual experience in the payment of contributions on
83 their own behalf and with respect to benefits charged
84 against their accounts, with a view of fixing such
85 contribution rates as will reflect such experiences. For
86 the purpose of fixing such contribution rates for each
87 calendar year, the books of the department shall be
88 closed on July thirty-one of the preceding calendar year,

89 and any contributions thereafter paid, as well as
90 benefits thereafter paid with respect to compensable
91 weeks ending on or before June thirty of the preceding
92 calendar year, shall not be taken into account until the
93 next annual date for fixing contribution rates: *Provided*,
94 That if an employer has failed to furnish to the
95 commissioner on or before July thirty-one of such
96 preceding calendar year the wage information for all
97 past periods necessary for the computation of the
98 contribution rate, such employer's rate shall be, if it is
99 immediately prior to such July thirty-one, less than
100 three and three-tenths percent, increased to three and
101 three-tenths percent: *Provided, however*, That any
102 payment made or any information necessary for the
103 computation of a reduced rate furnished on or before the
104 termination of an extension of time for such payment or
105 reporting of such information granted pursuant to a
106 regulation of the commissioner authorizing such exten-
107 sion, shall be taken into account for the purposes of
108 fixing contribution rates: *Provided further*, That when
109 the time for filing any report or making any payment
110 required hereunder falls on Saturday, Sunday, or a legal
111 holiday, the due date shall be deemed to be the next
112 succeeding business day: *And provided further*, That
113 whenever, through mistake or inadvertence, erroneous
114 credits or charges are found to have been made to or
115 against the reserved account of any employer, the rate
116 shall be adjusted as of January one of the calendar year
117 in which such mistake or inadvertence is discovered, but
118 payments, made under any rate assigned prior to
119 January one of such year shall not be deemed to be
120 erroneously collected.

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

129 (5) State and local government employers are hereby

130 authorized to enter into joint accounts and to maintain
131 such joint account or accounts as if it or they constituted
132 a single employer's account or accounts.

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

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

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

1 Upon the determination of the facts by the commis-
2 sioner, an individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent work
4 voluntarily without good cause involving fault on the
5 part of the employer and until the individual returns to
6 covered employment and has been employed in covered
7 employment at least thirty working days.

8 For the purpose of this subdivision (1), an individual
9 shall not be deemed to have left his most recent work
10 voluntarily without good cause involving fault on the
11 part of the employer, if such individual leaves his most
12 recent work with an employer and if he in fact, within
13 a fourteen-day calendar period, does return to employ-
14 ment with the last preceding employer with whom he
15 was previously employed within the past year prior to
16 his return to work day, and which last preceding
17 employer, after having previously employed such
18 individual for thirty working days or more, laid off such
19 individual because of lack of work, which layoff
20 occasioned the payment of benefits under this chapter
21 or could have occasioned the payment of benefits under

22 this chapter had such individual applied for such
23 benefits. It is the intent of this paragraph to cause no
24 disqualification for benefits for such an individual who
25 complies with the foregoing set of requirements and
26 conditions. Further, for the purpose of this subdivision,
27 an individual shall not be deemed to have left his most
28 recent work voluntarily without good cause involving
29 fault on the part of the employer, if such individual was
30 compelled to leave his work for his own health-related
31 reasons and presents certification from a licensed
32 physician that his work aggravated, worsened, or will
33 worsen the individual's health problem.

34 (2) For the week in which he was discharged from his
35 most recent work for misconduct and the six weeks
36 immediately following such week; or for the week in
37 which he was discharged from his last thirty-day
38 employing unit for misconduct and the six weeks
39 immediately following such week. Such disqualification
40 shall carry a reduction in the maximum benefit amount
41 equal to six times the individual's weekly benefit.
42 However, if the claimant returns to work in covered
43 employment for thirty days during his benefit year,
44 whether or not such days are consecutive, the maximum
45 benefit amount shall be increased by the amount of the
46 decrease imposed under the disqualification; except
47 that:

48 If he were discharged from his most recent work for
49 one of the following reasons, or if he were discharged
50 from his last thirty days employing unit for one of the
51 following reasons: Misconduct consisting of willful
52 destruction of his employer's property; assault upon the
53 person of his employer or any employee of his employer;
54 if such assault is committed at such individual's place
55 of employment or in the course of employment; report-
56 ing to work in an intoxicated condition, or being
57 intoxicated while at work; arson, theft, larceny, fraud
58 or embezzlement in connection with his work; or any
59 other gross misconduct; he shall be and remain disqual-
60 ified for benefits until he has thereafter worked for at
61 least thirty days in covered employment: *Provided*, That
62 for the purpose of this subdivision the words "any other

63 gross misconduct" shall include, but not be limited to,
64 any act or acts of misconduct where the individual has
65 received prior written warning that termination of
66 employment may result from such act or acts.

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

77 (4) For a week in which his total or partial unemploy-
78 ment is due to a stoppage of work which exists because
79 of a labor dispute at the factory, establishment or other
80 premises at which he was last employed, unless the
81 commissioner is satisfied that he was not (one) partic-
82 ipating, financing, or directly interested in such dispute,
83 and (two) did not belong to a grade or class of workers
84 who were participating, financing or directly interested
85 in the labor dispute which resulted in the stoppage of
86 work. No disqualification under this subdivision shall be
87 imposed if the employees are required to accept wages,
88 hours or conditions of employment substantially less
89 favorable than those prevailing for similar work in the
90 locality, or if employees are denied the right of collective
91 bargaining under generally prevailing conditions, or if
92 an employer shuts down his plant or operation or
93 dismisses his employees in order to force wage reduc-
94 tion, changes in hours or working conditions.

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

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

106 (a) Wages in lieu of notice;

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

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

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

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

128 (8) (a) Benefits shall not be paid on the basis of
129 services performed by an alien unless such alien is an
130 individual who has been lawfully admitted for perman-
131 ent residence or otherwise is permanently residing in
132 the United States under color of law (including an alien
133 who is lawfully present in the United States as a result
134 of the application of the provisions of section 203 (a) (7)
135 or section 212 (d) (5) of the Immigration and Nationality
136 Act): *Provided*, That any modifications to the provisions
137 of section 3304 (a) (14) of the Federal Unemployment
138 Tax Act as provided by Public Law 94-566 which
139 specify other conditions or other effective date than
140 stated herein for the denial of benefits based on services
141 performed by aliens and which modifications are
142 required to be implemented under state law as a

143 condition for full tax credit against the tax imposed by
144 the Federal Unemployment Tax Act shall be deemed
145 applicable under the provisions of this section;

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

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

155 (9) For each week in which an individual is unem-
156 ployed because, having voluntarily left employment to
157 attend a school, college, university or other educational
158 institution, he is attending such school, college, univer-
159 sity or other educational institution, or is awaiting
160 entrance thereto or is awaiting the starting of a new
161 term or session thereof, and until the individual returns
162 to covered employment.

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

168 (11) For each week with respect to which he is
169 receiving or has received benefits under Title II of the
170 Social Security Act or similar payments under any act
171 of Congress and/or remuneration in the form of an
172 annuity, pension or other retirement pay from a base
173 period and/or chargeable employer or from any trust or
174 fund contributed to by a base period and/or chargeable
175 employer, the weekly benefit amount payable to such
176 individual for such week shall be reduced (but not below
177 zero) by the prorated weekly amount of said benefits,
178 payments and/or remuneration: *Provided*, That if such
179 amount of benefits is not a multiple of one dollar, it shall
180 be computed to the next lowest multiple of one dollar:
181 *Provided, however*, That there shall be no disqualifica-
182 tion if in the individual's base period there are no wages

183 which were paid by the base period and/or chargeable
184 employer paying such remuneration, or by a fund into
185 which the employer has paid during said base period.
186 Claimant may be required to certify as to whether or
187 not he is receiving or has been receiving remuneration
188 in the form of an annuity, pension or other retirement
189 pay from a base period and/or chargeable employer or
190 from a trust fund contributed to by a base period and/or
191 chargeable employer.

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

**§21A-6-10. Benefit rate — Total unemployment; annual
computation and publication of rates.**

1 Each eligible individual who is totally unemployed in
2 any week shall be paid benefits with respect to that
3 week at the weekly rate appearing in Column (C) in the
4 Benefit Table in this paragraph, on the line on which
5 in Column (A) there is indicated the employee's wage
6 class, except as otherwise provided under the term "total
7 and partial unemployment" in section three, article one
8 of this chapter. The employee's wage class shall be
9 determined by his base period wages as shown in
10 Column (B) in the Benefit Table. The right of an
11 employee to receive benefits shall not be prejudiced nor
12 the amount thereof be diminished by reason of failure
13 by an employer to pay either the wages earned by the
14 employee or the contribution due on such wages. An
15 individual who is totally unemployed but earns in excess
16 of twenty-five dollars as a result of odd-job or subsidiary
17 work, or is paid a bonus in any benefit week shall be
18 paid benefits for such week in accordance with the
19 provisions of this chapter pertaining to benefits for
20 partial unemployment.

21 The maximum benefit for each wage class shall be
 22 equal to twenty-six times the weekly benefit rate.

23 On and after July one, one thousand nine hundred
 24 eighty-five, and until July one, one thousand nine
 25 hundred eighty-nine, the maximum weekly benefit rate
 26 shall be seventy percent of the average weekly wage in
 27 West Virginia, which average weekly wage shall not
 28 exceed three hundred and twenty-two dollars per week;
 29 thereafter, the maximum benefit rate shall be sixty-six
 30 and two-thirds percent of the average weekly wage in
 31 West Virginia.

32 Beginning on July one, one thousand nine hundred
 33 eighty-nine, and on the first day of July of each
 34 succeeding year thereafter, the commissioner shall
 35 determine the maximum weekly benefit rate upon the
 36 basis of the formula set forth above and shall establish
 37 wage classes as are required, increasing or decreasing
 38 the amount of the base period wages required for each
 39 wage class by one hundred fifty dollars, establishing the
 40 weekly benefit rate for each wage class by rounded
 41 dollar amount to be fifty-five percent of one fifty-second
 42 of the median dollar amount of wages in the base period
 43 for such wage class, and establishing the maximum
 44 benefit for each wage class as an amount equal to
 45 twenty-six times the weekly benefit rate. The maximum
 46 weekly benefit rate, when computed by the commis-
 47 sioner, in accordance with the foregoing provisions, shall
 48 be rounded to the next lowest multiple of one dollar.

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BENEFIT TABLE

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A	B	C	Maximum
Wage	Wages in	Weekly	Benefit in
Class	Base Period	Benefit	Benefit Year
		Rate	for Total
			and/or
			Partial Un-
			employment
	Under \$ 2,200.00	Ineligible	
1	\$ 2,200.00 - 2,349.99	\$ 24.00	\$ 624.00
2	2,350.00 - 2,499.99	25.00	650.00
3	2,500.00 - 2,649.99	27.00	702.00
4	2,650.00 - 2,799.99	28.00	728.00

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62	5	2,800.00 -	2,949.99	30.00	780.00
63	6	2,950.00 -	3,099.99	31.00	806.00
64	7	3,100.00 -	3,249.99	33.00	858.00
65	8	3,250.00 -	3,399.99	35.00	910.00
66	9	3,400.00 -	3,549.99	36.00	936.00
67	10	3,550.00 -	3,699.99	38.00	988.00
68	11	3,700.00 -	3,849.99	39.00	1,014.00
69	12	3,850.00 -	3,999.99	41.00	1,066.00
70	13	4,000.00 -	4,149.99	43.00	1,118.00
71	14	4,150.00 -	4,299.99	44.00	1,144.00
72	15	4,300.00 -	4,449.99	46.00	1,196.00
73	16	4,450.00 -	4,599.99	47.00	1,222.00
74	17	4,600.00 -	4,749.99	49.00	1,274.00
75	18	4,750.00 -	4,899.99	51.00	1,326.00
76	19	4,900.00 -	5,049.99	52.00	1,352.00
77	20	5,050.00 -	5,199.99	54.00	1,404.00
78	21	5,200.00 -	5,349.99	55.00	1,430.00
79	22	5,350.00 -	5,499.99	57.00	1,482.00
80	23	5,500.00 -	5,649.99	58.00	1,508.00
81	24	5,650.00 -	5,799.99	60.00	1,560.00
82	25	5,800.00 -	5,949.99	62.00	1,612.00
83	26	5,950.00 -	6,099.99	63.00	1,638.00
84	27	6,100.00 -	6,249.99	65.00	1,690.00
85	28	6,250.00 -	6,399.99	66.00	1,716.00
86	29	6,400.00 -	6,549.99	68.00	1,768.00
87	30	6,550.00 -	6,699.99	70.00	1,820.00
88	31	6,700.00 -	6,849.99	71.00	1,846.00
89	32	6,850.00 -	6,999.99	73.00	1,898.00
90	33	7,000.00 -	7,149.99	74.00	1,924.00
91	34	7,150.00 -	7,299.99	76.00	1,976.00
92	35	7,300.00 -	7,449.99	78.00	2,028.00
93	36	7,450.00 -	7,599.99	79.00	2,054.00
94	37	7,600.00 -	7,749.99	81.00	2,106.00
95	38	7,750.00 -	7,899.99	82.00	2,132.00
96	39	7,900.00 -	8,049.99	84.00	2,184.00
97	40	8,050.00 -	8,199.99	85.00	2,210.00
98	41	8,200.00 -	8,349.99	87.00	2,262.00
99	42	8,350.00 -	8,499.99	89.00	2,314.00
100	43	8,500.00 -	8,649.99	90.00	2,340.00
101	44	8,650.00 -	8,799.99	92.00	2,392.00
102	45	8,800.00 -	8,949.99	93.00	2,418.00
103	46	8,950.00 -	9,099.99	95.00	2,470.00

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104	47	9,100.00 -	9,249.99	97.00	2,522.00
105	48	9,250.00 -	9,399.99	98.00	2,548.00
106	49	9,400.00 -	9,549.99	100.00	2,600.00
107	50	9,550.00 -	9,699.99	101.00	2,626.00
108	51	9,700.00 -	9,849.99	103.00	2,678.00
109	52	9,850.00 -	9,999.99	104.00	2,704.00
110	53	10,000.00 -	10,149.99	106.00	2,756.00
111	54	10,150.00 -	10,299.99	108.00	2,808.00
112	55	10,300.00 -	10,449.99	109.00	2,834.00
113	56	10,450.00 -	10,599.99	111.00	2,886.00
114	57	10,600.00 -	10,749.99	112.00	2,912.00
115	58	10,750.00 -	10,899.99	114.00	2,964.00
116	59	10,900.00 -	11,049.99	116.00	3,016.00
117	60	11,050.00 -	11,199.99	117.00	3,042.00
118	61	11,200.00 -	11,349.99	119.00	3,094.00
119	62	11,350.00 -	11,499.99	120.00	3,120.00
120	63	11,500.00 -	11,649.99	122.00	3,172.00
121	64	11,650.00 -	11,799.99	124.00	3,224.00
122	65	11,800.00 -	11,949.99	125.00	3,250.00
123	66	11,950.00 -	12,099.99	127.00	3,302.00
124	67	12,100.00 -	12,249.99	128.00	3,328.00
125	68	12,250.00 -	12,399.99	130.00	3,380.00
126	69	12,400.00 -	12,549.99	131.00	3,406.00
127	70	12,550.00 -	12,699.99	133.00	3,458.00
128	71	12,700.00 -	12,849.99	135.00	3,510.00
129	72	12,850.00 -	12,999.99	136.00	3,536.00
130	73	13,000.00 -	13,149.99	138.00	3,588.00
131	74	13,150.00 -	13,299.99	139.00	3,614.00
132	75	13,300.00 -	13,449.99	141.00	3,666.00
133	76	13,450.00 -	13,599.99	143.00	3,718.00
134	77	13,600.00 -	13,749.99	144.00	3,744.00
135	78	13,750.00 -	13,899.99	146.00	3,796.00
136	79	13,900.00 -	14,049.99	147.00	3,822.00
137	80	14,050.00 -	14,199.99	149.00	3,874.00
138	81	14,200.00 -	14,349.99	150.00	3,900.00
139	82	14,350.00 -	14,499.99	152.00	3,952.00
140	83	14,500.00 -	14,649.99	154.00	4,004.00
141	84	14,650.00 -	14,799.99	155.00	4,030.00
142	85	14,800.00 -	14,949.99	157.00	4,082.00
143	86	14,950.00 -	15,099.99	158.00	4,108.00
144	87	15,100.00 -	15,249.99	160.00	4,160.00
145	88	15,250.00 -	15,399.99	162.00	4,212.00

146	89	15,400.00 -	15,549.99	163.00	4,238.00
147	90	15,550.00 -	15,699.99	165.00	4,290.00
148	91	15,700.00 -	15,849.99	166.00	4,316.00
149	92	15,850.00 -	15,999.99	168.00	4,368.00
150	93	16,000.00 -	16,149.99	170.00	4,420.00
151	94	16,150.00 -	16,299.99	171.00	4,446.00
152	95	16,300.00 -	16,449.99	173.00	4,498.00
153	96	16,450.00 -	16,599.99	174.00	4,524.00
154	97	16,600.00 -	16,749.99	176.00	4,576.00
155	98	16,750.00 -	16,899.99	177.00	4,602.00
156	99	16,900.00 -	17,049.99	179.00	4,654.00
157	100	17,050.00 -	17,199.99	181.00	4,706.00
158	101	17,200.00 -	17,349.99	182.00	4,732.00
159	102	17,350.00 -	17,499.99	184.00	4,784.00
160	103	17,500.00 -	17,649.99	185.00	4,810.00
161	104	17,650.00 -	17,799.99	187.00	4,862.00
162	105	17,800.00 -	17,949.99	189.00	4,914.00
163	106	17,950.00 -	18,099.99	190.00	4,940.00
164	107	18,100.00 -	18,249.99	192.00	4,992.00
165	108	18,250.00 -	18,399.99	193.00	5,018.00
166	109	18,400.00 -	18,549.99	195.00	5,070.00
167	110	18,550.00 -	18,699.99	196.00	5,096.00
168	111	18,700.00 -	18,849.99	198.00	5,148.00
169	112	18,850.00 -	18,999.99	200.00	5,200.00
170	113	19,000.00 -	19,149.99	201.00	5,226.00
171	114	19,150.00 -	19,299.99	203.00	5,278.00
172	115	19,300.00 -	19,449.99	204.00	5,304.00
173	116	19,450.00 -	19,599.99	206.00	5,356.00
174	117	19,600.00 -	19,749.99	208.00	5,408.00
175	118	19,750.00 -	19,899.99	209.00	5,434.00
176	119	19,900.00 -	20,049.99	211.00	5,486.00
177	120	20,050.00 -	20,199.99	212.00	5,512.00
178	121	20,200.00 -	20,349.99	214.00	5,564.00
179	122	20,350.00 -	20,499.99	216.00	5,616.00
180	123	20,500.00 -	20,649.99	217.00	5,642.00
181	124	20,650.00 -	20,799.99	219.00	5,694.00
182	125	20,800.00 -	20,949.99	220.00	5,720.00
183	126	20,950.00 -	21,099.99	222.00	5,772.00
184	127	21,100.00 -	21,249.99	223.00	5,798.00
185	128	21,250.00 -	AND OVER	225.00	5,850.00

186 After he has established such wage classes, the
187 commissioner shall prepare and publish a table setting

188 forth such information.

189 Average weekly wage shall be computed by dividing
190 the number of employees in West Virginia earning
191 wages in covered employment into the total wages paid
192 to employees in West Virginia in covered employment,
193 and by further dividing said result by fifty-two, and
194 shall be determined from employer wage and contribu-
195 tion reports for the previous calendar year which are
196 furnished to the department on or before June one
197 following such calendar year. The average weekly wage,
198 as determined by the commissioner, shall be rounded to
199 the next higher dollar.

200 The computation and determination of rates as
201 aforesaid shall be completed annually before July one,
202 and any such new wage class, with its corresponding
203 wages in base period, weekly benefit rate, and maxi-
204 mum benefit in a benefit year established by the
205 commissioner in the foregoing manner effective on a
206 July one, shall apply only to a new claim established by
207 a claimant on and after said July one, and shall not
208 apply to continued claims of a claimant based on his new
209 claim established before said July one.

§21A-6-11. Benefit rate — Partial unemployment.

1 An eligible individual who is partially unemployed in
2 any week shall, upon claim therefor filed within such
3 time and in such manner as the commissioner may by
4 regulation prescribe, be paid benefits for such partial
5 unemployment in an amount equal to his weekly benefit
6 rate, as determined in accordance with section ten of
7 this article, less that part of wages from any source
8 payable or bonus paid to him with respect to such week
9 which is in excess of twenty-five dollars (notwithstand-
10 ing the reference to fifteen dollars in the definition of
11 partial unemployment contained in section three, article
12 one of this chapter): *Provided*, That such amount of
13 benefits if not a multiple of one dollar shall be computed
14 to the next lowest multiple of one dollar. Such partial
15 benefits shall be paid to such individual for the week
16 for which he is claiming benefits without regard to the
17 provisions of subdivision (1), section one of this article.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-4. Weekly extended benefit amount.

1 The weekly extended benefit amount payable to an
2 individual for a week of total unemployment in his
3 eligibility period shall be an amount equal to the weekly
4 benefit amount payable to him during his applicable
5 benefit year: *Provided*, That for any week during a
6 period in which federal payments to states under section
7 204 of the Federal-State Extended Unemployment
8 Compensation Act of 1970 are reduced under an order
9 issued under section 252 of the Balanced Budget and
10 Emergency Deficit Control Act of 1985, the weekly
11 extended benefit amount payable to an individual for a
12 week of total unemployment in his eligibility period
13 shall be reduced by a percentage equivalent to the
14 percentage of the reduction in the federal payment.
15 Such reduced weekly extended benefit amount, if not a
16 full dollar amount, shall be rounded to the nearest lower
17 full dollar amount.

§21A-6A-5. Total extended benefit amount.

1 The total extended benefit amount payable to any
2 eligible individual with respect to his applicable benefit
3 year shall be the least of the following amounts:

4 (1) Fifty percent of the total amount of regular
5 benefits which were payable to him under this chapter
6 in his applicable benefit year;

7 (2) Thirteen times his weekly benefit amount which
8 was payable to him under this chapter for a week of
9 total unemployment in the applicable benefit year:
10 *Provided*, That an individual filing for extended benefits
11 through the interstate benefit payment plan and
12 residing in a state where an extended benefit period is
13 not in effect shall be limited to payment for only the first
14 two weeks of such extended benefits: *Provided, however*,
15 That during any fiscal year in which federal payments
16 to states under section 204 of the Federal-State Ex-
17 tended Unemployment Compensation Act of 1970 are
18 reduced under an order issued under section 252 of the
19 Balanced Budget and Emergency Deficit Control Act of

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20 1985, the total extended benefit amount payable to an
21 individual with respect to his applicable benefit year
22 shall be reduced by an amount equal to the aggregate
23 of the reductions under section four, article six-a of this
24 chapter in the weekly amounts paid to the individual.

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

Gene O. Allison

Chairman Senate Committee

Bernard V. Kelly

Chairman House Committee

Originating in the House.

Takes effect from passage.

John C. Nichols

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Don Tamm

President of the Senate

Robert B. Taylor

Speaker of the House of Delegates

The within *Approved* this the *29th*
March
day of _____, 1988.

Arch A. Moore Jr.

Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/88

Time 3:57 p.m.

RECEIVED

1958 APR -3 10 3 10

OFFICE OF THE ATTORNEY GENERAL
STATE OF TEXAS