

SB # 377

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



# ENROLLED

Committee Substitute for  
SENATE BILL NO. 377

(By Senators Burdette, Mr. President, and Boley, By Request of the Executive)



PASSED March 9, 1994  
In Effect from Passage

**E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 377**

(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,

By Request of the Executive)

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[Passed March 9, 1994; in effect from passage.]

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AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections ten and ten-b, article five of said chapter; to amend and reenact sections one, ten and eleven, article six of said chapter; and to amend and reenact section four, article seven of said chapter, all relating to unemployment compensation; definitions; permissible earnings; surtax on foreign construction employers; transfers of businesses; contribution rates; eligibility requirements; updating benefit tables; and notice of hearings.

*Be it enacted by the Legislature of West Virginia:*

That section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections ten and ten-b, article five of said chapter be amended and reenacted; that sections one, ten and eleven,

article six of said chapter be amended and reenacted; that section four, article seven of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 1. UNEMPLOYMENT COMPENSATION.**

**§21A-1-3. Definitions.**

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

3 “Administration fund” means the employment  
4 security administration fund, from which the admin-  
5 istrative expenses under this chapter shall be paid.

6 “Annual payroll” means the total amount of wages  
7 for 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  
13 five completed calendar quarters immediately preced-  
14 ing the first day of the individual benefit year.

15 “Base period employer” means any employer who  
16 in the base period for any benefit year paid wages to  
17 an individual who filed claim for unemployment  
18 compensation within such benefit year.

19 “Base period wages” means wages paid to an indi-  
20 vidual during the base period by all his base period  
21 employers.

22 “Benefit year” with respect to an individual means  
23 the fifty-two-week period beginning with the first day  
24 of the calendar week in which a valid claim is effec-  
25 tive, and thereafter the fifty-two-week period begin-  
26 ning with the first day of the calendar week in which  
27 such individual next files a valid claim for benefits  
28 after the termination of his last preceding benefit  
29 year; however, if a claim is effective on the first day  
30 of a quarter, the benefit year will be fifty-three weeks,  
31 in order to prevent an overlapping of the base period  
32 wages. An initial claim for benefits filed in accordance

33 with the provisions of this chapter shall be considered  
34 to be a valid claim within the purposes of this defini-  
35 tion if the individual has been paid wages in his base  
36 period sufficient to make him eligible for benefits  
37 under the provisions of this chapter.

38 "Benefits" means the money payable to an individ-  
39 ual with respect to his unemployment.

40 "Board" means board of review.

41 "Calendar quarter" means the period of three  
42 consecutive calendar months ending on the thirty-first  
43 day of March, the thirtieth day of June, the thirtieth  
44 day of September, the thirty-first day of December or  
45 the equivalent thereof as the commissioner may by  
46 regulation 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  
51 January on which an employer's contribution rate  
52 becomes 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  
60 of higher education, or the receiver, trustee in bank-  
61 ruptcy, trustee or successor thereof, or the legal  
62 representative of a deceased person, which has on the  
63 first day of January, one thousand nine hundred  
64 thirty-five, or subsequent thereto, had in its employ  
65 one or more individuals performing service within this  
66 state.

67 "Employer" means:

68 (1) Until the first day of January, one thousand nine  
69 hundred seventy-two, any employing unit which for  
70 some portion of a day, not necessarily simultaneously,

71 in each of twenty different calendar weeks, which  
72 weeks need not be consecutive, within either the  
73 current calendar year, or the preceding calendar year,  
74 has had in employment four or more individuals  
75 irrespective of whether the same individuals were or  
76 were not employed on each of such days;

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

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

84 (4) Any employing unit which, after the thirty-first  
85 day of December, one thousand nine hundred sixty-  
86 three, and until the first day of January, one thousand  
87 nine hundred seventy-two, in any one calendar quar-  
88 ter, in any calendar year, has in employment four or  
89 more individuals and has paid wages for employment  
90 in the total sum of five thousand dollars or more, or  
91 which, after such date, has paid wages for employment  
92 in any calendar year in the sum total of twenty  
93 thousand dollars or more;

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

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

104 (7) Any employing unit which, after the thirty-first  
105 day of December, one thousand nine hundred seventy-  
106 one: (i) In any calendar quarter in either the current  
107 or preceding calendar year paid for service in employ-  
108 ment wages of one thousand five hundred dollars or  
109 more; or (ii) for some portion of a day in each of

110 twenty different calendar weeks, whether or not such  
111 weeks were consecutive, in either the current or the  
112 preceding calendar year had in employment at least  
113 one individual (irrespective of whether the same  
114 individual was in employment in each such day)  
115 except as provided in subdivisions (11) and (12) hereof;

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

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

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

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

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

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

143 (1) Service, including service in interstate com-  
144 merce, performed for wages or under any contract of  
145 hire, written or oral, express or implied;

146 (2) Any service performed prior to the first day of  
147 January, one thousand nine hundred seventy-two,

148 which was employment as defined in this section prior  
149 to such date and, subject to the other provisions of this  
150 section, service performed after the thirty-first day of  
151 December, one thousand nine hundred seventy-one,  
152 by an employee, as defined in Section 3306(i) of the  
153 federal Unemployment Tax Act, including service in  
154 interstate commerce;

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

163 (4) An individual's entire service, performed within  
164 or both within and without this state if: (a) The service  
165 is localized in this state; or (b) the service is not  
166 localized in any state but some of the service is  
167 performed in this state and: (i) The base of operations,  
168 or, if there is no base of operations, then the place  
169 from which such service is directed or controlled, is in  
170 this state; or (ii) the base of operations or place from  
171 which such service is directed or controlled is not in  
172 any state in which some part of the service is per-  
173 formed but the individual's residence is in this state;

subsection  
DA

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

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185 (6) Service is localized within a state, if: (a) The  
186 service is performed entirely within such state; or (b)  
187 the service is performed both within and without such

188 state, but the service performed without such state is  
189 incidental to the individual's service within this state,  
190 as, for example, is temporary or transitory in nature  
191 or consists of isolated transactions;

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

205 (8) All service performed by an officer or member of  
206 the crew of an American vessel (as defined in Section  
207 305 of an act of Congress entitled Social Security Act  
208 Amendment of 1946, approved the tenth day of  
209 August, one thousand nine hundred forty-six), on or in  
210 connection with such vessel, provided that the operat-  
211 ing office, from which the operations of such vessel  
212 operating on navigable waters within and without the  
213 United States is ordinarily and regularly supervised,  
214 managed, directed and controlled, is within this state;

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

227 (b) Service performed after the thirty-first day of

228 December, one thousand nine hundred seventy-seven,  
229 in the employ of this state or any of its instrumental-  
230 ities or political subdivisions thereof or any of its  
231 instrumentalities or any instrumentality of more than  
232 one of the foregoing or any instrumentality of any  
233 foregoing and one or more other states or political  
234 subdivisions: *Provided*, That such service is excluded  
235 from "employment" as defined in the federal Unem-  
236 ployment Tax Act by Section 3306(c)(7) of that act and  
237 is not excluded from "employment" under subdivision  
238 (15) of the exclusion from employment in this section;  
239 and

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

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

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

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

258 (11) Service of an individual who is a citizen of the  
259 United States, performed outside the United States  
260 after the thirty-first day of December, one thousand  
261 nine hundred seventy-one (except in Canada and in  
262 the case of Virgin Islands after the thirty-first day of  
263 December, one thousand nine hundred seventy-one,  
264 and before the first day of January, the year following  
265 the year in which the secretary of labor approves for  
266 the first time an unemployment insurance law sub-  
267 mitted to him by the Virgin Islands for approval) in

268 the employ of an American employer (other than  
269 service which is considered "employment" under the  
270 provisions of subdivision (4), (5) or (6) of this definition  
271 of "employment" or the parallel provisions of another  
272 state's law) if:

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

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

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

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

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

302 (a) Such service is performed for a person who: (i)  
303 During any calendar quarter in either the current or  
304 the preceding calendar year paid remuneration in cash  
305 of twenty thousand dollars or more to individuals  
306 employed in agricultural labor including labor per-

307 formed by an alien referred to in paragraph (b) of this  
308 subdivision; or (ii) for some portion of a day in each of  
309 twenty different calendar weeks, whether or not such  
310 weeks were consecutive, in either the current or the  
311 preceding calendar year, employed in agricultural  
312 labor, including labor performed by an alien referred  
313 to in paragraph (b) of this subdivision, ten or more  
314 individuals, regardless of whether they were employed  
315 at the same moment of time;

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

323 (c) For the purposes of the definition of employ-  
324 ment, any individual who is a member of a crew  
325 furnished by a crew leader to perform service in  
326 agricultural labor for any other person shall be treated  
327 as an employee of such crew leader: (i) If such crew  
328 leader holds a valid certificate of registration under  
329 the Migrant and Seasonal Agricultural Worker Protec-  
330 tion Act; or substantially all the members of such crew  
331 operate or maintain tractors, mechanized harvesting  
332 or crop-dusting equipment, or any other mechanized  
333 equipment, which is provided by such crew leader;  
334 and (ii) if such individual is not an employee of such  
335 other person within the meaning of subdivision (7) of  
336 the definition of employer;

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

348 behalf or on behalf of such other person) for the  
349 service in agricultural labor performed for such other  
350 person; and

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

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

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

381 The term "employment" does not include:

382 (1) Service performed in the employ of this state or  
383 any political subdivision thereof, or any instrumental-  
384 ity of this state or its subdivisions, except as otherwise  
385 provided herein until the thirty-first day of December,  
386 one thousand nine hundred seventy-seven;

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

393 (3) Service performed in the employ of the United  
394 States or any instrumentality of the United States  
395 exempt under the constitution of the United States  
396 from the payments imposed by this law, except that to  
397 the extent that the Congress of the United States shall  
398 permit states to require any instrumentalities of the  
399 United States to make payments into an unemploy-  
400 ment fund under a state unemployment compensation  
401 law, all of the provisions of this law shall be applicable  
402 to such instrumentalities and to service performed for  
403 such instrumentalities in the same manner, to the  
404 same extent and on the same terms as to all other  
405 employers, employing units, individuals and services:  
406 *Provided*, That if this state shall not be certified for  
407 any year by the secretary of labor under Section  
408 1603(c) of the federal Internal Revenue Code, the  
409 payments required of such instrumentalities with  
410 respect to such year shall be refunded by the commis-  
411 sioner from the fund in the same manner and within  
412 the same period as is provided in section nineteen,  
413 article five of this chapter, with respect to payments  
414 erroneously collected;

415 (4) Service performed after the thirtieth day of  
416 June, one thousand nine hundred thirty-nine, with  
417 respect to which unemployment compensation is  
418 payable under the Railroad Unemployment Insurance  
419 Act and service with respect to which unemployment  
420 benefits are payable under an unemployment compen-  
421 sation system for maritime employees established by  
422 an act of Congress. The commissioner may enter into  
423 agreements with the proper agency established under  
424 such an act of Congress to provide reciprocal treat-  
425 ment to individuals who, after acquiring potential  
426 rights to unemployment compensation under an act of  
427 Congress, or who have, after acquiring potential rights

428 to unemployment compensation under an act of  
429 Congress, acquired rights to benefit under this chap-  
430 ter. Such agreement shall become effective ten days  
431 after such publications which shall comply with the  
432 general rules of the department;

433 (5) Service performed by an individual in agricultur-  
434 al labor, except as provided in subdivision (12) of the  
435 definition of "employment" in this section. For  
436 purposes of this subdivision, the term "agricultural  
437 labor" includes all services performed:

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

445 (b) In the employ of the owner or tenant or other  
446 operator of a farm, in connection with the operation,  
447 management, conservation, improvement or mainte-  
448 nance of such farm and its tools and equipment, or in  
449 salvaging timber or clearing land of brush and other  
450 debris left by a hurricane, if the major part of such  
451 service is performed on a farm;

452 (c) In connection with the production or harvesting  
453 of any commodity defined as an agricultural commod-  
454 ity in section fifteen (g) of the Agricultural Marketing  
455 Act, as amended, or in connection with the ginning of  
456 cotton, or in connection with the operation or mainte-  
457 nance of ditches, canals, reservoirs or waterways, not  
458 owned or operated for profit, used exclusively for  
459 supplying and storing water for farming purposes;

460 (d) (i) In the employ of the operator of a farm in  
461 handling, planting, drying, packing, packaging, pro-  
462 cessing, freezing, grading, storing or delivering to  
463 storage or to market or to a carrier for transportation  
464 to market, in its unmanufactured state, any agricultur-  
465 al or horticultural commodity; but only if such oper-  
466 ator produced more than one half of the commodity  
467 with respect to which such service is performed; or (ii)

468 in the employ of a group of operators of farms (or a  
469 cooperative organization of which such operators are  
470 members) in the performance of service described in  
471 subparagraph (i), but only if such operators produced  
472 more than one half of the commodity with respect to  
473 which such service is performed; but the provisions of  
474 subparagraphs (i) and (ii) are not applicable with  
475 respect to service performed in connection with  
476 commercial canning or commercial freezing or in  
477 connection with any agricultural or horticultural  
478 commodity after its delivery to a terminal market for  
479 distribution for consumption;

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

489 (6) Domestic service in a private home except as  
490 provided in subdivision (13) of the definition of  
491 "employment" in this section;

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

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

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

503 (10) Service performed by agents of mutual fund  
504 broker-dealers or insurance companies, exclusive of  
505 industrial insurance agents, or by agents of investment  
506 companies, who are compensated wholly on a commis-

507 sion basis;

508 (11) Service performed: (i) In the employ of a church  
509 or convention or association of churches, or an organi-  
510 zation which is operated primarily for religious  
511 purposes and which is operated, supervised, controlled  
512 or principally supported by a church or convention or  
513 association of churches; or (ii) by a duly ordained,  
514 commissioned or licensed minister of a church in the  
515 exercise of his ministry or by a member of a religious  
516 order in the exercise of duties required by such order;  
517 or (iii) prior to the first day of January, one thousand  
518 nine hundred seventy-eight, in the employ of a school  
519 which is not an institution of higher education; or (iv)  
520 in a facility conducted for the purpose of carrying out  
521 a program of rehabilitation for individuals whose  
522 earning capacity is impaired by age or physical or  
523 mental deficiency or injury or providing remunerative  
524 work for individuals who because of their impaired  
525 physical or mental capacity cannot be readily absorbed  
526 in the competitive labor market by an individual  
527 receiving such rehabilitation or remunerative work; or  
528 (v) as part of an unemployment work-relief or work-  
529 training program assisted or financed, in whole or in  
530 part, by any federal agency or an agency of a state or  
531 political subdivision thereof, by an individual receiving  
532 such work relief or work training; or (vi) prior to the  
533 first day of January, one thousand nine hundred  
534 seventy-eight, for a hospital in a state prison or other  
535 state correctional institution by an inmate of the  
536 prison or correctional institution, and after the thirty-  
537 first day of December, one thousand nine hundred  
538 seventy-seven, by an inmate of a custodial or penal  
539 institution;

540 (12) Service performed in the employ of a school,  
541 college or university, if such service is performed: (i)  
542 By a student who is enrolled and is regularly attend-  
543 ing classes at such school, college or university; or (ii)  
544 by the spouse of such a student, if such spouse is  
545 advised, at the time such spouse commences to per-  
546 form such service, that: (I) The employment of such  
547 spouse to perform such service is provided under a

548 program to provide financial assistance to such student  
549 by such school, college or university; and (II) such  
550 employment will not be covered by any program of  
551 unemployment insurance;

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

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

568 (15) Service in the employ of a governmental entity  
569 referred to in subdivision (9) of the definition of  
570 "employment" in this section if such service is  
571 performed by an individual in the exercise of duties:  
572 (i) As an elected official; (ii) as a member of a  
573 legislative body, or a member of the judiciary, of a  
574 state or political subdivision; (iii) as a member of the  
575 state national guard or air national guard; (iv) as an  
576 employee serving on a temporary basis in case of fire,  
577 storm, snow, earthquake, flood or similar emergency;  
578 (v) in a position which, under or pursuant to the laws  
579 of this state, is designated as: (I) A major nontenured  
580 policymaking or advisory position; or (II) a policymak-  
581 ing or advisory position the performance of the duties  
582 of which ordinarily does not require more than eight  
583 hours per week.

584 Notwithstanding the foregoing exclusions from the  
585 definition of "employment", services, except agricul-  
586 tural labor and domestic service in a private home, are  
587 in employment if with respect to such services a tax

588 is required to be paid under any federal law imposing  
589 a tax against which credit may be taken for contribu-  
590 tions required to be paid into a state unemployment  
591 compensation fund, or which as a condition for full tax  
592 credit against the tax imposed by the federal Unem-  
593 ployment Tax Act are required to be covered under  
594 this chapter.

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

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

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

605 “Institution of higher education” means an educa-  
606 tional institution which:

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

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

612 (3) Provides an educational program for which it  
613 awards a bachelor’s or higher degree, or provides a  
614 program which is acceptable for full credit toward  
615 such a degree, or provides a program of postgraduate  
616 or postdoctoral studies, or provides a program of  
617 training to prepare students for gainful employment in  
618 a recognized occupation; and

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

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

624 “Payments” means the money required to be paid

625 or that may be voluntarily paid into the state unem-  
626 ployment compensation fund as provided in article  
627 five of this chapter.

628 “Reorganized employer” means: (1) An employer  
629 that alters its legal status, including changing from a  
630 sole proprietorship or a partnership to a corporation;  
631 or (2) an employer that otherwise changes its trade  
632 name or business identity while remaining under  
633 substantially the same ownership.

634 “Separated from employment” means, for the  
635 purposes of this chapter, the total severance, whether  
636 by quitting, discharge or otherwise, of the employer-  
637 employee relationship.

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

641 “Successor employer” means an employer that  
642 acquires, by sale or otherwise, the entire organization,  
643 trade or business, or substantially all the assets thereof  
644 of another employer.

645 “Total and partial unemployment” means:

646 (1) An individual is totally unemployed in any week  
647 in which such individual is separated from employ-  
648 ment for an employing unit and during which he  
649 performs no services and with respect to which no  
650 wages are payable to him.

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

657 “Wages” means all remuneration for personal  
658 service, including commissions, gratuities customarily  
659 received by an individual in the course of employment  
660 from persons other than the employing unit, as long as  
661 such gratuities equal or exceed an amount of not less  
662 than twenty dollars each month and which are

663 required to be reported to the employer by the  
664 employee, bonuses, and the cash value of all remuner-  
665 ation in any medium other than cash except for  
666 agricultural labor and domestic service: *Provided*, That  
667 the term "wages" does not include:

668 (1) That part of the remuneration which, after  
669 remuneration equal to three thousand dollars has been  
670 paid to an individual by an employer with respect to  
671 employment during any calendar year, is paid after  
672 the thirty-first day of December, one thousand nine  
673 hundred thirty-nine, and prior to the first day of  
674 January, one thousand nine hundred forty-seven, to  
675 such individual by such employer with respect to  
676 employment during such calendar year; or that part of  
677 the remuneration which, after remuneration equal to  
678 three thousand dollars with respect to employment  
679 after the year one thousand nine hundred thirty-eight,  
680 has been paid to an individual by an employer during  
681 any calendar year after one thousand nine hundred  
682 forty-six, is paid to such individual by such employer  
683 during such calendar year, except that for the pur-  
684 poses of sections one, ten, eleven and thirteen, article  
685 six of this chapter, all remuneration earned by an  
686 individual in employment shall be credited to the  
687 individual and included in his computation of base  
688 period wages: *Provided*, That notwithstanding the  
689 foregoing provisions, on and after the first day of  
690 January, one thousand nine hundred sixty-two, the  
691 term "wages" does not include:

692 That part of the remuneration which, after remu-  
693 neration equal to three thousand six hundred dollars  
694 has been paid to an individual by an employer with  
695 respect to employment during any calendar year, is  
696 paid during any calendar year after one thousand nine  
697 hundred sixty-one; and shall not include that part of  
698 remuneration which, after remuneration equal to four  
699 thousand two hundred dollars is paid during a calen-  
700 dar year after one thousand nine hundred seventy-  
701 one; and shall not include that part of remuneration  
702 which, after remuneration equal to six thousand  
703 dollars is paid during a calendar year after one

704 thousand nine hundred seventy-seven; and shall not  
705 include that part of remuneration which, after remuneration  
706 equal to eight thousand dollars is paid during  
707 a calendar year after one thousand nine hundred  
708 eighty, to an individual by an employer or his predecessor  
709 with respect to employment during any calendar  
710 year, is paid to such individual by such employer  
711 during such calendar year unless that part of the  
712 remuneration is subject to a tax under a federal law  
713 imposing a tax against which credit may be taken for  
714 contributions required to be paid into a state unemployment  
715 fund. For the purposes of this subdivision,  
716 the term "employment" includes service constituting  
717 employment under any unemployment compensation  
718 law of another state; or which as a condition for full  
719 tax credit against the tax imposed by the federal  
720 Unemployment Tax Act is required to be covered  
721 under this chapter; and, except that for the purposes  
722 of sections one, ten, eleven and thirteen, article six of  
723 this chapter, all remuneration earned by an individual  
724 in employment shall be credited to the individual and  
725 included in his computation of base period wages:  
726 *Provided*, That the remuneration paid to an individual  
727 by an employer with respect to employment in another  
728 state or other states upon which contributions were  
729 required of and paid by such employer under an  
730 unemployment compensation law of such other state  
731 or states shall be included as a part of the remuneration  
732 equal to the amounts of three thousand six  
733 hundred dollars or four thousand two hundred dollars  
734 or six thousand dollars or eight thousand dollars  
735 herein referred to. In applying such limitation on the  
736 amount of remuneration that is taxable, an employer  
737 shall be accorded the benefit of all or any portion of  
738 such amount which may have been paid by its predecessor  
739 or predecessors: *Provided, however*, That if the  
740 definition of the term "wages" as contained in Section  
741 3306(b) of the Internal Revenue Code of 1954, as  
742 amended, is amended: (a) Effective prior to the first  
743 day of January, one thousand nine hundred sixty-two,  
744 to include remuneration in excess of three thousand  
745 dollars; or (b) effective on or after the first day of

746 January, one thousand nine hundred sixty-two, to  
747 include remuneration in excess of three thousand six  
748 hundred dollars; or (c) effective on or after the first  
749 day of January, one thousand nine hundred seventy-  
750 two, to include remuneration in excess of four thou-  
751 sand two hundred dollars; or (d) effective on or after  
752 the first day of January, one thousand nine hundred  
753 seventy-eight, to include remuneration in excess of six  
754 thousand dollars; or (e) effective on or after the first  
755 day of January, one thousand nine hundred eighty, to  
756 include remuneration in excess of eight thousand  
757 dollars, paid to an individual by an employer under  
758 the federal Unemployment Tax Act during any calen-  
759 dar year, wages for the purposes of this definition shall  
760 include remuneration paid in a calendar year to an  
761 individual by an employer subject to this article or his  
762 predecessor with respect to employment during any  
763 calendar year up to an amount equal to the amount of  
764 remuneration taxable under the federal Unemploy-  
765 ment Tax Act;

766 (2) The amount of any payment made after the  
767 thirty-first day of December, one thousand nine  
768 hundred fifty-two (including any amount paid by an  
769 employer for insurance or annuities, or into a fund, to  
770 provide for any such payment), to, or on behalf of, an  
771 individual in its employ or any of his dependents,  
772 under a plan or system established by an employer  
773 which makes provision for individuals in its employ  
774 generally (or for such individuals and their depend-  
775 ents), or for a class or classes of such individuals (or  
776 for a class or classes of such individuals and their  
777 dependents), on account of: (A) Retirement; or (B)  
778 sickness or accident disability payments made to an  
779 employee under an approved state workers' compen-  
780 sation law; or (C) medical or hospitalization expenses  
781 in connection with sickness or accident disability; or  
782 (D) death;

783 (3) Any payment made after the thirty-first day of  
784 December, one thousand nine hundred fifty-two, by  
785 an employer to an individual in its employ (including  
786 any amount paid by an employer for insurance or

787 annuities, or into a fund, to provide for any such  
788 payment) on account of retirement;

789 (4) Any payment made after the thirty-first day of  
790 December, one thousand nine hundred fifty-two, by  
791 an employer on account of sickness or accident disabil-  
792 ity, or medical or hospitalization expenses in connec-  
793 tion with sickness or accident disability, to, or on  
794 behalf of, an individual in its employ after the expira-  
795 tion of six calendar months following the last calendar  
796 month in which such individual worked for such  
797 employer;

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

811 (6) The payment by an employer of the tax imposed  
812 upon an employer under Section 3101 of the federal  
813 Internal Revenue Code with respect to remuneration  
814 paid to an employee for domestic service in a private  
815 home or the employer of agricultural labor;

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

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

827 made;

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

833 (10) Vacation pay, severance pay or savings plans  
834 received by an individual before or after becoming  
835 totally or partially unemployed but earned prior to  
836 becoming totally or partially unemployed: *Provided*,  
837 That the term totally or partially unemployed shall  
838 not be interpreted to include: (A) Employees who are  
839 on vacation by reason of the request of the employees  
840 or their duly authorized agent, for a vacation at a  
841 specific time, and which request by the employees or  
842 their agent is acceded to by their employer; (B)  
843 employees who are on vacation by reason of the  
844 employer's request provided they are so informed at  
845 least ninety days prior to such vacation; or (C)  
846 employees who are on vacation by reason of the  
847 employer's request where such vacation is in addition  
848 to the regular vacation and the employer compensates  
849 such employee at a rate equal to or exceeding their  
850 regular daily rate of pay during the vacation period.

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

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

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

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

**ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.**

**§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.**

1 (a) On and after the first day of July, one thousand  
2 nine hundred eighty-one, an employer's payment shall  
3 remain two and seven-tenths percent, until:

4 (1) There have elapsed thirty-six consecutive months  
5 immediately preceding the computation date through-  
6 out which an employer's account was chargeable with  
7 benefits.

8 (2) His payments credited to his account for all past  
9 years exceed the benefits charged to his account by an  
10 amount equal to at least the percent of his average  
11 annual payroll as shown in Column B of Table II. His  
12 rate shall be the amount appearing in Column C of  
13 Table II on line with the percentage in Column B.

14 When the total assets of the fund as of the first day  
15 of January of a calendar year equal or exceed one  
16 hundred percent but are less than one hundred  
17 twenty-five percent of the average benefit payments  
18 from the trust fund for the three preceding calendar  
19 years, an employer's rate shall be the amount appear-  
20 ing in Column D of Table II on line with the percent-  
21 age in Column B.

22 When the total assets of the fund as of the first day  
23 of January of a calendar year equal or exceed one  
24 hundred twenty-five percent but are less than one  
25 hundred fifty percent, an employer's rate shall be the  
26 amount appearing in Column E of Table II on line  
27 with the percentage in Column B.

28 When the total assets of the fund as of the first day  
29 *of* ~~for~~ January of a calendar year equal or exceed one  
30 hundred fifty percent, an employer's rate shall be the  
31 amount appearing in Column F of Table II on line  
32 with the percentage in Column B.

33

**TABLE II**

34	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
35		Percentage of				
36		Average				
37		Annual Payroll				
38		By Which				
39	Rate	Credits Exceed	Employer's			
40	Class	Charges	Rate			
41	(1)	0.0 to 6.0	4.5	3.5	2.5	1.5
42	(2)	6.0	4.1	3.1	2.1	1.1
43	(3)	7.0	3.9	2.9	1.9	0.9
44	(4)	8.0	3.7	2.7	1.7	0.7
45	(5)	9.0	3.5	2.5	1.5	0.5
46	(6)	10.0	3.3	2.3	1.3	0.3
47	(7)	10.5	3.1	2.1	1.1	0.1
48	(8)	11.0	2.9	1.9	0.9	0.0
49	(9)	11.5	2.7	1.7	0.7	0.0
50	(10)	12.0	2.5	1.5	0.5	0.0
51	(11)	12.5	2.3	1.3	0.3	0.0
52	(12)	13.0	2.1	1.1	0.1	0.0
53	(13)	14.0	1.9	0.9	0.0	0.0
54	(14)	16.0	1.7	0.7	0.0	0.0
55	(15)	18.0 and over	1.5	0.5	0.0	0.0

56 All employer accounts in which charges for all past  
57 years exceed credits for such past years shall be  
58 adjusted effective the thirtieth day of June, one  
59 thousand nine hundred sixty-seven, so that as of said  
60 date, for the purpose of determining such employer's  
61 rate of contribution, the credits for all past years shall  
62 be deemed to equal the charges to such accounts.

63 Effective on and after the computation date of the  
64 thirtieth day of June, one thousand nine hundred  
65 eighty-four, the noncredited contribution identified in  
66 section seven of this article shall not be added to the  
67 employer's debit balance to determine the employer  
68 contribution rate.

69 Effective on and after the computation date of the  
70 thirtieth day of June, one thousand nine hundred  
71 sixty-seven, all employers with a debit balance account  
72 in which the benefits charged to their account for all

73 past years exceed the payments credited to their  
74 account for such past years by an amount up to and  
75 including ten percent of their average annual payroll  
76 shall make payments to the unemployment compensa-  
77 tion fund at the rate of three percent of wages paid by  
78 them with respect to employment; except that effec-  
79 tive on and after the first day of July, one thousand  
80 nine hundred eighty-one, all employers with a debit  
81 balance account in which the benefits charged to their  
82 account for all past years exceed the payments credit-  
83 ed to their account for such past years by an amount  
84 up to and including five percent of their average  
85 annual payroll shall make payments to the unemploy-  
86 ment compensation fund at the rate of five and five-  
87 tenths percent of wages paid by them with respect to  
88 employment.

89 Effective on or after the first day of July, one  
90 thousand nine hundred eighty-one, all employers with  
91 a debit balance account in which the benefits charged  
92 to their account for all past years exceed the payments  
93 credited to their account for such past years by an  
94 amount in excess of five percent but less than ten  
95 percent of their average annual payroll shall make  
96 payments to the unemployment compensation fund at  
97 the rate of six and five-tenths percent of wages paid by  
98 them with respect to employment.

99 Effective on and after the computation date of the  
100 thirtieth day of June, one thousand nine hundred  
101 sixty-seven, all employers with a debit balance account  
102 in which the benefits charged to their account for all  
103 past years exceed the payments credited to their  
104 account for such past years by an amount of ten  
105 percent or above of their average annual payroll shall  
106 make payments to the unemployment compensation  
107 fund at the rate of three and three-tenths percent of  
108 wages paid by them with respect to employment;  
109 except that effective on and after the first day July,  
110 one thousand nine hundred eighty-one, such payments  
111 to the unemployment compensation fund shall be at  
112 the rate of seven and five-tenths percent of wages paid  
113 by them with respect to employment or at such other

114 rate authorized by this article.

115 “Debit balance account” for the purpose of this  
116 section means an account in which the benefits  
117 charged for all past years exceed the payments credit-  
118 ed for such past years.

119 “Credit balance account” for the purposes of this  
120 section means an account in which the payments  
121 credited for all past years exceed the benefits charged  
122 for such past years.

123 Once a debit balance account rate is established for  
124 an employer’s account for a year, it shall apply for the  
125 entire year.

126 “Due date” means the last day of the month next  
127 following a calendar quarter. In determining the  
128 amount in the fund on any due date, contributions  
129 received, but not benefits paid, for such month next  
130 following the end of a calendar quarter shall be  
131 included.

132 (b) Notwithstanding any other provision of this  
133 section, every debit balance employer subject to the  
134 provisions of this chapter, and any foreign corporation  
135 or business entity engaged in the construction trades  
136 which has not been an employer in the state of West  
137 Virginia for thirty-six consecutive months ending on  
138 the computation date, shall, in addition to any other  
139 tax provided for in this section, pay contributions at  
140 the rate of one percent surtax on wages paid by him  
141 with respect to employment.

142 (c) Effective the thirtieth day of June, one thousand  
143 nine hundred eighty-five, and each computation date  
144 thereafter, the reserve balance of a debit balance  
145 employer shall be reduced to fifteen percent if such  
146 balance exceeds fifteen percent. The amount of non-  
147 credited tax shall be reduced by an amount equal to  
148 the eliminated charges. If the eliminated charges  
149 exceed the amount of noncredited tax, the noncredited  
150 tax shall be reduced to zero.

151 (d) On and after the first day of January, one  
152 thousand nine hundred ninety-one, an employer’s

153 payment shall remain two and seven-tenths percent,  
154 until:

155 (1) There have elapsed thirty-six consecutive months  
156 immediately preceding the computation date through-  
157 out which an employer's account was chargeable with  
158 benefits; and

159 (2) The payments credited to the account for all past  
160 years exceed the benefits charged to the account by an  
161 amount equal to at least the percent of the average  
162 annual payroll as shown in Column B of Table III. The  
163 rate shall be the amount appearing in Column C of  
164 Table II on line with the percentage in Column B.

165 When the total assets of the fund as of the first day  
166 of January of a calendar year equal or exceed one and  
167 seventy-five one-hundredths percent but are less than  
168 two and twenty-five one-hundredths percent of gross  
169 covered wages for the twelve-month period ending on  
170 the thirtieth day of June of the preceding year, an  
171 employer's rate shall be the amount appearing in  
172 Column D of Table III on line with the percentage in  
173 Column B.

174 When the total assets of the fund as of the first day  
175 of January of a calendar year equal or exceed two and  
176 twenty-five one-hundredths percent but are less than  
177 two and seventy-five one-hundredths percent of gross  
178 covered wages for the twelve month period ending on  
179 the thirtieth day of June of the preceding year, an  
180 employer's rate shall be the amount appearing in  
181 Column E of Table III on line with the percentage in  
182 Column B.

183 When the total assets of the fund as of the first day  
184 of January of a calendar year equal or exceed two and  
185 seventy-five one-hundredths percent but are less than  
186 three percent of gross covered wages for the twelve-  
187 month period ending on the thirtieth day of June of  
188 the preceding year, an employer's rate shall be the  
189 amount appearing in Column F of Table III on line  
190 with the percentage in Column B.

191 When the total assets of the fund as of the first day

192 of January of a calendar year equal or exceed three  
 193 percent of gross covered wages for the twelve-month  
 194 period ending on the thirtieth day of June of the  
 195 preceding year, an employer's rate shall be the  
 196 amount appearing in Column G of Table III on line  
 197 with the percentage in Column B.

198

**TABLE III**

199	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G
200		Percentage of					
201		Average					
202		Annual Payroll					
203		By Which					
204	Rate	Credits Exceed	Employer's				
205	Class	Charges	Rate				
206	(1)	0.0 to 6.0	4.5	4.0	3.5	3.0	2.0
207	(2)	6.0	4.1	3.6	3.1	2.6	1.6
208	(3)	7.0	3.9	3.4	2.9	2.4	1.4
209	(4)	8.0	3.7	3.2	2.7	2.2	1.2
210	(5)	9.0	3.5	3.0	2.5	2.0	1.0
211	(6)	10.0	3.3	2.8	2.3	1.8	0.8
212	(7)	10.5	3.1	2.6	2.1	1.6	0.6
213	(8)	11.0	2.9	2.4	1.9	1.4	0.4
214	(9)	11.5	2.7	2.2	1.7	1.2	0.2
215	(10)	12.0	2.5	2.0	1.5	1.0	0.0
216	(11)	12.5	2.3	1.8	1.3	0.8	0.0
217	(12)	13.0	2.1	1.6	1.1	0.6	0.0
218	(13)	14.0	1.9	1.4	0.9	0.4	0.0
219	(14)	16.0	1.7	1.2	0.7	0.2	0.0
220	(15)	18.0 and over	1.5	1.0	0.5	0.0	0.0

221 (e) Notwithstanding any other provision of this  
 222 section, all employers' rates for the calendar year  
 223 beginning the first day of January, one thousand nine  
 224 hundred ninety, and ending on the thirty-first day of  
 225 December, one thousand nine hundred ninety, shall be  
 226 the amount in Column D of Table II on line with the  
 227 percentage in Column B.

**§21A-5-10b. Transfer of business.**

1 If a subject employer shall transfer his entire  
 2 organization, trade or business, or substantially all the

3 assets thereof, to another employer, the commissioner  
4 shall combine the contribution records and the benefit  
5 experience records of the transferring and acquiring  
6 employers. The acquiring employer's contribution rate  
7 for the remainder of the calendar year shall not be  
8 affected by the transfer but such rate shall apply to  
9 the whole of his business, including the portion  
10 acquired by the transfer, through the following the  
11 thirty-first day of December. If a subject employer  
12 shall make such transfer to an employing unit which  
13 is not an employer on the date of the transfer, such  
14 subject employer's rate shall continue as the rate of  
15 the acquiring employing unit until the next effective  
16 rate date. If an employing unit acquires simultaneous-  
17 ly the entire organization, trade or business, or  
18 substantially all the assets thereof, of two or more  
19 covered employers, the successor shall be assigned as  
20 a contribution rate the then current rate of the  
21 transferring employer which had, in the calendar  
22 quarter immediately preceding the date of the trans-  
23 fer, the higher or highest payroll. If a subject employ-  
24 er shall transfer his entire organization, trade or  
25 business, or substantially all the assets thereof, to two  
26 or more employers are employing units, apportion-  
27 ment of the contribution records and benefit experi-  
28 ence records of the transferring employer shall be  
29 made between the acquiring units in accordance with  
30 the ratio that the total assets acquired by each trans-  
31 feree bears to the total assets transferred by the  
32 transferring employer as of the date of the transfers.  
33 The current contribution rate of the transferring  
34 employer shall in such case continue as the rate of  
35 each transferee who or which is an employing unit  
36 until the next effective rate date; the current contri-  
37 bution rate of each transferee who or which is an  
38 employer shall continue as his or its rate until the  
39 next effective rate date. For the succeeding calendar  
40 year the rate of each transferee shall be determined as  
41 provided in section ten of this article. As to any  
42 transfers which occur prior to the thirty-first day of  
43 July of the current calendar year such rate shall  
44 remain effective for the balance of that calendar year:

45 *Provided*, That if the transfers occur subsequent to the  
46 thirty-first day of July such rate shall remain effective  
47 for the balance of that calendar year and the rate for  
48 the succeeding calendar year shall, notwithstanding  
49 anything to the contrary provided in section seven of  
50 article five of this chapter, be recomputed on the basis  
51 of the combined experience of the transferring  
52 employers as of the thirty-first day of July of the year  
53 in which the transfers occur. In case the transferring  
54 employer is delinquent in the payment of contribu-  
55 tions or interest thereof the acquiring employer shall  
56 not be entitled to any benefit of the contribution  
57 record of the transferring employer unless payment of  
58 such delinquent contributions and interest thereon is  
59 assumed by the acquiring employer. The commission-  
60 er shall upon joint request of the transferor and  
61 transferee furnish the transferee a statement of the  
62 amount of any contribution and interest due and  
63 unpaid by the transferor. A statement so furnished  
64 shall be controlling for the purposes of the foregoing  
65 proviso.

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

70 A reorganized employer shall keep the contribution  
71 rate of the employing unit before the reorganization  
72 and be liable for all contributions, interest and penal-  
73 ties owed by the employing unit before the reorgani-  
74 zation. If the predecessor does not remain in business  
75 after the transfer of all or part of the assets, business,  
76 organization, or trade of the predecessor employer: (1)  
77 The successor employer is liable for all contributions,  
78 interest and penalties owed by the predecessor  
79 employer at the time of the transfer; and (2) if two or  
80 more successor employers receive the transfer, the  
81 successor employers shall be liable in the same  
82 proportion as the assets of the unit being transferred  
83 is to the total assets of the predecessor employer.

**ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

**§21A-6-1. Eligibility qualifications.**

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

3 (1) He has registered for work at and thereafter  
4 continues to report at an employment office in accor-  
5 dance with the regulations of the commissioner;

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

10 (3) He is able to work and is available for full-time  
11 work for which he is fitted by prior training or  
12 experience and is doing that which a reasonably  
13 prudent person in his circumstances would do in  
14 seeking work;

15 (4) He has been totally or partially unemployed  
16 during his benefit year for a waiting period of one  
17 week prior to the week for which he claims benefits  
18 for total or partial unemployment;

19 (5) He has within his base period been paid wages  
20 for employment equal to not less than two thousand  
21 two hundred dollars and must have earned wages in  
22 more than one quarter of his base period; and

23 (6) Beginning the first day of November, one thou-  
24 sand nine hundred ninety-four, he participates in  
25 reemployment services, such as job search assistance  
26 services, if the individual has been determined to be  
27 likely to exhaust regular benefits and needs reemploy-  
28 ment services pursuant to a profiling system estab-  
29 lished by the commissioner, unless the commissioner  
30 determines that:

31 (a) The individual has completed such services; or

32 (b) There is justifiable cause for the claimant's  
33 failure to participate in such services.

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

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

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

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

32 Beginning on the first day of July, one thousand  
33 nine hundred eighty-nine, and on the first day of July  
34 of each succeeding year thereafter, the commissioner  
35 shall determine the maximum weekly benefit rate  
36 upon the basis of the formula set forth above and shall  
37 establish wage classes as are required, increasing or  
38 decreasing the amount of the base period wages

39 required for each wage class by one hundred fifty  
 40 dollars, establishing the weekly benefit rate for each  
 41 wage class by rounded dollar amount to be fifty-five  
 42 percent of one fifty-second of the median dollar  
 43 amount of wages in the base period for such wage  
 44 class, and establishing the maximum benefit for each  
 45 wage class as an amount equal to twenty-six times the  
 46 weekly benefit rate. The maximum weekly benefit  
 47 rate, when computed by the commissioner, in accor-  
 48 dance with the foregoing provisions, shall be rounded  
 49 to the next lowest multiple of one dollar.

50

**BENEFIT TABLE**

51				Maximum	
52				Benefit in	
53				Benefit Year	
54				for Total	
55	A	B		C	and/or
56	Wage	Wages in		Weekly	Partial Un-
57	Class	Base Period		Benefit	employment
58		Under	\$ 2,200.00	Rate	Ineligible
59	1	\$ 2,200.00-	2,349.99	\$ 24.00	\$ 624.00
60	2	2,350.00-	2,499.99	25.00	650.00
61	3	2,500.00-	2,649.99	27.00	702.00
62	4	2,650.00-	2,799.99	28.00	728.00
63	5	2,800.00-	2,949.99	30.00	780.00
64	6	2,950.00-	3,099.99	31.00	806.00
65	7	3,100.00-	3,249.99	33.00	858.00
66	8	3,250.00-	3,399.99	35.00	910.00
67	9	3,400.00-	3,549.99	36.00	936.00
68	10	3,550.00-	3,699.99	38.00	988.00
69	11	3,700.00-	3,849.99	39.00	1,014.00
70	12	3,850.00-	3,999.99	41.00	1,066.00
71	13	4,000.00-	4,149.99	43.00	1,118.00
72	14	4,150.00-	4,299.99	44.00	1,144.00
73	15	4,300.00-	4,449.99	46.00	1,196.00
74	16	4,450.00-	4,599.99	47.00	1,222.00
75	17	4,600.00-	4,749.99	49.00	1,274.00
76	18	4,750.00-	4,899.99	51.00	1,326.00
77	19	4,900.00-	5,049.99	52.00	1,352.00
78	20	5,050.00-	5,199.99	54.00	1,404.00
79	21	5,200.00-	5,349.99	55.00	1,430.00

80	22	5,350.00-	5,499.99	57.00	1,482.00
81	23	5,500.00-	5,649.99	58.00	1,508.00
82	24	5,650.00-	5,799.99	60.00	1,560.00
83	25	5,800.00-	5,949.99	62.00	1,612.00
84	26	5,950.00-	6,099.99	63.00	1,638.00
85	27	6,100.00-	6,249.99	65.00	1,690.00
86	28	6,250.00-	6,399.99	66.00	1,716.00
87	29	6,400.00-	6,549.99	68.00	1,768.00
88	30	6,550.00-	6,699.99	70.00	1,820.00
89	31	6,700.00-	6,849.99	71.00	1,846.00
90	32	6,850.00-	6,999.99	73.00	1,898.00
91	33	7,000.00-	7,149.99	74.00	1,924.00
92	34	7,150.00-	7,299.99	76.00	1,976.00
93	35	7,300.00-	7,449.99	78.00	2,028.00
94	36	7,450.00-	7,599.99	79.00	2,054.00
95	37	7,600.00-	7,749.99	81.00	2,106.00
96	38	7,750.00-	7,899.99	82.00	2,132.00
97	39	7,900.00-	8,049.99	84.00	2,184.00
98	40	8,050.00-	8,199.99	85.00	2,210.00
99	41	8,200.00-	8,349.99	87.00	2,262.00
100	42	8,350.00-	8,499.99	89.00	2,314.00
101	43	8,500.00-	8,649.99	90.00	2,340.00
102	44	8,650.00-	8,799.99	92.00	2,392.00
103	45	8,800.00-	8,949.99	93.00	2,418.00
104	46	8,950.00-	9,099.99	95.00	2,470.00
105	47	9,100.00-	9,249.99	97.00	2,522.00
106	48	9,250.00-	9,399.99	98.00	2,548.00
107	49	9,400.00-	9,549.99	100.00	2,600.00
108	50	9,550.00-	9,699.99	101.00	2,626.00
109	51	9,700.00-	9,849.99	103.00	2,678.00
110	52	9,850.00-	9,999.99	104.00	2,704.00
111	53	10,000.00-	10,149.99	106.00	2,756.00
112	54	10,150.00-	10,299.99	108.00	2,808.00
113	55	10,300.00-	10,449.99	109.00	2,834.00
114	56	10,450.00-	10,599.99	111.00	2,886.00
115	57	10,600.00-	10,749.99	112.00	2,912.00
116	58	10,750.00-	10,899.99	114.00	2,964.00
117	59	10,900.00-	11,049.99	116.00	3,016.00
118	60	11,050.00-	11,199.99	117.00	3,042.00
119	61	11,200.00-	11,349.99	119.00	3,094.00
120	62	11,350.00-	11,499.99	120.00	3,120.00
121	63	11,500.00-	11,649.99	122.00	3,172.00

122	64	11,650.00-	11,799.99	124.00	3,224.00
123	65	11,800.00-	11,949.99	125.00	3,250.00
124	66	11,950.00-	12,099.99	127.00	3,302.00
125	67	12,100.00-	12,249.99	128.00	3,328.00
126	68	12,250.00-	12,399.99	130.00	3,380.00
127	69	12,400.00-	12,549.99	131.00	3,406.00
128	70	12,550.00-	12,699.99	133.00	3,458.00
129	71	12,700.00-	12,849.99	135.00	3,510.00
130	72	12,850.00-	12,999.99	136.00	3,536.00
131	73	13,000.00-	13,149.99	138.00	3,588.00
132	74	13,150.00-	13,299.99	139.00	3,614.00
133	75	13,300.00-	13,449.99	141.00	3,666.00
134	76	13,450.00-	13,599.99	143.00	3,718.00
135	77	13,600.00-	13,749.99	144.00	3,744.00
136	78	13,750.00-	13,899.99	146.00	3,796.00
137	79	13,900.00-	14,049.99	147.00	3,822.00
138	80	14,050.00-	14,199.99	149.00	3,874.00
139	81	14,200.00-	14,349.99	150.00	3,900.00
140	82	14,350.00-	14,499.99	152.00	3,952.00
141	83	14,500.00-	14,649.99	154.00	4,004.00
142	84	14,650.00-	14,799.99	155.00	4,030.00
143	85	14,800.00-	14,949.99	157.00	4,082.00
144	86	14,950.00-	15,099.99	158.00	4,108.00
145	87	15,100.00-	15,249.99	160.00	4,160.00
146	88	15,250.00-	15,399.99	162.00	4,212.00
147	89	15,400.00-	15,549.99	163.00	4,238.00
148	90	15,550.00-	15,699.99	165.00	4,290.00
149	91	15,700.00-	15,849.99	166.00	4,316.00
150	92	15,850.00-	15,999.99	168.00	4,368.00
151	93	16,000.00-	16,149.99	170.00	4,420.00
152	94	16,150.00-	16,299.99	171.00	4,446.00
153	95	16,300.00-	16,449.99	173.00	4,498.00
154	96	16,450.00-	16,599.99	174.00	4,524.00
155	97	16,600.00-	16,749.99	176.00	4,576.00
156	98	16,750.00-	16,899.99	177.00	4,602.00
157	99	16,900.00-	17,049.99	179.00	4,654.00
158	100	17,050.00-	17,199.99	181.00	4,706.00
159	101	17,200.00-	17,349.99	182.00	4,732.00
160	102	17,350.00-	17,499.99	184.00	4,784.00
161	103	17,500.00-	17,649.99	185.00	4,810.00
162	104	17,650.00-	17,799.99	187.00	4,862.00

163	105	17,800.00-	17,949.99	189.00	4,914.00
164	106	17,950.00-	18,099.99	190.00	4,940.00
165	107	18,100.00-	18,249.99	192.00	4,992.00
166	108	18,250.00-	18,399.99	193.00	5,018.00
167	109	18,400.00-	18,549.99	195.00	5,070.00
168	110	18,550.00-	18,699.99	196.00	5,096.00
169	111	18,700.00-	18,849.99	198.00	5,148.00
170	112	18,850.00-	18,999.99	200.00	5,200.00
171	113	19,000.00-	19,149.99	201.00	5,226.00
172	114	19,150.00-	19,299.99	203.00	5,278.00
173	115	19,300.00-	19,449.99	204.00	5,304.00
174	116	19,450.00-	19,599.99	206.00	5,356.00
175	117	19,600.00-	19,749.99	208.00	5,408.00
176	118	19,750.00-	19,899.99	209.00	5,434.00
177	119	19,900.00-	20,049.99	211.00	5,486.00
178	120	20,050.00-	20,199.99	212.00	5,512.00
179	121	20,200.00-	20,349.99	214.00	5,564.00
180	122	20,350.00-	20,499.99	216.00	5,616.00
181	123	20,500.00-	20,649.99	217.00	5,642.00
182	124	20,650.00-	20,799.99	219.00	5,694.00
183	125	20,800.00-	20,949.99	220.00	5,720.00
184	126	20,950.00-	21,099.99	222.00	5,772.00
185	127	21,100.00-	21,249.99	223.00	5,798.00
186	128	21,250.00-	21,399.99	225.00	5,850.00
187	129	21,400.00-	21,549.99	227.00	5,902.00
188	130	21,550.00-	21,699.99	228.00	5,928.00
189	131	21,700.00-	21,849.99	230.00	5,980.00
190	132	21,850.00-	21,999.99	231.00	6,006.00
191	133	22,000.00-	22,149.99	233.00	6,058.00
192	134	22,150.00-	22,299.99	235.00	6,110.00
193	135	22,300.00-	22,449.99	236.00	6,136.00
194	136	22,450.00-	22,599.99	238.00	6,188.00
195	137	22,600.00-	22,749.99	239.00	6,214.00
196	138	22,750.00-	22,899.99	241.00	6,266.00
197	139	22,900.00-	23,049.99	243.00	6,318.00
198	140	23,050.00-	23,199.99	244.00	6,344.00
199	141	23,200.00-	23,349.99	246.00	6,396.00
200	142	23,350.00-	23,499.99	247.00	6,422.00
201	143	23,500.00-	23,649.99	249.00	6,474.00
202	144	23,650.00-	23,799.99	250.00	6,500.00
203	145	23,800.00-	23,949.99	252.00	6,552.00
204	146	23,950.00-	24,099.99	254.00	6,604.00

205	147	24,100.00-	24,249.99	255.00	6,630.00
206	148	24,250.00-	24,399.99	257.00	6,682.00
207	149	24,400.00-	24,549.99	258.00	6,708.00
208	150	24,550.00-	24,699.99	260.00	6,760.00
209	151	24,700.00-	24,849.99	262.00	6,812.00
210	152	24,850.00-	24,999.99	263.00	6,838.00
211	153	25,000.00-	25,149.99	265.00	6,890.00
212	154	25,150.00-	25,299.99	266.00	6,916.00
213	155	25,300.00-	25,449.99	268.00	6,968.00
214	156	25,450.00-	25,599.99	269.00	6,994.00
215	157	25,600.00-	25,749.99	271.00	7,046.00
216	158	25,750.00-	25,899.99	273.00	7,098.00
217	159	25,900.00-	26,049.99	274.00	7,124.00
218	160	26,050.00-	26,199.99	276.00	7,176.00
219	161	26,200.00-	26,349.99	277.00	7,202.00
220	162	26,350.00-	26,499.99	279.00	7,254.00
221	163	26,500.00-	AND OVER	280.00	7,280.00

222 After he has established such wage classes, the  
 223 commissioner shall prepare and publish a table setting  
 224 forth such information.

225 Average weekly wage shall be computed by dividing  
 226 the number of employees in West Virginia earning  
 227 wages in covered employment into the total wages  
 228 paid to employees in West Virginia in covered employ-  
 229 ment, and by further dividing said result by fifty-two,  
 230 and shall be determined from employer wage and  
 231 contribution reports for the previous calendar year  
 232 which are furnished to the department on or before  
 233 the first day of June following such calendar year. The  
 234 average weekly wage, as determined by the commis-  
 235 sioner, shall be rounded to the next higher dollar.

236 The computation and determination of rates as  
 237 aforesaid shall be completed annually before the first  
 238 day of July, and any such new wage class, with its  
 239 corresponding wages in base period, weekly benefit  
 240 rate, and maximum benefit in a benefit year estab-  
 241 lished by the commissioner in the foregoing manner  
 242 effective on a first day of July, shall apply only to a  
 243 new claim established by a claimant on and after said  
 244 first day of July, and shall not apply to continued  
 245 claims of a claimant based on his new claim estab-

246 lished before said first day of July.

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

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

**ARTICLE 7. CLAIM PROCEDURE.**

**§21A-7-4. Investigation by deputy; notice and hearing before  
deputy; referral of labor dispute claims for  
hearing and determination by appeal tribu-  
nal; initial determination of other claims by  
deputy; notice of findings and decision.**

1 (a) A deputy shall promptly investigate all claims.  
2 (b) Upon the filing of any claim for benefits, notice  
3 thereof shall promptly be given by the commissioner  
4 or his designee to the employer concerned, in writing.  
5 The employer shall have a period of four calendar  
6 days from the receipt of such notice within which to  
7 furnish to the deputy or his local office initial informa-  
8 tion respecting the claim and the facts and circumstan-  
9 ces pertaining to the claimant's unemployment. If,  
10 within said four-day period, any party shall request a  
11 hearing before the deputy, such hearing shall be held,  
12 upon notice to all parties by the commissioner or his  
13 designee, either by delivery in person or by mail,  
14 within five calendar days of receipt of such request.  
15 Such hearing shall be informal in nature, but shall  
16 afford the parties reasonable opportunity to present, in

17 person, information relevant to the eligibility and  
18 disqualification of the claimant.

19 (c) If it appears from the deputy's investigation and  
20 from all of the information before him, that a claim  
21 relates to a labor dispute or to a disqualification under  
22 subdivision (4), section three, article six of this chap-  
23 ter, the claim shall be transferred to the board for full  
24 hearing and initial determination by an appeal  
25 tribunal.

26 (d) If it appears from the deputy's investigation, and  
27 from all of the information before him, that a claim  
28 does not relate to a labor dispute or to a disqualifica-  
29 tion under subdivision (4), section three, article six of  
30 this chapter, the deputy shall determine whether or  
31 not such claim is valid, and, if valid, shall determine:

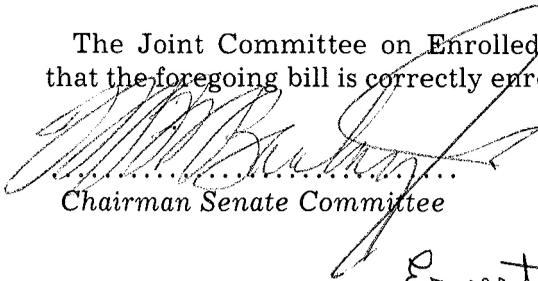
32 (1) The week with respect to which benefits will  
33 commence;

34 (2) The amount of benefit;

35 (3) The maximum duration of benefits.

36 (e) After any finding or determination by a deputy,  
37 the deputy shall promptly notify the claimant and the  
38 employer of his findings and decision.

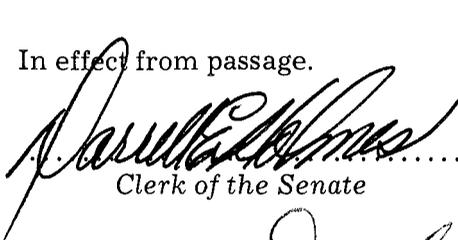
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

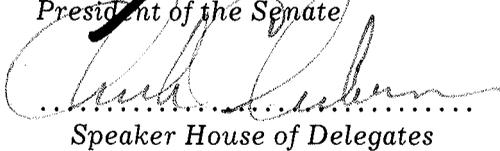
Originated in the Senate.

In effect from passage.

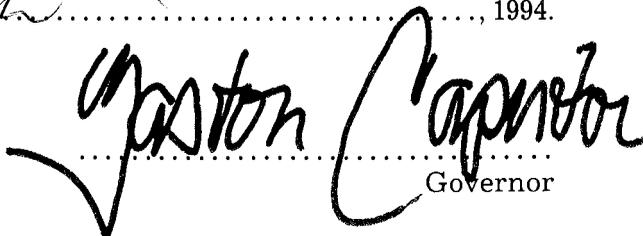
  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within ~~is approved~~ this the 29<sup>th</sup> day of March, 1994.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/94

Time 9:50 am