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
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.


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.

4 “Average annual payroll” means the average of the last three annual payrolls of an employer.

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

6 “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.

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

8 “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 employed 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 sub-
stantially 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 quar-
ter, 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 employ-
ment 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 employ-
ment, 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 employ-
ment, 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),
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 per-
formed 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 com-
merce, 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 compensation 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 incidental 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, occupation, profession or business;

(8) All service performed by an officer or member of the crew of an American vessel (as defined in Section 305 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 instrumentalities 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 "employment" 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 paragraphs (a) and (b) of
this subdivision 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, 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 per-
formed by an alien referred to in paragraph (b) of this subdivision; 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, 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, 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 paragraph (c) of this subdivision: (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, 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 instrumental-
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
day of December, one thousand nine hundred seventy-
391 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
to unemployment compensation 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, 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 horticultural 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 maintenance 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 subparagraph (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 subparagraphs (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, 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 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 commis-
(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
(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 contribu-
tions required to be paid into a state unemployment
compensation fund, or which as a condition for full tax
credit against the tax imposed by the federal Unem-
ployment 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 educa-
tional 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 postgraduate
or postdoctoral 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 unemployment compensation fund as provided in article five of this chapter.

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

"Separated from employment" means, for the purposes 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.

"Successor employer" means an employer that acquires, by sale or otherwise, the entire organization, trade or business, or substantially all the assets thereof of another employer.

"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 sixty dollars: Provided, That said individual must have earnings of at least sixty-one 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, is paid 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

704 thousand nine hundred seventy-seven; and shall not
705 include that part of remuneration which, after remu-
706 neration 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 prede-
709 cessor with respect to employment during any calen-
710 dar 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 unem-
715 ployment 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 anoth-
728 er 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 remuner-
732 ation 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 prede-
739 cessor 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
January, one thousand nine hundred sixty-two, to include remuneration 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 remuneration in excess of four thousand two hundred dollars; or (d) effective on or after the first day of January, one thousand nine hundred seventy-eight, to include remuneration 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

787 annuities, or into a fund, to provide for any such
788 payment) on account of retirement;
789
790 (4) Any payment made after the thirty-first day of
791 December, one thousand nine hundred fifty-two, by
792 an employer on account of sickness or accident disabil-
793 ity, or medical or hospitalization expenses in connec-
794 tion with sickness or accident disability, to, or on
795 behalf of, an individual in its employ after the expira-
796 tion of six calendar months following the last calendar
797 month in which such individual worked for such
798 employer;
799
800 (5) Any payment made after the thirty-first day of
801 December, one thousand nine hundred fifty-two, by
802 an employer to, or on behalf of, an individual in its
803 employ or his beneficiary: (A) From or to a trust
804 described in Section 401(a) which is exempt from tax
805 under Section 501(a) of the federal Internal Revenue
806 Code at the time of such payments unless such
807 payment is made to such individual as an employee of
808 the trust as remuneration for services rendered by
809 such individual and not as a beneficiary of the trust;
810 or (B) under or to an annuity plan which, at the time
811 of such payment, is a plan described in Section 403(a)
812 of the federal Internal Revenue Code;
813
814 (6) The payment by an employer of the tax imposed
815 upon an employer under Section 3101 of the federal
816 Internal Revenue Code with respect to remuneration
817 paid to an employee for domestic service in a private
818 home or the employer of agricultural labor;
819
820 (7) Remuneration paid by an employer after the
821 thirty-first day of December, one thousand nine
822 hundred fifty-two, in any medium other than cash to
823 an individual in its employ for service not in the
824 course of the employer's trade or business;
825
826 (8) Any payment (other than vacation or sick pay)
827 made by an employer after the thirty-first day of
828 December, one thousand nine hundred fifty-two, to an
829 individual in its employ after the month in which he
830 attains the age of sixty-five, if he did not work for the
831 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 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 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 nine hundred eighty-one, an employer’s payment shall remain two and seven-tenths percent, until:

4 (1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer’s account was chargeable with benefits.

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

14 When the total assets of the fund as of the first day of January of a calendar year equal or exceed one hundred percent but are less than one hundred twenty-five percent of the average benefit payments from the trust fund for the three preceding calendar years, an employer’s rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

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

28 When the total assets of the fund as of the first day of January of a calendar year equal or exceed one hundred fifty percent, an employer’s rate shall be the amount appearing in Column F of Table II on line with the percentage in Column B.
<table>
<thead>
<tr>
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<th>Credits Exceed</th>
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<th>Rate</th>
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</tr>
<tr>
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</tr>
<tr>
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</tr>
<tr>
<td>(11)</td>
<td>12.5</td>
<td>2.3</td>
<td>1.3</td>
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</tbody>
</table>

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

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

Effective on and after the computation date of the thirtieth day of June, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all
past years exceed the payments credited to their account for such past years by an amount up to and including ten percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of three percent of wages paid by them with respect to employment; except that effective on and after the first day of July, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including five percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of five and five-tenths percent of wages paid by them with respect to employment.

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

Effective on and after the computation date of the thirty-first day of June, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount of ten percent or above of their average annual payroll shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment; except that effective on and after the first day July, one thousand nine hundred eighty-one, such payments to the unemployment compensation fund shall be at the rate of seven and five-tenths percent of wages paid by them with respect to employment or at such other
rate authorized by this article.

"Debit balance account" for the purpose of this section means an account in which the benefits charged for all past years exceed the payments credited for such past years.

"Credit balance account" for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.

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

"Due date" means the last day of the month next following a calendar quarter. In determining the amount in the fund on any due date, contributions received, but not benefits paid, for such month next following the end of a calendar quarter shall be included.

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

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

(d) On and after the first day of January, one thousand nine hundred ninety-one, an employer's
payment shall remain two and seven-tenths percent, until:

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

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

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

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

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

When the total assets of the fund as of the first day
of January of a calendar year equal or exceed three percent of gross covered wages for the twelve-month period ending on the thirtieth day of June of the preceding year, an employer's rate shall be the amount appearing in Column G of Table III on line with the percentage in Column B.

TABLE III

<table>
<thead>
<tr>
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<td>(2) 6.0</td>
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<td>(9) 11.5</td>
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<td>0.6</td>
<td>0.0</td>
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</tr>
<tr>
<td>(13) 14.0</td>
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<td></td>
</tr>
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<td>(14) 16.0</td>
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<td>0.7</td>
<td>0.2</td>
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<tr>
<td>(15) 18.0 and over</td>
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<td>1.0</td>
<td>0.5</td>
<td>0.0</td>
<td>0.0</td>
<td></td>
</tr>
</tbody>
</table>

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


1 If a subject employer shall transfer his entire organization, trade or business, or substantially all the
assets thereof, to another employer, the commissioner shall combine the contribution records and the benefit experience records of the transferring and acquiring employers. The acquiring employer's contribution rate for the remainder of the calendar year shall not be affected by the transfer but such rate shall apply to the whole of his business, including the portion acquired by the transfer, through the following the thirty-first day of December. If a subject employer shall make such transfer to an employing unit which is not an employer on the date of the transfer, such subject employer's rate shall continue as the rate of the acquiring employing unit until the next effective rate date. If an employing unit acquires simultaneously the entire organization, trade or business, or substantially all the assets thereof, of two or more covered employers, the successor shall be assigned as a contribution rate the then current rate of the transferring employer which had, in the calendar quarter immediately preceding the date of the transfer, the higher or highest payroll. If a subject employer shall transfer his entire organization, trade or business, or substantially all the assets thereof, to two or more employers are employing units, apportionment of the contribution records and benefit experience records of the transferring employer shall be made between the acquiring units in accordance with the ratio that the total assets acquired by each transferee bears to the total assets transferred by the transferring employer as of the date of the transfers. The current contribution rate of the transferring employer shall in such case continue as the rate of each transferee who or which is an employing unit until the next effective rate date; the current contribution rate of each transferee who or which is an employer shall continue as his or its rate until the next effective rate date. For the succeeding calendar year the rate of each transferee shall be determined as provided in section ten of this article. As to any transfers which occur prior to the thirty-first day of July of the current calendar year such rate shall remain effective for the balance of that calendar year:
Provided, That if the transfers occur subsequent to the thirty-first day of July such rate shall remain effective for the balance of that calendar year and the rate for the succeeding calendar year shall, notwithstanding anything to the contrary provided in section seven of article five of this chapter, be recomputed on the basis of the combined experience of the transferring employers as of the thirty-first day of July of the year in which the transfers occur. In case the transferring employer is delinquent in the payment of contributions or interest thereof the acquiring employer shall not be entitled to any benefit of the contribution record of the transferring employer unless payment of such delinquent contributions and interest thereon is assumed by the acquiring employer. The commissioner shall upon joint request of the transferor and transferee furnish the transferee a statement of the amount of any contribution and interest due and unpaid by the transferor. A statement so furnished shall be controlling for the purposes of the foregoing proviso.

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

A reorganized employer shall keep the contribution rate of the employing unit before the reorganization and be liable for all contributions, interest and penalties owed by the employing unit before the reorganization. If the predecessor does not remain in business after the transfer of all or part of the assets, business, organization, or trade of the predecessor employer: (1) The successor employer is liable for all contributions, interest and penalties owed by the predecessor employer at the time of the transfer; and (2) if two or more successor employers receive the transfer, the successor employers shall be liable in the same proportion as the assets of the unit being transferred 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 receive benefits only if the commissioner finds that:

2 (1) He has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner;

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

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

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

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

7 (6) Beginning the first day of November, one thousand nine hundred ninety-four, he participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the commissioner, unless the commissioner determines that:

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

9 (b) There is justifiable cause for the claimant’s 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 in any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in the benefit table in this section, on the line on which in Column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in Column (B) in the benefit table. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of sixty dollars as a result of odd-job or subsidiary work, or is paid a bonus in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.

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

3 On and after the first day of July, one thousand nine hundred eighty-five, and until the first day of July, one thousand nine hundred eighty-nine, the maximum weekly benefit rate shall be seventy percent of the average weekly wage in West Virginia, which average weekly wage shall not exceed three hundred twenty-two dollars per week; thereafter, the maximum benefit rate shall be sixty-six and two-thirds percent of the average weekly wage in West Virginia.

4 Beginning on the first day of July, one thousand nine hundred eighty-nine, and on the first day of July of each succeeding year thereafter, the commissioner shall determine the maximum weekly benefit rate upon the basis of the formula set forth above and shall establish wage classes as are required, increasing or decreasing the amount of the base period wages
39 required for each wage class by one hundred fifty
dollars, establishing the weekly benefit rate for each
wage class by rounded dollar amount to be fifty-five
percent of one fifty-second of the median dollar
amount of wages in the base period for such wage
class, and establishing the maximum benefit for each
wage class as an amount equal to twenty-six times the
weekly benefit rate. The maximum weekly benefit
rate, when computed by the commissioner, in accor-
dance with the foregoing provisions, shall be rounded
to the next lowest multiple of one dollar.

### BENEFIT TABLE

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<th>Class</th>
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After he has established such wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before the first day of June following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.

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


1 An eligible individual who is partially unemployed in any week shall, upon claim therefor filed within such time and in such manner as the commissioner may by regulation prescribe, be paid benefits for such partial unemployment in an amount equal to his weekly benefit rate, as determined in accordance with section ten of this article, less that part of wages from any source payable or bonus paid to him with respect to such week which is in excess of sixty dollars: Provided, That such amount of benefits if not a multiple of one dollar shall be computed to the next lowest multiple of one dollar. Such partial benefits shall be paid to such individual for the week for which he is claiming benefits without regard to the provisions 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 tribunal; 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 thereof shall promptly be given by the commissioner or his designee to the employer concerned, in writing. The employer shall have a period of four calendar days from the receipt of such notice within which to furnish to the deputy or his local office initial information respecting the claim and the facts and circumstances pertaining to the claimant’s unemployment. If, within said four-day period, any party shall request a hearing before the deputy, such hearing shall be held, upon notice to all parties by the commissioner or his designee, either by delivery in person or by mail, within five calendar days of receipt of such request. Such hearing shall be informal in nature, but shall afford the parties reasonable opportunity to present, in
person, information relevant to the eligibility and
disqualification of the claimant.

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

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

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

(2) The amount of benefit;

(3) The maximum duration of benefits.

(e) After any finding or determination by a deputy,
the deputy shall promptly notify the claimant and the
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 bill passed this the ... day of ... 1994.

Governor
Presented to the Governor
Date 3/25/94
Time 9:30 a.m.