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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



ENROLLED

HOUSE BILL No. *2626*

(By Delegate *S. White, Manuel, Pettit,
Gallagher, Kessel, Lino and Tribett*)



Passed *April 10,* 1993

In Effect *From* Passage

ENROLLED
H. B. 2626

(By DELEGATES L. WHITE, MANUEL, PETHTEL,
GALLAGHER, KESSEL, PINO AND TRIBETT)

[Passed April 10, 1993; in effect 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; and to amend and reenact section one, article six-a of said chapter, all relating to unemployment compensation coverage and benefits.

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; and that section one, article six-a of said chapter 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 the thirtieth day of June of
9 any calendar 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 considered to be a valid claim
34 within the purposes of this definition if the individual
35 has been paid wages in his base period sufficient to
36 make him eligible for benefits under the provisions of
37 this chapter.

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

40 "Board" means board of review.

41 "Calendar quarter" means the period of three consec-
42 utive calendar months ending on the thirty-first day of
43 March, the thirtieth day of June, the thirtieth day of
44 September, the thirty-first day of December, or the
45 equivalent thereof as the commissioner may by regula-
46 tion prescribe.

47 "Commissioner" means the bureau of employment

48 programs' commissioner.

49 "Computation date" means the thirtieth day of June
50 the year immediately preceding the first day of January
51 on which an employer's contribution rate becomes
52 effective.

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

66 "Employer" means:

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

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

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

83 (4) Any employing unit which, after the thirty-first
84 day of December, one thousand nine hundred sixty-
85 three, and until the first day of January, one thousand
86 nine hundred seventy-two, in any one calendar quarter,

87 in any calendar year, has in employment four or more
88 individuals and has paid wages for employment in the
89 total sum of five thousand dollars or more, or which,
90 after such date, has paid wages for employment in any
91 calendar year in the sum total of twenty thousand
92 dollars or more;

93 (5) Any employing unit which, after the thirty-first
94 day of December, one thousand nine hundred sixty-
95 three, and until the first day of January, one thousand
96 nine hundred seventy-two, in any three-week period, in
97 any calendar year, has in employment ten or more
98 individuals;

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

102 (7) Any employing unit which, after the thirty-first
103 day of December, one thousand nine hundred seventy-
104 one, (i) in any calendar quarter in either the current or
105 preceding calendar year paid for service in employment
106 wages of one thousand five hundred dollars or more, or
107 (ii) for some portion of a day in each of twenty different
108 calendar weeks, whether or not such weeks were
109 consecutive, in either the current or the preceding
110 calendar year had in employment at least one individual
111 (irrespective of whether the same individual was in
112 employment in each such day) except as provided in
113 subdivisions (11) and (12) hereof;

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

119 (9) Any employing unit for which service in employ-
120 ment, as defined in subdivision (10) of the definition of
121 "employment" in this section, is performed after the
122 thirty-first day of December, one thousand nine hundred
123 seventy-one;

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

126 (9) of the definition of "employment" in this section, is
127 performed after the thirty-first day of December, one
128 thousand nine hundred seventy-seven;

129 (11) Any employing unit for which agricultural labor,
130 as defined in subdivision (12) of the definition of
131 "employment" in this section, is performed after the
132 thirty-first day of December, one thousand nine hundred
133 seventy-seven; or

134 (12) Any employing unit for which domestic service
135 in employment, as defined in subdivision (13) of the
136 definition of "employment" in this section, is performed
137 after the thirty-first day of December, one thousand nine
138 hundred seventy-seven.

139 "Employment", subject to the other provisions of this
140 section, means:

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

144 (2) Any service performed prior to the first day of
145 January, one thousand nine hundred seventy-two, which
146 was employment as defined in this section prior to such
147 date and, subject to the other provisions of this section,
148 service performed after the thirty-first day of De-
149 cember, one thousand nine hundred seventy-one, by an
150 employee, as defined in section 3306 (i) of the Federal
151 Unemployment Tax Act, including service in interstate
152 commerce;

153 (3) Any service performed prior to the first day of
154 January, one thousand nine hundred seventy-two, which
155 was employment as defined in this section prior to such
156 date and, subject to the other provisions of this section,
157 service performed after the thirty-first day of De-
158 cember, one thousand nine hundred seventy-one, includ-
159 ing service in interstate commerce, by any officer of a
160 corporation;

161 (4) An individual's entire service, performed within or
162 both within and without this state if: (a) The service is
163 localized in this state, or (b) the service is not localized
164 in any state but some of the service is performed in this

165 state and (i) the base of operations, or, if there is no base
166 of operations, then the place from which such service is
167 directed or controlled, is in this state; or (ii) the base of
168 operations or place from which such service is directed
169 or controlled is not in any state in which some part of
170 the service is performed but the individual's residence
171 is in this state;

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

183 (6) Service is localized within a state, if: (a) The
184 service is performed entirely within such state; or (b) the
185 service is performed both within and without such state,
186 but the service performed without such state is inci-
187 dental to the individual's service within this state, as, for
188 example, is temporary or transitory in nature or consists
189 of isolated transactions;

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

203 (8) All service performed by an officer or member of
204 the crew of an American vessel (as defined in section

205 three hundred five of an act of Congress entitled Social
206 Security Act Amendment of 1946, approved the tenth
207 day of August, one thousand nine hundred forty-six), on
208 or in connection with such vessel, provided that the
209 operating office, from which the operations of such
210 vessel operating on navigable waters within and without
211 the United States is ordinarily and regularly supervised,
212 managed, directed and controlled, is within this state;

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

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

237 (c) Service performed after the thirty-first day of
238 December, one thousand nine hundred seventy-seven, in
239 the employ of a nonprofit educational institution which
240 is not an institution of higher education;

241 (10) Service performed after the thirty-first day of
242 December, one thousand nine hundred seventy-one, by
243 an individual in the employ of a religious, charitable,
244 educational or other organization but only if the

245 following conditions are met:

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

249 (b) The organization had four or more individuals in
250 employment for some portion of a day in each of twenty
251 different weeks, whether or not such weeks were
252 consecutive, within either the current or preceding
253 calendar year, regardless of whether they were em-
254 ployed at the same moment of time;

255 (11) Service of an individual who is a citizen of the
256 United States, performed outside the United States
257 after the thirty-first day of December, one thousand nine
258 hundred seventy-one (except in Canada and in the case
259 of Virgin Islands after the thirty-first day of December,
260 one thousand nine hundred seventy-one, and before the
261 first day of January, the year following the year in
262 which the secretary of labor approves for the first time
263 an unemployment insurance law submitted to him by
264 the Virgin Islands for approval) in the employ of an
265 American employer (other than service which is
266 considered "employment" under the provisions of
267 subdivision (4), (5) or (6) of this definition of "employ-
268 ment" or the parallel provisions of another state's law)
269 if:

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

272 (b) The employer has no place of business in the
273 United States, but (i) the employer is an individual who
274 is a resident of this state; or (ii) the employer is a
275 corporation which is organized under the laws of this
276 state; or (iii) the employer is a partnership or a trust
277 and the number of the partners or trustees who are
278 residents of this state is greater than the number who
279 are residents of any one other state; or

280 (c) None of the criteria of subparagraphs (a) and (b)
281 of this subdivision (11) is met but the employer has
282 elected coverage in this state or, the employer having
283 failed to elect coverage in any state, the individual has

284 filed a claim for benefits, based on such service, under
285 the law of this state.

286 An "American employer", for purposes of this subdivi-
287 sion (11), means a person who is (i) an individual who
288 is a resident of the United States; or (ii) a partnership
289 if two thirds or more of the partners are residents of
290 the United States; or (iii) a trust, if all of the trustees
291 are residents of the United States; or (iv) a corporation
292 organized under the laws of the United States or of any
293 state;

294 (12) Service performed after the thirty-first day of
295 December, one thousand nine hundred seventy-seven, by
296 an individual in agricultural labor as defined in
297 subdivision (5) of the exclusions from employment in
298 this section when:

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

313 (b) Such service is not performed in agricultural labor
314 if performed before the first day of January, one
315 thousand nine hundred ninety-five, by an individual who
316 is an alien admitted to the United States to perform
317 service in agricultural labor pursuant to sections 214 (c)
318 and 101 (a) (15) (H) of the Immigration and Nationality
319 Act;

320 (c) For the purposes of the definition of employment,
321 any individual who is a member of a crew furnished by
322 a crew leader to perform service in agricultural labor
323 for any other person shall be treated as an employee of

324 such crew leader: (i) If such crew leader holds a valid
325 certificate of registration under the Migrant and
326 Seasonal Agricultural Worker Protection Act; or
327 substantially all the members of such crew operate or
328 maintain tractors, mechanized harvesting or crop-
329 dusting equipment, or any other mechanized equipment,
330 which is provided by such crew leader; and (ii) if such
331 individual is not an employee of such other person
332 within the meaning of subdivision (7) of the definition
333 of employer;

334 (d) For the purposes of this subdivision (12), in the
335 case of any individual who is furnished by a crew leader
336 to perform service in agricultural labor for any other
337 person and who is not treated as an employee of such
338 crew leader under subparagraph (c) of this subdivision
339 (12): (i) Such other person and not the crew leader shall
340 be treated as the employer of such individual; and (ii)
341 such other person shall be treated as having paid cash
342 remuneration to such individual in an amount equal to
343 the amount of cash remuneration paid to such individual
344 by the crew leader (either on his own behalf or on behalf
345 of such other person) for the service in agricultural
346 labor performed for such other person; and

347 (e) For the purposes of this subdivision (12), the term
348 "crew leader" means an individual who: (i) Furnishes
349 individuals to perform service in agricultural labor for
350 any other person; (ii) pays (either on his own behalf or
351 on behalf of such other person) the individuals so
352 furnished by him for the service in agricultural labor
353 performed by them, and (iii) has not entered into a
354 written agreement with such other person under which
355 such individual is designated as an employee of such
356 other person;

357 (13) The term "employment" includes domestic service
358 after the thirty-first day of December, one thousand nine
359 hundred seventy-seven, in a private home, local college
360 club or local chapter of a college fraternity or sorority
361 performed for a person who paid cash remuneration of
362 one thousand dollars or more after the thirty-first day
363 of December, one thousand nine hundred seventy-seven,
364 in any calendar quarter in the current calendar year or

365 the preceding calendar year to individuals employed in
366 such domestic service.

367 Notwithstanding the foregoing definition of "employ-
368 ment", if the services performed during one half or more
369 of any pay period by an employee for the person
370 employing him constitute employment, all the services
371 of such employee for such period are employment; but
372 if the services performed during more than one half of
373 any such pay period by an employee for the person
374 employing him do not constitute employment, then none
375 of the services of such employee for such period are
376 employment.

377 The term "employment" does not include:

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

383 (2) Service performed directly in the employ of
384 another state, or its political subdivisions, except as
385 otherwise provided in paragraph (a), subdivision (9) of
386 the definition of "employment", until the thirty-first day
387 of December, one thousand nine hundred seventy-seven;

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

405 be refunded by the commissioner from the fund in the
406 same manner and within the same period as is provided
407 in section nineteen, article five of this chapter, with
408 respect to payments erroneously collected;

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

426 (5) Service performed by an individual in agricultural
427 labor, except as provided in subdivision (12) of the
428 definition of "employment" in this section. For purposes
429 of this subdivision (5), the term "agricultural labor"
430 includes all services performed:

431 (a) On a farm, in the employ of any person, in
432 connection with cultivating the soil, or in connection
433 with raising or harvesting any agricultural or horticul-
434 tural commodity, including the raising, shearing,
435 feeding, caring for, training and management of
436 livestock, bees, poultry, and fur-bearing animals and
437 wildlife;

438 (b) In the employ of the owner or tenant or other
439 operator of a farm, in connection with the operation,
440 management, conservation, improvement or mainte-
441 nance of such farm and its tools and equipment, or in
442 salvaging timber or clearing land of brush and other
443 debris left by a hurricane, if the major part of such
444 service is performed on a farm;

445 (c) In connection with the production or harvesting of
446 any commodity defined as an agricultural commodity in
447 section fifteen (g) of the Agricultural Marketing Act, as
448 amended, or in connection with the ginning of cotton,
449 or in connection with the operation or maintenance of
450 ditches, canals, reservoirs or waterways, not owned or
451 operated for profit, used exclusively for supplying and
452 storing water for farming purposes;

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

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

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

484 (7) Service performed by an individual in the employ

485 of his son, daughter or spouse;

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

488 (9) Service as an officer or member of a crew of an
489 American vessel, performed on or in connection with
490 such vessel, if the operating office, from which the
491 operations of the vessel operating on navigable waters
492 within or without the United States are ordinarily and
493 regularly supervised, managed, directed and controlled,
494 is without this state;

495 (10) Service performed by agents of mutual fund
496 broker-dealers or insurance companies, exclusive of
497 industrial insurance agents, or by agents of investment
498 companies, who are compensated wholly on a commis-
499 sion basis;

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

525 first day of January, one thousand nine hundred
526 seventy-eight, for a hospital in a state prison or other
527 state correctional institution by an inmate of the prison
528 or correctional institution, and after the thirty-first day
529 of December, one thousand nine hundred seventy-seven,
530 by an inmate of a custodial or penal institution;

531 (12) Service performed in the employ of a school,
532 college or university, if such service is performed: (i) By
533 a student who is enrolled and is regularly attending
534 classes at such school, college or university, or (ii) by the
535 spouse of such a student, if such spouse is advised, at
536 the time such spouse commences to perform such
537 service, that: (I) The employment of such spouse to
538 perform such service is provided under a program to
539 provide financial assistance to such student by such
540 school, college or university; and (II) such employment
541 will not be covered by any program of unemployment
542 insurance;

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

556 (14) Service performed in the employ of a hospital, if
557 such service is performed by a patient of the hospital,
558 as defined in this section; and

559 (15) Service in the employ of a governmental entity
560 referred to in subdivision (9) of the definition of
561 "employment" in this section if such service is per-
562 formed by an individual in the exercise of duties (i) as
563 an elected official; (ii) as a member of a legislative body,
564 or a member of the judiciary, of a state or political

565 subdivision; (iii) as a member of the state national guard
566 or air national guard; (iv) as an employee serving on a
567 temporary basis in case of fire, storm, snow, earthquake,
568 flood or similar emergency; (v) in a position which,
569 under or pursuant to the laws of this state, is designated
570 as: (I) A major nontenured policymaking or advisory
571 position, or (II) a policymaking or advisory position the
572 performance of the duties of which ordinarily does not
573 require more than eight hours per week.

574 Notwithstanding the foregoing exclusions from the
575 definition of "employment", services, except agricultural
576 labor and domestic service in a private home, are in
577 employment if with respect to such services a tax is
578 required to be paid under any federal law imposing a
579 tax against which credit may be taken for contributions
580 required to be paid into a state unemployment compen-
581 sation fund, or which as a condition for full tax credit
582 against the tax imposed by the Federal Unemployment
583 Tax Act are required to be covered under this chapter.

584 "Employment office" means a free employment office
585 or branch thereof, operated by this state, or any free
586 public employment office maintained as a part of a state
587 controlled system of public employment offices in any
588 other state.

589 "Fund" means the unemployment compensation fund
590 established by this chapter.

591 "Hospital" means an institution which has been
592 licensed, certified or approved by the state department
593 of health as a hospital.

594 "Institution of higher education" means an educational
595 institution which:

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

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

601 (3) Provides an educational program for which it
602 awards a bachelor's or higher degree, or provides a

603 program which is acceptable for full credit toward such
604 a degree, or provides a program of post-graduate or
605 post-doctoral studies, or provides a program of training
606 to prepare students for gainful employment in a
607 recognized occupation; and

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

609 Notwithstanding any of the foregoing provisions of
610 this definition all colleges and universities in this state
611 are institutions of higher education for purposes of this
612 section.

613 "Payments" means the money required to be paid or
614 that may be voluntarily paid into the state unemploy-
615 ment compensation fund as provided in article five of
616 this chapter.

617 "Separated from employment" means, for the pur-
618 poses of this chapter, the total severance, whether by
619 quitting, discharge or otherwise, of the employer-
620 employee relationship.

621 "State" includes, in addition to the states of the United
622 States, Puerto Rico, District of Columbia and the Virgin
623 Islands.

624 "Total and partial unemployment" means:

625 (1) An individual is totally unemployed in any week
626 in which such individual is separated from employment
627 for an employing unit and during which he performs no
628 services and with respect to which no wages are payable
629 to him.

630 (2) An individual who has not been separated from
631 employment is partially unemployed in any week in
632 which due to lack of full-time work wages payable to
633 him are less than his weekly benefit amount plus
634 twenty-five dollars: *Provided*, That said individual must
635 have earnings of at least twenty-six dollars.

636 "Wages" means all remuneration for personal service,
637 including commissions, gratuities customarily received
638 by an individual in the course of employment from
639 persons other than the employing unit, as long as such
640 gratuities equal or exceed an amount of not less than

641 twenty dollars each month and which are required to
642 be reported to the employer by the employee, bonuses,
643 and the cash value of all remuneration in any medium
644 other than cash except for agricultural labor and
645 domestic service: *Provided*, That the term "wages" does
646 not include:

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

670 That part of the remuneration which, after remuneration
671 equal to three thousand six hundred dollars has
672 been paid to an individual by an employer with respect
673 to employment during any calendar year, is paid during
674 any calendar year after one thousand nine hundred
675 sixty-one; and shall not include that part of remuneration
676 which, after remuneration equal to four thousand
677 two hundred dollars is paid during a calendar year after
678 one thousand nine hundred seventy-one; and shall not
679 include that part of remuneration which, after remuneration
680 equal to six thousand dollars is paid during a
681 calendar year after one thousand nine hundred seventy-

682 seven; and shall not include that part of remuneration
683 which, after remuneration equal to eight thousand
684 dollars is paid during a calendar year after one
685 thousand nine hundred eighty, to an individual by an
686 employer or his predecessor with respect to employment
687 during any calendar year, is paid to such individual by
688 such employer during such calendar year unless that
689 part of the remuneration is subject to a tax under a
690 federal law imposing a tax against which credit may be
691 taken for contributions required to be paid into a state
692 unemployment fund. For the purposes of this subdivi-
693 sion (1), the term "employment" includes service
694 constituting employment under any unemployment
695 compensation law of another state; or which as a
696 condition for full tax credit against the tax imposed by
697 the Federal Unemployment Tax Act is required to be
698 covered under this chapter; and, except that for the
699 purposes of sections one, ten, eleven and thirteen, article
700 six of this chapter, all remuneration earned by an
701 individual in employment shall be credited to the
702 individual and included in his computation of base
703 period wages: *Provided*, That the remuneration paid to
704 an individual by an employer with respect to employ-
705 ment in another state or other states upon which
706 contributions were required of and paid by such
707 employer under an unemployment compensation law of
708 such other state or states shall be included as a part of
709 the remuneration equal to the amounts of three thou-
710 sand six hundred dollars or four thousand two hundred
711 dollars or six thousand dollars or eight thousand dollars
712 herein referred to. In applying such limitation on the
713 amount of remuneration that is taxable, an employer
714 shall be accorded the benefit of all or any portion of such
715 amount which may have been paid by its predecessor
716 or predecessors: *Provided, however*, That if the definition
717 of the term "wages" as contained in section 3306 (b) of
718 the Internal Revenue Code of 1954, as amended, is
719 amended: (a) Effective prior to the first day of January,
720 one thousand nine hundred sixty-two, to include remun-
721 eration in excess of three thousand dollars, or (b)
722 effective on or after the first day of January, one
723 thousand nine hundred sixty-two, to include remunera-

724 tion in excess of three thousand six hundred dollars, or
725 (c) effective on or after the first day of January, one
726 thousand nine hundred seventy-two, to include remun-
727 eration in excess of four thousand two hundred dollars;
728 or (d) effective on or after the first day of January, one
729 thousand nine hundred seventy-eight, to include remun-
730 eration in excess of six thousand dollars; or (e) effective
731 on or after the first day of January, one thousand nine
732 hundred eighty, to include remuneration in excess of
733 eight thousand dollars, paid to an individual by an
734 employer under the Federal Unemployment Tax Act
735 during any calendar year, wages for the purposes of this
736 definition shall include remuneration paid in a calendar
737 year to an individual by an employer subject to this
738 article or his predecessor with respect to employment
739 during any calendar year up to an amount equal to the
740 amount of remuneration taxable under the Federal
741 Unemployment Tax Act;

742 (2) The amount of any payment made after the thirty-
743 first day of December, one thousand nine hundred fifty-
744 two (including any amount paid by an employer for
745 insurance or annuities, or into a fund, to provide for any
746 such payment), to, or on behalf of, an individual in its
747 employ or any of his dependents, under a plan or system
748 established by an employer which makes provision for
749 individuals in its employ generally (or for such individ-
750 uals and their dependents), or for a class or classes of
751 such individuals (or for a class or classes of such
752 individuals and their dependents), on account of: (A)
753 Retirement; or (B) sickness or accident disability
754 payments made to an employee under an approved state
755 workers' compensation law; or (C) medical or hospital-
756 ization expenses in connection with sickness or accident
757 disability; or (D) death;

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

764 (4) Any payment made after the thirty-first day of

765 December, one thousand nine hundred fifty-two, by an
766 employer on account of sickness or accident disability,
767 or medical or hospitalization expenses in connection
768 with sickness or accident disability, to, or on behalf of,
769 an individual in its employ after the expiration of six
770 calendar months following the last calendar month in
771 which such individual worked for such employer;

772 (5) Any payment made after the thirty-first day of
773 December, one thousand nine hundred fifty-two, by an
774 employer to, or on behalf of, an individual in its employ
775 or his beneficiary: (A) From or to a trust described in
776 section 401 (a) which is exempt from tax under section
777 501 (a) of the Federal Internal Revenue Code at the time
778 of such payments unless such payment is made to such
779 individual as an employee of the trust as remuneration
780 for services rendered by such individual and not as a
781 beneficiary of the trust; or (B) under or to an annuity
782 plan which, at the time of such payment, is a plan
783 described in section 403 (a) of the Federal Internal
784 Revenue Code;

785 (6) The payment by an employer of the tax imposed
786 upon an employer under section 3101 of the Federal
787 Internal Revenue Code with respect to remuneration
788 paid to an employee for domestic service in a private
789 home or the employer of agricultural labor;

790 (7) Remuneration paid by an employer after the
791 thirty-first day of December, one thousand nine hundred
792 fifty-two, in any medium other than cash to an individ-
793 ual in its employ for service not in the course of the
794 employer's trade or business;

795 (8) Any payment (other than vacation or sick pay)
796 made by an employer after the thirty-first day of
797 December, one thousand nine hundred fifty-two, to an
798 individual in its employ after the month in which he
799 attains the age of sixty-five, if he did not work for the
800 employer in the period for which such payment is made;

801 (9) Payments, not required under any contract of hire,
802 made to an individual with respect to his period of
803 training or service in the armed forces of the United
804 States by an employer by which such individual was

805 formerly employed; and

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

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

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

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

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

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions.

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

- 3 (1) "Extended benefit period" means a period which:
4 (A) Begins with the third week after a week for which
5 there is a state "on" indicator; and
6 (B) Ends with either of the following weeks, which-
7 ever occurs later:
8 (i) The third week after the first week for which there
9 is a state "off" indicator; or
10 (ii) The thirteenth consecutive week of such period.

11 Notwithstanding the foregoing provisions of this
12 section, no extended benefit period may begin by reason
13 of a state "on" indicator before the fourteenth week
14 following the end of a prior extended benefit period
15 which was in effect with respect to this state, and no
16 extended benefit period may become effective in this
17 state prior to the sixty-first day following the date of
18 enactment of the Federal-State Extended Unemploy-
19 ment Compensation Act of 1970, and, within the period
20 beginning on such sixty-first day and ending on
21 December thirty-one, one thousand nine hundred
22 seventy-one, an extended benefit period may become
23 effective and be terminated in this state solely by reason
24 of a state "on" and state "off" indicator, respectively.

25 (2) There is a "state 'on' indicator" for this state for
26 a week if the commissioner determines, in accordance
27 with the regulations of the United States secretary of
28 labor, that for the period consisting of such week and
29 the immediately preceding twelve weeks, the rate of
30 insured unemployment (not seasonally adjusted) under
31 this article:

32 (A) Equaled or exceeded one hundred twenty percent
33 of the average of such rates for the corresponding
34 thirteen-week period ending in each of the preceding
35 two calendar years, and

36 (B) Equaled or exceeded four percent.

37 (C) The determination of whether there has been a
38 state "on" indicator beginning any extended benefit
39 period shall be made hereunder as if subsection (2) did
40 not contain paragraph (A) thereof, but only if the

41 commissioner determines that the rate of insured
42 unemployment (not seasonally adjusted) equals or
43 exceeds five percent.

44 (3) After the twenty-fifth day of September, one
45 thousand nine hundred eighty-two, there is a "state 'on'
46 indicator" for this state for a week if the commissioner
47 determines, in accordance with the regulations of the
48 United States secretary of labor, that for the period
49 consisting of such week and the immediately preceding
50 twelve weeks, the rate of insured unemployment (not
51 seasonally adjusted) under this article:

52 (A) Equaled or exceeded one hundred twenty percent
53 of the average of such rates for the corresponding
54 thirteen-week period ending in each of the preceding
55 two calendar years, and

56 (B) Equaled or exceeded five percent.

57 (C) An extended benefit period shall be made here-
58 under as if subsection (3) did not contain paragraph (A)
59 thereof, but only if the commissioner determines that
60 the rate of insured unemployment (not seasonally
61 adjusted) equals or exceeds six percent.

62 (4) There is a state "off" indicator for a week if, for
63 the period consisting of such week and the immediately
64 preceding twelve weeks, either subsection (2) or (3) were
65 not satisfied.

66 (5) "Rate of insured unemployment," for purposes of
67 subdivisions (2) and (3) of this section, means the
68 percentage derived by dividing:

69 (A) The average weekly number of individuals filing
70 claims for regular compensation in this state for weeks
71 of unemployment with respect to the most recent
72 thirteen-consecutive-week period, as determined by the
73 commissioner on the basis of his reports to the United
74 States secretary of labor, by

75 (B) The average monthly employment covered under
76 this chapter for the first four of the most recent six
77 completed calendar quarters ending before the end of
78 such thirteen-week period.

79 (6) "Regular benefits" means benefits payable to an
80 individual under this chapter or under any other state
81 law (including benefits payable to federal civilian
82 employees and to ex-servicemen pursuant to 5 U.S.C.,
83 chapter 85) other than extended benefits.

84 (7) "Extended benefits" means benefits (including
85 benefits payable to federal civilian employees and to ex-
86 servicemen pursuant to 5 U.S.C., chapter 85) payable to
87 an individual under the provisions of this article for
88 weeks of unemployment in his eligibility period.

89 (8) "Eligibility period" of an individual means the
90 period consisting of the weeks in his benefit year which
91 begin in an extended benefit period and, if his benefit
92 year ends within such extended benefit period, any
93 weeks thereafter which begin in such period.

94 (9) "Exhaustee" means an individual who, with
95 respect to any week of unemployment in his eligibility
96 period:

97 (A) Has received, prior to such week, all of the regular
98 benefits which were available to him under this chapter
99 or any other state law (including dependents' allowances
100 and benefits payable to federal civilian employees and
101 ex-servicemen under 5 U.S.C., chapter 85) in his current
102 benefit year that includes such week: *Provided*, That for
103 the purposes of this subdivision, an individual shall be
104 deemed to have received all of the regular benefits
105 which were available to him although (i) as a result of
106 a pending appeal with respect to wages and/or employ-
107 ment which were not considered in the original moneta-
108 ry determination in his benefit year, he may subse-
109 quently be determined to be entitled to added regular
110 benefits, or (ii) he may be entitled to regular benefits
111 with respect to future weeks of unemployment, but such
112 benefits are not payable with respect to such week of
113 unemployment by reason of the provisions of section one-
114 a, article six of this chapter; or

115 (B) His benefit year having expired prior to such
116 week, has no, or insufficient, wages and/or employment
117 on the basis of which he could establish a new benefit
118 year which would include such week; and

119 (C) Has no right to unemployment benefits or allow-
120 ances, as the case may be, under the Railroad Unem-
121 ployment Insurance Act, the Trade Expansion Act of
122 1962, the Automotive Products Trade Act of 1965 and
123 such other federal laws as are specified in regulations
124 issued by the United States secretary of labor; and has
125 not received and is not seeking unemployment benefits
126 under the unemployment compensation law of the
127 Virgin Islands or of Canada; but if he is seeking such
128 benefits and the appropriate agency finally determines
129 that he is not entitled to benefits under such law he is
130 considered an exhaustee.

131 (10) "State law" means the unemployment insurance
132 law of any state, approved by the United States
133 secretary of labor under section 3304 of the Internal
134 Revenue Code of 1954.

135 (11) No individual shall be entitled to extended
136 benefits during a period of unemployment if he was
137 disqualified under the provisions of subdivision (1),(2) or
138 (3) of section three, article six of this chapter, which
139 disqualification shall not be terminated until such
140 individual has returned to covered employment and has
141 been employed in covered employment for at least thirty
142 working days.

143 (12) (A) Notwithstanding any other provisions of this
144 section, an individual shall be ineligible for payment of
145 extended benefits for any week of unemployment in his
146 eligibility period if the commissioner finds that during
147 such period:

148 (i) He failed to accept any offer of suitable work or
149 failed to apply for any suitable work (as defined under
150 subdivision (12) (C) of this section), to which he was
151 referred by the commissioner; or

152 (ii) He failed to actively engage in seeking work as
153 prescribed under subdivision (12) (E) of this section.

154 (B) Any individual who has been found ineligible for
155 extended benefits by reason of the provisions in
156 subdivision (12) (A) of this section shall also be denied
157 benefits beginning with the first day of the week

158 following the week in which such failure occurred and
159 until he has been employed in each of four subsequent
160 weeks (whether or not consecutive) and has earned
161 remuneration equal to not less than four times the
162 extended weekly benefit amount;

163 (C) For purposes of this subdivision (12) (A) (i) of this
164 section, the term "suitable work" means, with respect to
165 any individual, any work which is within such individ-
166 ual's capabilities: *Provided*, That the gross average
167 weekly remuneration payable for the work must exceed
168 the sum of:

169 (i) The individual's average weekly benefit amount (as
170 determined under subdivision (12)(D) of this section)
171 plus;

172 (ii) The amount, if any, of supplemental unemploy-
173 ment benefits (as defined in section 501 (c)(17)(D) of the
174 Internal Revenue Code of 1954) payable to such individ-
175 ual for such week; and further,

176 (iii) Pays wages equal to the higher of:

177 (I) The minimum wages provided by section (6)(a)(1)
178 of the Fair Labor Standards Act of 1938, without regard
179 to any exemption; or

180 (II) The state or local minimum wage;

181 (iv) Provided that no individual shall be denied
182 extended benefits for failure to accept an offer or
183 referral to any job which meets the definition of
184 suitability as described above if:

185 (I) The position was not offered to such individual in
186 writing and was not listed with the employment service;
187 or

188 (II) Such failure could not result in a denial of benefits
189 under the definition of suitable work for regular benefit
190 claimants in section five, article six of this chapter, to
191 the extent that the criteria of suitability in that section
192 are not inconsistent with the provisions of this subdivi-
193 sion (12)(C) of this section; or

194 (III) The individual furnishes satisfactory evidence to

195 the commissioner that his or her prospects for obtaining
196 work in his or her customary occupation within a
197 reasonably short period are good. If such evidence is
198 deemed satisfactory for this purpose, the determination
199 of whether any work is suitable with respect to such
200 individual shall be made in accordance with the
201 definition of suitable work in section five, article six of
202 this chapter, without regard to the definition specified
203 by subdivision (12)(C) of this section.

204 (D) Notwithstanding the provisions of this section to
205 the contrary, no work shall be deemed to be suitable
206 work for an individual which does not accord with the
207 labor standard provisions required by section 3304(a)(5)
208 of the Internal Revenue Code of 1954 and set forth
209 herein under subdivision (12)(C)(iii)(I) of this section.

210 (E) For the purposes of subdivision (12)(A)(ii) of this
211 section an individual shall be treated as actively
212 engaged in seeking work during any week if:

213 (i) The individual has engaged in a systematic and
214 sustained effort to obtain work during such week, and

215 (ii) The individual furnishes tangible evidence that he
216 has engaged in such effort during such week.

217 (F) The employment service shall refer any claimant
218 entitled to extended benefits under this article to any
219 suitable work which meets the criteria prescribed in
220 subdivision (12)(C) of this section.

221 (G) An individual shall not be eligible to receive
222 extended benefits with respect to any week of unemploy-
223 ment in his eligibility period if such individual has been
224 disqualified for regular benefits under this chapter
225 because he or she voluntarily left work, was discharged
226 for misconduct or refused an offer of suitable work
227 unless the disqualification imposed for such reasons has
228 been terminated in accordance with specific conditions
229 established under this subdivision requiring the individ-
230 ual to perform service for remuneration subsequent to
231 the date of such disqualification.

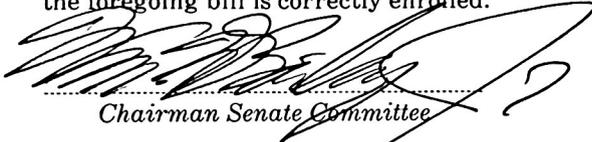
232 (13) Notwithstanding any other provisions of this
233 chapter, if the benefit year of any individual ends within

234 an extended benefit period, the remaining balance of
235 extended benefits that such individual would, but for
236 this section, be entitled to receive in that extended
237 benefit period, with respect to weeks of unemployment
238 beginning after the end of the benefit year, shall be
239 reduced (but not below zero) by the product of the
240 number of weeks for which the individual received any
241 amounts as trade readjustment allowances within that
242 benefit year, multiplied by the individual's weekly
243 benefit amount for extended benefits.

244 (14) An unemployed individual shall be eligible to
245 receive benefits with respect to any week only if it has
246 been found that he has been paid wages by an employer
247 who was subject to the provisions of this chapter during
248 the base period of his current benefit year in an amount
249 at least equal to forty times his benefit rate for total
250 unemployment.

251 (15) The provisions of subdivisions (11) and (12) of this
252 section shall not apply at any time should such provi-
253 sions be temporarily or permanently suspended by
254 federal law. If these provisions are suspended by federal
255 law, the provisions of state law which apply to claims
256 for and the payment of regular benefits shall apply to
257 claims for and the payment of extended benefits.

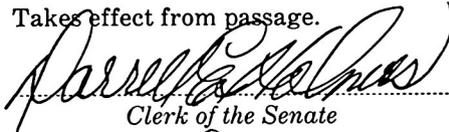
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee


Ernest E. Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.


Clerk of the Senate


Donald L. Kopp
Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 12th
day of May 1993.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/29/93

Time 11:29 am