WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1993

ENROLLED

HOUSE BILL No. 2626

(By Delegate S.T. White, Manuel, Pettiford, Gallagher, Kessel, Pino and Trickett)

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.


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

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

3. "Annual payroll" means the total amount of wages for employment paid by an employer during a twelve-month period ending with the thirtieth day of June of any calendar year.
"Average annual payroll" means the average of the last three annual payrolls of an employer.

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

"Base period employer" means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

"Base period wages" means wages paid to an individual during the base period by all his base period employers.

"Benefit year" with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his last preceding benefit year; however, if a claim is effective on the first day of a quarter, the benefit year will be fifty-three weeks, in order to prevent an overlapping of the base period wages. An initial claim for benefits filed in accordance with the provisions of this chapter shall be considered to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

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

"Board" means board of review.

"Calendar quarter" means the period of three consecutive calendar months ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, the thirty-first day of December, or the equivalent thereof as the commissioner may by regulation prescribe.

"Commissioner" means the bureau of employment
programs' commissioner.

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

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

"Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any service performed prior to the first day of January, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after the thirty-first day of December, one thousand nine hundred seventy-one, including service in interstate commerce, by any officer of a corporation;

(4) An individual's entire service, performed within or both within and without this state if: (a) The service is localized in this state, or (b) the service is not localized in any state but some of the service is performed in this
state and (i) the base of operations, or, if there is no base

of operations, then the place from which such service is
directed or controlled, is in this state; or (ii) the base of
operations or place from which such service is directed
or controlled is not in any state in which some part of
the service is performed but the individual’s residence
is in this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An "American employer", for purposes of this subdivision (11), means a person who is (i) an individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

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

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor including labor performed by an alien referred to in paragraph (b) of this subdivision (12); or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in paragraph (b) of this subdivision (12), ten or more individuals, regardless of whether they were employed at the same moment of time;

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

(c) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of
such crew leader: (i) If such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and (ii) if such individual is not an employee of such other person within the meaning of subdivision (7) of the definition of employer;

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

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

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

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

The term "employment" does not include:

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

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

3. Service performed in the employ of the United States or any instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603 (c) of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall
be refunded by the commissioner from the fund in the
same manner and within the same period as is provided
in section nineteen, article five of this chapter, with
respect to payments erroneously collected;

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

(5) Service performed by an individual in agricultural
labor, except as provided in subdivision (12) of the
definition of “employment” in this section. For purposes
of this subdivision (5), the term “agricultural labor”
includes all services performed:

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

(b) In the employ of the owner or tenant or other
operator of a farm, in connection with the operation,
management, conservation, improvement or mainte-
nance of such farm and its tools and equipment, or in
salvaging timber or clearing land of brush and other
debris left by a hurricane, if the major part of such
service is performed on a farm;
(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in clause (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of clauses (i) and (ii) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

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

(6) Domestic service in a private home except as provided in subdivision (13) of the definition of “employment” in this section;

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

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

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

(10) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(11) Service performed: (i) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) prior to the first day of January, one thousand nine hundred seventy-eight, in the employ of a school which is not an institution of higher education; or (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) prior to the
first day of January, one thousand nine hundred seventy-eight, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution, and after the thirty-first day of December, one thousand nine hundred seventy-seven, by an inmate of a custodial or penal institution;

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

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

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

(15) Service in the employ of a governmental entity referred to in subdivision (9) of the definition of “employment” in this section if such service is performed by an individual in the exercise of duties (i) as an elected official; (ii) as a member of a legislative body, or a member of the judiciary, of a state or political
subdivision; (iii) as a member of the state national guard
or air national guard; (iv) as an employee serving on a
temporary basis in case of fire, storm, snow, earthquake,
flood or similar emergency; (v) in a position which,
under or pursuant to the laws of this state, is designated
as: (I) A major nontenured policymaking or advisory
position, or (II) a policymaking or advisory position the
performance of the duties of which ordinarily does not
require more than eight hours per week.

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

“Employment office” means a free employment office
or branch thereof, operated by this state, or any free
public employment office maintained as a part of a state
controlled system of public employment offices in any
other state.

“Fund” means the unemployment compensation fund
established by this chapter.

“Hospital” means an institution which has been
licensed, certified or approved by the state department
of health as a hospital.

“Institution of higher education” means an educational
institution which:

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

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

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

(4) Is a public or other nonprofit institution.

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

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

“Separated from employment” means, for the pur-
poses of this chapter, the total severance, whether by
quitting, discharge or otherwise, of the employer-
employee relationship.

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

“Total and partial unemployment” means:

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

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

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

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

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a calendar year after one thousand nine hundred seventy-one; and shall not include that part of remuneration which, after remuneration equal to six thousand dollars is paid during a calendar year after one thousand nine hundred seventy-
seven; and shall not include that part of remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year after one thousand nine hundred eighty, to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision (1), the term “employment” includes service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter; and, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand six hundred dollars or four thousand two hundred dollars or six thousand dollars or eight thousand dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided, however, That if the definition of the term “wages” as contained in section 3306 (b) of the Internal Revenue Code of 1954, as amended, is amended: (a) Effective prior to the first day of January, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective on or after the first day of January, one thousand nine hundred sixty-two, to include remunera-
tion in excess of three thousand six hundred dollars, or
(c) effective on or after the first day of January, one thousand nine hundred seventy-two, to include remun-
eration in excess of four thousand two hundred dollars;
(d) effective on or after the first day of January, one thousand nine hundred seventy-eight, to include remun-
eration in excess of six thousand dollars; or (e) effective on or after the first day of January, one thousand nine hundred eighty, to include remuneration in excess of eight thousand dollars, paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this article or his predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the Federal Unemployment Tax Act;

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

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

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

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

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

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

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

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

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided,

That the term totally or partially unemployed shall not be interpreted to include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation; or (C) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

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

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

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

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

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


1 As used in this article, unless the context clearly requires otherwise:
(1) "Extended benefit period" means a period which:

(A) Begins with the third week after a week for which there is a state "on" indicator; and

(B) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state "off" indicator; or

(ii) The thirteenth consecutive week of such period.

Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and no extended benefit period may become effective in this state prior to the sixty-first day following the date of enactment of the Federal-State Extended Unemployment Compensation Act of 1970, and, within the period beginning on such sixty-first day and ending on December thirty-one, one thousand nine hundred seventy-one, an extended benefit period may become effective and be terminated in this state solely by reason of a state "on" and state "off" indicator, respectively.

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

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

(B) Equaled or exceeded four percent.

(C) The determination of whether there has been a state "on" indicator beginning any extended benefit period shall be made hereunder as if subsection (2) did not contain paragraph (A) thereof, but only if the
commissioner determines that the rate of insured unemployment (not seasonally adjusted) equals or exceeds five percent.

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

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

(B) Equaled or exceeded five percent.

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

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

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

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

(B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.
(6) “Regular benefits” means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

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

(8) “Eligibility period” of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(9) “Exhaustee” means an individual who, with respect to any week of unemployment in his eligibility period:

(A) Has received, prior to such week, all of the regular benefits which were available to him under this chapter or any other state law (including dependents’ allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits which were available to him although (i) as a result of a pending appeal with respect to wages and/or employment which were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions of section one-a, article six of this chapter; or

(B) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year which would include such week; and
(C) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

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

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

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

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

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

(B) Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision (12) (A) of this section shall also be denied benefits beginning with the first day of the week
following the week in which such failure occurred and until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount;

(C) For purposes of this subdivision (12) (A) (i) of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities: Provide, That the gross average weekly remuneration payable for the work must exceed the sum of:

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

(ii) The amount, if any, of supplemental unemployment benefits (as defined in section 501 (c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,

(iii) Pays wages equal to the higher of:

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

(II) The state or local minimum wage;

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

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

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

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

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

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

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

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

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

(G) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or refused an offer of suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this subdivision requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

(13) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within
an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

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

(15) The provisions of subdivisions (11) and (12) of this section shall not apply at any time should such provisions be temporarily or permanently suspended by federal law. If these provisions are suspended by federal law, the provisions of state law which apply to claims for and the payment of regular benefits shall apply to 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

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor