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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

Com. Sub. For
HOUSE BILL No. 4862

(By Delegates Bivens, Johnson,
Thomas and Greer)



Passed March 7 1996
In Effect From Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4862

(BY DELEGATES GIVENS, JOHNSON, THOMAS AND GREAR)

[Passed March 7, 1996; in effect from passage.]

AN ACT to repeal section three, article one, and section nine-a, article nine, both of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said chapter by adding thereto a new article, designated article one-a; to amend and reenact section six, article two of said chapter; to amend said article by adding thereto a new section, designated section six-c; to amend and reenact sections two, three, three-b, four, ten-b, sixteen, seventeen and twenty, article five of said chapter; to amend and reenact sections ten and fifteen, article six of said chapter; to further amend said article by adding thereto a new section, designated section one-c; to amend and reenact section fifteen, article eight, section nine, article nine, and section seventeen, article ten, all of said chapter, all relating generally to unemployment compensation and other payments due the commissioner of the bureau of employment programs, definitions, powers of the commissioner, allowing for rules to restrict certain delinquent employers from having authority to conduct business, criminal penalties, rates of reorganized employers, enhancements to ability of commissioner to collect payments due, interest rate and penalty for past due payments, updating weekly benefit table, voluntary withholding of tax payments from unemployment compen-

sation benefits, payment of funds from unemployment trust fund and Reed Act appropriation.

Be it enacted by the Legislature of West Virginia:

That section three, article one, and section nine-a, article nine, both of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said chapter be further amended by adding thereto a new article, designated article one-a; that section six, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-c; that sections two, three, three-b, four, ten-b, sixteen, seventeen and twenty, article five of said chapter be amended and reenacted; that sections ten and fifteen, article six of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one-c; and that section fifteen, article eight, section nine, article nine, and section seventeen, article ten, all of said chapter, be amended and reenacted, all to read as follows:

CHAPTER 21A. BUREAU OF EMPLOYMENT PROGRAMS.

ARTICLE 1A. DEFINITIONS.

§21A-1A-1. Construction of terms.

- 1 The terms and phrases defined by this article have the
- 2 stated meanings when used in this chapter unless the con-
- 3 text clearly requires otherwise.

§21A-1A-2. Administration fund.

- 1 "Administration fund" means the employment security
- 2 administration fund, from which the administrative ex-
- 3 penses under this chapter shall be paid.

§21A-1A-3. Annual payroll.

- 1 "Annual payroll" means the total amount of wages for
- 2 employment paid by an employer during a twelve-month
- 3 period ending with the thirtieth day of June of any calen-
- 4 dar year.

§21A-1A-4. Average annual payroll.

1 "Average annual payroll" means the average of the last
2 three annual payrolls of an employer.

§21A-1A-5. Base period.

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

§21A-1A-6. Base period employer.

1 "Base period employer" means any employer who in
2 the base period for any benefit year paid wages to an
3 individual who filed claim for unemployment compensa-
4 tion within such benefit year.

§21A-1A-7. Base period wages.

1 "Base period wages" means wages paid to an individual
2 during the base period by all the individual's base period
3 employers.

§21A-1A-8. Benefit year.

1 "Benefit year" with respect to an individual means the
2 fifty-two-week period beginning with the first day of the
3 calendar week in which a valid claim is effective, and
4 thereafter the fifty-two-week period beginning with the
5 first day of the calendar week in which such individual
6 next files a valid claim for benefits after the termination of
7 his or her last preceding benefit year: *Provided*, That if a
8 claim is effective on the first day of a quarter, the benefit
9 year will be fifty-three weeks in order to prevent an over-
10 lapping of the base period wages: *Provided, however*, That
11 for any benefit year beginning on or after the first day of
12 January, one thousand nine hundred ninety-five, if a claim
13 is effective on the second day of a quarter and the benefit
14 year includes the twenty-ninth day of February, the bene-
15 fit year will be fifty-three weeks in order to prevent an
16 overlapping of the base period wages. An initial claim for
17 benefits filed in accordance with the provisions of this
18 chapter is a valid claim within the purposes of this defini-
19 tion if the individual has been paid wages in his or her
20 base period sufficient to make him or her eligible for
21 benefits under the provisions of this chapter.

§21A-1A-9. Benefits.

1 "Benefits" means the money payable to an individual
2 with respect to his or her unemployment.

§21A-1A-10. Board.

1 "Board" means board of review.

§21A-1A-11. Calendar quarter.

1 "Calendar quarter" means the period of three consecu-
2 tive calendar months ending on the thirty-first day of
3 March, the thirtieth day of June, the thirtieth day of Sep-
4 tember, the thirty-first day of December or the equivalent
5 thereof as the commissioner may by rule prescribe.

§21A-1A-12. Commissioner.

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

§21A-1A-13. Computation date.

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

§21A-1A-14. Employing unit.

1 "Employing unit" means an individual, or type of
2 organization, including any partnership, association, trust,
3 estate, joint-stock company, insurance company, corpora-
4 tion (domestic or foreign), state or political subdivision
5 thereof, or their instrumentalities, as provided in paragraph
6 (B), subdivision (9) of the definition of "employment" in
7 this article institution of higher education, or the receiver,
8 trustee in bankruptcy, trustee or successor thereof, or the
9 legal representative of a deceased person, which has in its
10 employ one or more individuals performing service within
11 this state.

§21A-1A-15. Employer.

1 "Employer" means:

2 (1) Any employing unit which for some portion of a
3 day, not necessarily simultaneously, in each of twenty
4 different calendar weeks, which weeks need not be consec-

5 utive, within either the current calendar year, or the pre-
6 ceding calendar year, has had in employment four or
7 more individuals irrespective of whether the same individ-
8 uals were or were not employed on each of such days;

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

11 (3) Any employing unit which has acquired or ac-
12 quires the organization, trade or business, or substantially
13 all the assets thereof, of an employing unit which at the
14 time of such acquisition was an employer subject to this
15 chapter;

16 (4) Any employing unit which, in any one calendar
17 quarter, in any calendar year, has in employment four or
18 more individuals and has paid wages for employment in
19 the total sum of five thousand dollars or more, or which,
20 after such date, has paid wages for employment in any
21 calendar year in the sum total of twenty thousand dollars
22 or more;

23 (5) Any employing unit which, in any three-week
24 period, in any calendar year, has in employment ten or
25 more individuals;

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

29 (7) Any employing unit which: (A) In any calendar
30 quarter in either the current or preceding calendar year
31 paid for service in employment wages of one thousand
32 five hundred dollars or more; or (B) for some portion of a
33 day in each of twenty different calendar weeks, whether or
34 not such weeks were consecutive, in either the current or
35 the preceding calendar year had in employment at least
36 one individual (irrespective of whether the same individual
37 was in employment in each such day) except as provided
38 in subdivisions (10) and (11) of this section;

39 (8) Any employing unit for which service in employ-
40 ment, as defined in subdivision (9) of the definition of
41 "employment" in this article is performed;

42 (9) Any employing unit for which service in employ-
43 ment, as defined in subdivision (10) of the definition of
44 "employment" in this article is performed;

45 (10) Any employing unit for which agricultural labor,
46 as defined in subdivision (12) of the definition of "em-
47 ployment", is performed; or

48 (11) Any employing unit for which domestic service
49 in employment, as defined in subdivision (13) of the defi-
50 nition of "employment", is performed.

§21A-1A-16. Employment.

1 "Employment", subject to the other provisions of this
2 article, means:

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

6 (2) Any service performed by an employee, as defined
7 in Section 3306(i) of the federal Unemployment Tax Act,
8 including service in interstate commerce;

9 (3) Any service performed, including service in inter-
10 state commerce, by any officer of a corporation;

11 (4) An individual's entire service, performed within or
12 both within and without this state if: (A) The service is
13 localized in this state; or (B) the service is not localized in
14 any state but some of the service is performed in this state
15 and: (i) The base of operations, or, if there is no base of
16 operations, then the place from which such service is di-
17 rected or controlled, is in this state; or (ii) the base of op-
18 erations or place from which such service is directed or
19 controlled is not in any state in which some part of the
20 service is performed but the individual's residence is in this
21 state;

22 (5) Service not covered under subdivision (4) of this
23 section and performed entirely without this state with re-
24 spect to no part of which contributions are required and
25 paid under an unemployment compensation law of any
26 other state or of the federal government, is employment
27 subject to this chapter if the individual performing such

28 services is a resident of this state and the commissioner
29 approves the election of the employing unit for whom
30 such services are performed that the entire service of such
31 individual is employment subject to this chapter;

32 (6) Service is localized within a state, if: (A) The ser-
33 vice is performed entirely within such state; or (B) the
34 service is performed both within and without such state,
35 but the service performed without such state is incidental
36 to the individual's service within this state, as, for example,
37 is temporary or transitory in nature or consists of isolated
38 transactions;

39 (7) Services performed by an individual for wages are
40 employment subject to this chapter unless and until it is
41 shown to the satisfaction of the commissioner that: (A)
42 Such individual has been and will continue to be free from
43 control or direction over the performance of such services,
44 both under his or her contract of service and in fact; and
45 (B) such service is either outside the usual course of the
46 business for which such service is performed or that such
47 service is performed outside of all the places of business
48 of the enterprise for which such service is performed; and
49 (C) such individual is customarily engaged in an indepen-
50 dently established trade, occupation, profession or busi-
51 ness;

52 (8) All service performed by an officer or member of
53 the crew of an American vessel (as defined in Section 305
54 of an act of Congress entitled Social Security Act Amend-
55 ment of 1946, approved the tenth day of August, one
56 thousand nine hundred forty-six), on or in connection
57 with such vessel, provided that the operating office, from
58 which the operations of such vessel operating on navigable
59 waters within and without the United States is ordinarily
60 and regularly supervised, managed, directed and con-
61 trolled, is within this state;

62 (9) (A) Service performed by an individual in the
63 employ of this state or any of its instrumentalities (or in
64 the employ of this state and one or more other states or
65 their instrumentalities) for a hospital or institution of high-
66 er education located in this state: *Provided*, That such
67 service is excluded from "employment" as defined in the

68 federal Unemployment Tax Act solely by reason of Sec-
69 tion 3306(c)(7) of that act and is not excluded from "em-
70 ployment" under subdivision (11), section seventeen of
71 this article;

72 (B) Service performed in the employ of this state or
73 any of its instrumentalities or political subdivisions thereof
74 or any of its instrumentalities or any instrumentality of
75 more than one of the foregoing or any instrumentality of
76 any foregoing and one or more other states or political
77 subdivisions: *Provided*, That such service is excluded
78 from "employment" as defined in the federal Unemploy-
79 ment Tax Act by Section 3306(c)(7) of that act and is not
80 excluded from "employment" under subdivision (15),
81 section seventeen of this article; and

82 (C) Service performed in the employ of a nonprofit
83 educational institution which is not an institution of higher
84 education;

85 (10) Service performed by an individual in the em-
86 ploy of a religious, charitable, educational or other organi-
87 zation but only if the following conditions are met:

88 (A) The service is excluded from "employment" as
89 defined in the federal Unemployment Tax Act solely by
90 reason of Section 3306(c)(8) of that act; and

91 (B) The organization had four or more individuals in
92 employment for some portion of a day in each of twenty
93 different weeks, whether or not such weeks were consecu-
94 tive, within either the current or preceding calendar year,
95 regardless of whether they were employed at the same
96 moment of time;

97 (11) Service of an individual who is a citizen of the
98 United States, performed outside the United States after
99 the thirty-first day of December, one thousand nine hun-
100 dred seventy-one (except in Canada and in the case of the
101 Virgin Islands after the thirty-first day of December, one
102 thousand nine hundred seventy-one, and before the first
103 day of January, the year following the year in which the
104 secretary of labor approves for the first time an unem-
105 ployment insurance law submitted to him or her by the
106 Virgin Islands for approval) in the employ of an Ameri-

107 can employer (other than service which is considered
108 "employment" under the provisions of subdivision (4), (5)
109 or (6) of this section or the parallel provisions of another
110 state's law) if:

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

113 (B) The employer has no place of business in the
114 United States, but: (i) The employer is an individual who
115 is a resident of this state; or (ii) the employer is a corpora-
116 tion which is organized under the laws of this state; or (iii)
117 the employer is a partnership or a trust and the number of
118 the partners or trustees who are residents of this state is
119 greater than the number who are residents of any one
120 other state; or

121 (C) None of the criteria of paragraphs (A) and (B) of
122 this subdivision is met but the employer has elected cover-
123 age in this state or, the employer having failed to elect
124 coverage in any state, the individual has filed a claim for
125 benefits, based on such service, under the law of this state.

126 (D) An "American employer", for purposes of this
127 subdivision, means a person who is: (i) An individual who
128 is a resident of the United States; or (ii) a partnership if
129 two thirds or more of the partners are residents of the
130 United States; or (iii) a trust, if all of the trustees are resi-
131 dents of the United States; or (iv) a corporation organized
132 under the laws of the United States or of any state;

133 (12) Service performed by an individual in agricultur-
134 al labor as defined in subdivision (5), section seventeen of
135 this article when:

136 (A) Such service is performed for a person who: (i)
137 During any calendar quarter in either the current or the
138 preceding calendar year paid remuneration in cash of
139 twenty thousand dollars or more to individuals employed
140 in agricultural labor including labor performed by an
141 alien referred to in paragraph (B) of this subdivision; or
142 (ii) for some portion of a day in each of twenty different
143 calendar weeks, whether or not such weeks were consecu-
144 tive, in either the current or the preceding calendar year,
145 employed in agricultural labor, including labor performed

146 by an alien referred to in paragraph (B) of this subdivi-
147 sion, ten or more individuals, regardless of whether they
148 were employed at the same moment of time;

149 (B) Such service is not performed in agricultural labor
150 if performed before the first day of January, one thousand
151 nine hundred ninety-five, by an individual who is an alien
152 admitted to the United States to perform service in agricul-
153 tural labor pursuant to Sections 214(c) and 101(a)(15)(H)
154 of the Immigration and Nationality Act;

155 (C) For the purposes of the definition of employment,
156 any individual who is a member of a crew furnished by a
157 crew leader to perform service in agricultural labor for
158 any other person shall be treated as an employee of such
159 crew leader: (i) If such crew leader holds a valid certifi-
160 cate of registration under the Migrant and Seasonal Agri-
161 cultural Worker Protection Act; or substantially all the
162 members of such crew operate or maintain tractors, mech-
163 anized harvesting or crop-dusting equipment, or any
164 other mechanized equipment, which is provided by such
165 crew leader; and (ii) if such individual is not an employee
166 of such other person within the meaning of subdivision
167 (7) of the definition of employer;

168 (D) For the purposes of this subdivision, in the case of
169 any individual who is furnished by a crew leader to per-
170 form service in agricultural labor for any other person and
171 who is not treated as an employee of such crew leader
172 under paragraph (C) of this subdivision: (i) Such other
173 person and not the crew leader shall be treated as the em-
174 ployer of such individual; and (ii) such other person shall
175 be treated as having paid cash remuneration to such indi-
176 vidual in an amount equal to the amount of cash remuner-
177 ation paid to such individual by the crew leader (either on
178 his or her own behalf or on behalf of such other person)
179 for the service in agricultural labor performed for such
180 other person; and

181 (E) For the purposes of this subdivision, the term
182 "crew leader" means an individual who: (i) Furnishes
183 individuals to perform service in agricultural labor for any
184 other person; (ii) pays (either on his or her own behalf or
185 on behalf of such other person) the individuals so fur-

186 nished by him or her for the service in agricultural labor
187 performed by them; and (iii) has not entered into a written
188 agreement with such other person under which such indi-
189 vidual is designated as an employee of such other person;

190 (13)(A) The term "employment" includes domestic
191 service in a private home, local college club or local chap-
192 ter of a college fraternity or sorority performed for a
193 person who paid cash remuneration of one thousand dol-
194 lars or more in any calendar quarter in the current calen-
195 dar year or the preceding calendar year to individuals
196 employed in such domestic service.

197 (B) Notwithstanding the foregoing definition of "em-
198 ployment", if the services performed during one half or
199 more of any pay period by an employee for the person
200 employing him or her constitute employment, all the ser-
201 vices of such employee for such period are employment;
202 but if the services performed during more than one half of
203 any such pay period by an employee for the person em-
204 ploying him or her do not constitute employment, then
205 none of the services of such employee for such period are
206 employment.

§21A-1A-17. Employment does not include.

1 The term "employment" does not include:

2 (1) Service performed in the employ of this state or
3 any political subdivision thereof, or any instrumentality of
4 this state or its subdivisions, except as otherwise provided
5 herein;

6 (2) Service performed directly in the employ of an-
7 other state, or its political subdivisions, except as otherwise
8 provided in paragraph (A), subdivision (9) of the defini-
9 tion of "employment";

10 (3) Service performed in the employ of the United
11 States or any instrumentality of the United States exempt
12 under the constitution of the United States from the pay-
13 ments imposed by this law, except that to the extent that
14 the Congress of the United States shall permit states to
15 require any instrumentalities of the United States to make
16 payments into an unemployment fund under a state un-

17 employment compensation law, all of the provisions of
18 this law shall be applicable to such instrumentalities and to
19 service performed for such instrumentalities in the same
20 manner, to the same extent and on the same terms as to all
21 other employers, employing units, individuals and servic-
22 es: *Provided*, That if this state is not certified for any year
23 by the secretary of labor under Section 1603(c) of the
24 federal Internal Revenue Code, the payments required of
25 such instrumentalities with respect to such year shall be
26 refunded by the commissioner from the fund in the same
27 manner and within the same period as is provided in sec-
28 tion nineteen, article five of this chapter, with respect to
29 payments erroneously collected;

30 (4) Service performed with respect to which unem-
31 ployment compensation is payable under the Railroad
32 Unemployment Insurance Act and service with respect to
33 which unemployment benefits are payable under an un-
34 employment compensation system for maritime employ-
35 ees established by an act of Congress. The commissioner
36 may enter into agreements with the proper agency estab-
37 lished under such an act of Congress to provide reciprocal
38 treatment to individuals who, after acquiring potential
39 rights to unemployment compensation under an act of
40 Congress, or who have, after acquiring potential rights to
41 unemployment compensation under an act of Congress,
42 acquired rights to benefit under this chapter. Such agree-
43 ment shall become effective ten days after such publica-
44 tions which shall comply with the general rules of the
45 department;

46 (5) Service performed by an individual in agricultural
47 labor, except as provided in subdivision (12) of the defini-
48 tion of "employment" in this article. For purposes of this
49 subdivision, the term "agricultural labor" includes all ser-
50 vices performed:

51 (A) On a farm, in the employ of any person, in con-
52 nection with cultivating the soil, or in connection with
53 raising or harvesting any agricultural or horticultural com-
54 modity, including the raising, shearing, feeding, caring for,
55 training and management of livestock, bees, poultry and
56 fur-bearing animals and wildlife;

57 (B) In the employ of the owner or tenant or other
58 operator of a farm, in connection with the operation, man-
59 agement, conservation, improvement or maintenance of
60 such farm and its tools and equipment, or in salvaging
61 timber or clearing land of brush and other debris left by a
62 hurricane, if the major part of such service is performed
63 on a farm;

64 (C) In connection with the production or harvesting of
65 any commodity defined as an agricultural commodity in
66 section fifteen (g) of the Agricultural Marketing Act, as
67 amended, or in connection with the ginning of cotton, or
68 in connection with the operation or maintenance of ditch-
69 es, canals, reservoirs or waterways, not owned or operated
70 for profit, used exclusively for supplying and storing
71 water for farming purposes;

72 (D) (i) In the employ of the operator of a farm in
73 handling, planting, drying, packing, packaging, process-
74 ing, freezing, grading, storing or delivering to storage or
75 to market or to a carrier for transportation to market, in its
76 unmanufactured state, any agricultural or horticultural
77 commodity; but only if such operator produced more
78 than one half of the commodity with respect to which such
79 service is performed; or (ii) in the employ of a group of
80 operators of farms (or a cooperative organization of which
81 such operators are members) in the performance of ser-
82 vice described in subparagraph (i) of this paragraph, but
83 only if such operators produced more than one half of the
84 commodity with respect to which such service is per-
85 formed; but the provisions of subparagraphs (i) and (ii) of
86 this paragraph are not applicable with respect to service
87 performed in connection with commercial canning or
88 commercial freezing or in connection with any agricultur-
89 al or horticultural commodity after its delivery to a termi-
90 nal market for distribution for consumption;

91 (E) On a farm operated for profit if such service is not
92 in the course of the employer's trade or business or is
93 domestic service in a private home of the employer. As
94 used in this subdivision, the term "farm" includes stock,
95 dairy, poultry, fruit, fur-bearing animals, truck farms,
96 plantations, ranches, greenhouses, ranges and nurseries, or

97 other similar land areas or structures used primarily for
98 the raising of any agricultural or horticultural commodi-
99 ties;

100 (6) Domestic service in a private home except as pro-
101 vided in subdivision (13) of the definition of "employ-
102 ment" in this article;

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

105 (8) Service performed by a child under the age of
106 eighteen years in the employ of his or her father or moth-
107 er;

108 (9) Service as an officer or member of a crew of an
109 American vessel, performed on or in connection with such
110 vessel, if the operating office, from which the operations
111 of the vessel operating on navigable waters within or with-
112 out the United States are ordinarily and regularly super-
113 vised, managed, directed and controlled, is without this
114 state;

115 (10) Service performed by agents of mutual fund
116 broker-dealers or insurance companies, exclusive of in-
117 dustrial insurance agents, or by agents of investment com-
118 panies, who are compensated wholly on a commission
119 basis;

120 (11) Service performed: (A) In the employ of a
121 church or convention or association of churches, or an
122 organization which is operated primarily for religious
123 purposes and which is operated, supervised, controlled or
124 principally supported by a church or convention or asso-
125 ciation of churches; or (B) by a duly ordained, commis-
126 sioned or licensed minister of a church in the exercise of
127 his or her ministry or by a member of a religious order in
128 the exercise of duties required by such order; or (C) in a
129 facility conducted for the purpose of carrying out a pro-
130 gram of rehabilitation for individuals whose earning ca-
131 pacity is impaired by age or physical or mental deficiency
132 or injury or providing remunerative work for individuals
133 who because of their impaired physical or mental capacity
134 cannot be readily absorbed in the competitive labor mar-
135 ket by an individual receiving such rehabilitation or remu-

136 nerative work; or (D) as part of an unemployment
137 work-relief or work-training program assisted or financed,
138 in whole or in part, by any federal agency or an agency of
139 a state or political subdivision thereof, by an individual
140 receiving such work relief or work training; or (E) by an
141 inmate of a custodial or penal institution;

142 (12) Service performed in the employ of a school,
143 college or university, if such service is performed: (A) By
144 a student who is enrolled and is regularly attending classes
145 at such school, college or university; or (B) by the spouse
146 of such a student, if such spouse is advised, at the time
147 such spouse commences to perform such service, that: (i)
148 The employment of such spouse to perform such service
149 is provided under a program to provide financial assist-
150 tance to such student by such school, college or university;
151 and (ii) such employment will not be covered by any
152 program of unemployment insurance;

153 (13) Service performed by an individual who is en-
154 rolled at a nonprofit or public educational institution
155 which normally maintains a regular faculty and curricu-
156 lum and normally has a regularly organized body of stu-
157 dents in attendance at the place where its educational activ-
158 ities are carried on as a student in a full-time program,
159 taken for credit at such institution, which combines aca-
160 demic instruction with work experience, if such service is
161 an integral part of such program, and such institution has
162 so certified to the employer, except that this subdivision
163 does not apply to service performed in a program estab-
164 lished for or on behalf of an employer or group of em-
165 ployers;

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

169 (15) Service in the employ of a governmental entity
170 referred to in subdivision (9) of the definition of "employ-
171 ment" in this article if such service is performed by an
172 individual in the exercise of duties: (A) As an elected
173 official; (B) as a member of a legislative body, or a mem-
174 ber of the judiciary, of a state or political subdivision; (C)
175 as a member of the state national guard or air national

176 guard; (D) as an employee serving on a temporary basis in
177 case of fire, storm, snow, earthquake, flood or similar
178 emergency; (E) in a position which, under or pursuant to
179 the laws of this state, is designated as: (i) A major
180 nontenured policymaking or advisory position; or (ii) a
181 policymaking or advisory position the performance of the
182 duties of which ordinarily does not require more than
183 eight hours per week.

184 Notwithstanding the foregoing exclusions from the
185 definition of "employment", services, except agricultural
186 labor and domestic service in a private home, are in em-
187 ployment if with respect to such services a tax is required
188 to be paid under any federal law imposing a tax against
189 which credit may be taken for contributions required to be
190 paid into a state unemployment compensation fund, or
191 which as a condition for full tax credit against the tax
192 imposed by the federal Unemployment Tax Act are re-
193 quired to be covered under this chapter.

§21A-1A-18. Employment office.

1 "Employment office" means a free employment office
2 or branch thereof, operated by this state, or any free pub-
3 lic employment office maintained as a part of a state con-
4 trolled system of public employment offices in any other
5 state.

§21A-1A-19. Fund.

1 "Fund" means the unemployment compensation fund
2 established by this chapter.

§21A-1A-20. Hospital.

1 "Hospital" means an institution which has been li-
2 censed, certified or approved by the state department of
3 health as a hospital.

§21A-1A-21. Institution of higher education.

1 "Institution of higher education" means an educational
2 institution which:

3 (1) Admits as regular students only individuals having
4 a certificate of graduation from a high school, or the rec-
5 ognized equivalent of such a certificate;

6 (2) Is legally authorized in this state to provide a pro-
7 gram of education beyond high school;

8 (3) Provides an educational program for which it
9 awards a bachelor's or higher degree, or provides a pro-
10 gram which is acceptable for full credit toward such a
11 degree, or provides a program of postgraduate or postdoc-
12 toral studies, or provides a program of training to prepare
13 students for gainful employment in a recognized occupa-
14 tion; and

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

16 Notwithstanding any of the foregoing provisions of
17 this definition all colleges and universities in this state are
18 institutions of higher education.

§21A-1A-22. Payments.

1 "Payments" means the money required to be paid or
2 that may be voluntarily paid into the state unemployment
3 compensation fund as provided in article five of this chap-
4 ter.

§21A-1A-23. Reorganized employer.

1 "Reorganized employer" means: (1) An employer that
2 alters its legal status, including changing from a sole pro-
3 prietorship or a partnership to a corporation; or (2) an
4 employer that otherwise changes its trade name or busi-
5 ness identity while remaining under substantially the same
6 ownership.

§21A-1A-24. Separated from employment.

1 "Separated from employment" means, for the purposes
2 of this chapter, the total severance, whether by quitting,
3 discharge or otherwise, of the employer-employee rela-
4 tionship.

§21A-1A-25. State.

1 "State" includes, in addition to the states of the United
2 States, Puerto Rico, District of Columbia and the Virgin
3 Islands.

§21A-1A-26. Successor employer.

1 "Successor employer" means an employer that ac-
2 quires, by sale or otherwise, the entire organization, trade
3 or business, or substantially all the assets thereof of anothe-
4 er employer.

§21A-1A-27. Total and partial employment.

1 "Total and partial unemployment" means:

2 (1) An individual is totally unemployed in any week
3 in which such individual is separated from employment
4 for an employing unit and during which he or she per-
5 forms no services and with respect to which no wages are
6 payable to him or her.

7 (2) An individual who has not been separated from
8 employment is partially unemployed in any week in which
9 due to lack of full-time work wages payable to him or her
10 are less than his or her weekly benefit amount plus sixty
11 dollars: *Provided*, That said individual must have earnings
12 of at least sixty-one dollars.

§21A-1A-28. Wages.

1 (a) "Wages" means all remuneration for personal ser-
2 vice, including commissions, gratuities customarily re-
3 ceived by an individual in the course of employment from
4 persons other than the employing unit, as long as such
5 gratuities equal or exceed an amount of not less than
6 twenty dollars each month and which are required to be
7 reported to the employer by the employee, bonuses, and
8 the cash value of all remuneration in any medium other
9 than cash except for agricultural labor and domestic ser-
10 vice.

11 (b) The term "wages" does not include:

12 (1) That part of the remuneration which, after remu-
13 neration equal to eight thousand dollars is paid during a
14 calendar year to an individual by an employer or his or
15 her predecessor with respect to employment during any
16 calendar year, is paid to such individual by such employer
17 during such calendar year unless that part of the remuner-
18 ation is subject to a tax under a federal law imposing a tax
19 against which credit may be taken for contributions re-
20 quired to be paid into a state unemployment fund. For

21 the purposes of this section, the term "employment" in-
22 cludes service constituting employment under any unem-
23 ployment compensation law of another state; or which as a
24 condition for full tax credit against the tax imposed by the
25 Federal Unemployment Tax Act is required to be covered
26 under this chapter; and, except that for the purposes of
27 sections one, ten, eleven and thirteen, article six of this
28 chapter, all remuneration earned by an individual in em-
29 ployment shall be credited to the individual and included
30 in his or her computation of base period wages: *Provided,*
31 That the remuneration paid to an individual by an em-
32 ployer with respect to employment in another state or
33 other states upon which contributions were required of
34 and paid by such employer under an unemployment com-
35 pensation law of such other state or states shall be included
36 as a part of the remuneration equal to the amounts of
37 eight thousand dollars herein referred to. In applying
38 such limitation on the amount of remuneration that is
39 taxable, an employer shall be accorded the benefit of all
40 or any portion of such amount which may have been paid
41 by its predecessor or predecessors: *Provided, however,*
42 That if the definition of the term "wages" as contained in
43 Section 3306(b) of the Internal Revenue Code of 1954, as
44 amended, is amended to include remuneration in excess of
45 eight thousand dollars, paid to an individual by an em-
46 ployer under the federal Unemployment Tax Act during
47 any calendar year, wages for the purposes of this defini-
48 tion shall include remuneration paid in a calendar year to
49 an individual by an employer subject to this chapter or his
50 or her predecessor with respect to employment during any
51 calendar year up to an amount equal to the amount of
52 remuneration taxable under the federal Unemployment
53 Tax Act;

54 (2) The amount of any payment made (including any
55 amount paid by an employer for insurance or annuities, or
56 into a fund, to provide for any such payment), to, or on
57 behalf of, an individual in its employ or any of his or her
58 dependents, under a plan or system established by an
59 employer which makes provision for individuals in its
60 employ generally (or for such individuals and their de-
61 pendents), or for a class or classes of such individuals (or

62 for a class or classes of such individuals and their depen-
63 dents), on account of: (A) Retirement; or (B) sickness or
64 accident disability payments made to an employee under
65 an approved state workers' compensation law; or (C) medi-
66 cal or hospitalization expenses in connection with sickness
67 or accident disability; or (D) death;

68 (3) Any payment made by an employer to an individ-
69 ual in its employ (including any amount paid by an em-
70 ployer for insurance or annuities, or into a fund, to pro-
71 vide for any such payment) on account of retirement;

72 (4) Any payment made by an employer on account of
73 sickness or accident disability, or medical or hospitaliza-
74 tion expenses in connection with sickness or accident
75 disability, to, or on behalf of, an individual in its employ
76 after the expiration of six calendar months following the
77 last calendar month in which such individual worked for
78 such employer;

79 (5) Any payment made by an employer to, or on
80 behalf of, an individual in its employ or his or her benefi-
81 ciary: (A) From or to a trust described in Section 401(a)
82 which is exempt from tax under Section 501(a) of the
83 federal Internal Revenue Code at the time of such pay-
84 ments unless such payment is made to such individual as
85 an employee of the trust as remuneration for services
86 rendered by such individual and not as a beneficiary of
87 the trust; or (B) under or to an annuity plan which, at the
88 time of such payment, is a plan described in Section 403
89 (a) of the federal Internal Revenue Code;

90 (6) The payment by an employer of the tax imposed
91 upon an employer under Section 3101 of the federal
92 Internal Revenue Code with respect to remuneration paid
93 to an employee for domestic service in a private home or
94 the employer of agricultural labor;

95 (7) Remuneration paid by an employer in any medi-
96 um other than cash to an individual in its employ for ser-
97 vice not in the course of the employer's trade or business;

98 (8) Any payment (other than vacation or sick pay)
99 made by an employer to an individual in its employ after
100 the month in which he or she attains the age of sixty-five,

101 if he or she did not work for the employer in the period
102 for which such payment is made;

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

108 (10) Vacation pay, severance pay or savings plans
109 received by an individual before or after becoming totally
110 or partially unemployed but earned prior to becoming
111 totally or partially unemployed: *Provided*, That the term
112 totally or partially unemployed does not include: (A)
113 Employees who are on vacation by reason of the request
114 of the employees or their duly authorized agent, for a
115 vacation at a specific time, and which request by the em-
116 ployees or their agent is acceded to by their employer; (B)
117 employees who are on vacation by reason of the employ-
118 er's request provided they are so informed at least ninety
119 days prior to such vacation; or (C) employees who are on
120 vacation by reason of the employer's request where such
121 vacation is in addition to the regular vacation and the
122 employer compensates such employee at a rate equal to or
123 exceeding their regular daily rate of pay during the vaca-
124 tion period.

125 (c) The reasonable cash value of remuneration in any
126 medium other than cash shall be estimated and determined
127 in accordance with rules prescribed by the commissioner,
128 except for remuneration other than cash for services per-
129 formed in agricultural labor and domestic service.

§21A-1A-29. Week.

1 "Week" means a calendar week, ending at midnight
2 Saturday, or the equivalent thereof, as determined in ac-
3 cordance with the rules prescribed by the commissioner.

§21A-1A-30. Weekly benefit rate.

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

§21A-1A-31. Year.

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

**ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EM-
PLOYMENT PROGRAMS.**

§21A-2-6. Powers and duties generally.

1 The commissioner is the executive and administrative
2 head of the bureau and has the power and duty to:

3 (1) Exercise general supervision of and make rules
4 for the government of the bureau;

5 (2) Prescribe uniform rules pertaining to investiga-
6 tions, departmental hearings, and promulgate rules;

7 (3) Supervise fiscal affairs and responsibilities of the
8 bureau;

9 (4) Prescribe the qualifications of, appoint, remove,
10 and fix the compensation of the officers and employees of
11 the bureau, subject to the provisions of section ten, article
12 four of this chapter, relating to the board of review;

13 (5) Organize and administer the bureau so as to com-
14 ply with the requirements of this chapter and chapter
15 twenty-three of this code and to satisfy any conditions
16 established in applicable federal legislation;

17 (6) Make reports in such form and containing such
18 information as the United States department of labor may
19 from time to time require, and comply with such provi-
20 sions as the United States department of labor may from
21 time to time find necessary to assure the correctness and
22 verification of such reports;

23 (7) Make available to any agency of the United States
24 charged with the administration of public works or assis-
25 tance through public employment, upon its request, the
26 name, address, ordinary occupation and employment
27 status of each recipient of unemployment compensation,
28 and a statement of the recipient's rights to further compen-
29 sation under this chapter;

30 (8) Keep an accurate and complete record of all bu-
31 reau proceedings; record and file all bonds and contracts

32 and assume responsibility for the custody and preservation
33 of all papers and documents of the bureau;

34 (9) Sign and execute in the name of the state, by "The
35 Bureau of Employment Programs", any contract or agree-
36 ment with the federal government, its agencies, other states,
37 their subdivisions, or private persons;

38 (10) Prescribe a salary scale to govern compensation
39 of appointees and employees of the bureau;

40 (11) Make the original determination of right in
41 claims for benefits;

42 (12) Make recommendations and an annual report to
43 the governor concerning the condition, operation, and
44 functioning of the bureau;

45 (13) Invoke any legal or special remedy for the en-
46 forcement of orders or the provisions of this chapter and
47 chapter twenty-three of this code;

48 (14) Exercise any other power necessary to standard-
49 ize administration, expedite bureau business, assure the
50 establishment of fair rules and promote the efficiency of
51 the service;

52 (15) Keep an accurate and complete record and pre-
53 pare a monthly report of the number of persons employed
54 and unemployed in the state, which report shall be made
55 available upon request to members of the public and
56 press;

57 (16) Provide at bureau expense a program of continu-
58 ing professional, technical and specialized instruction for
59 the personnel of the bureau;

60 (17) In addition to the authority granted to the com-
61 missioner by section eighteen of this article and notwith-
62 standing anything to the contrary elsewhere in this code,
63 utilize any attorney regularly employed by the bureau or
64 the office of the attorney general to represent the commis-
65 sioner, the bureau or any of its divisions in any matter. In
66 addition, the commissioner, with the approval of the com-
67 pensation programs performance council, is authorized to
68 retain counsel for any purpose in the administration of

69 this chapter or in the administration of chapter
70 twenty-three of this code relating to the collection of any
71 amounts due from employers to the bureau or any of its
72 divisions. The compensation programs performance
73 council shall solicit proposals from counsel who are inter-
74 ested in representing the commissioner, the bureau or any
75 of its divisions under the terms of this subdivision. There-
76 after, the compensation programs performance council
77 shall select such attorneys as it determines necessary to
78 pursue the collection objectives of this subdivision.

79 (A) Payment to any such retained counsel may either
80 be by hourly or other fixed fee, or as determined by the
81 court or administrative law judge as provided for below.
82 A contingency fee payable from the amount recovered by
83 judgment or settlement for the commissioner, the bureau
84 or any of its divisions is only permitted, to the extent not
85 prohibited by federal law, when the assets of a defendant
86 or respondent are depleted so that a full recovery plus
87 attorneys' fees is not possible.

88 (B) In the event that any collections action, other than
89 a collections action against a claimant, initiated either by
90 retained counsel or other counsel on behalf of the com-
91 missioner, the bureau or any of its divisions results in a
92 judgment or settlement in favor of the commissioner, the
93 bureau or any of its divisions, then the court or, if there
94 was no judicial component to the action, the administrative
95 law judge, shall determine the amount of attorneys' fees
96 that shall be paid by the defendants or respondents to the
97 retained or other counsel representing the commissioner,
98 the bureau or any of its divisions. If the court is to deter-
99 mine the amount of attorneys' fees, it shall include in its
100 determination the amount of fee that should be paid for
101 the representation of the commissioner, the bureau or its
102 divisions in pursuing the administrative component, if any,
103 of the action. The amount so paid shall be fixed by the
104 court or the administrative law judge in an amount no less
105 than twenty percent of its recovery. Any additional
106 amount of attorneys' fees shall be determined by use of
107 the following factors:

108 (i) The counsel's normal hourly rate or, if the counsel
109 is an employee of the bureau or is an employee of the
110 office of the attorney general, such hourly rate as the
111 court or the administrative law judge shall determine to be
112 customary based upon the attorney's experience and skill
113 level;

114 (ii) The number of hours actually expended on the
115 action;

116 (iii) The complexity of the issues involved in the ac-
117 tion;

118 (iv) The degree of risk involved in the case with regard
119 to the probability of success or failure;

120 (v) The overhead costs incurred by counsel with re-
121 gard to the use of paralegals and other office staff, experts,
122 and investigators; and

123 (vi) The public purpose served or public objective
124 achieved by the attorney in obtaining the judgment or
125 settlement on behalf of the commissioner, the bureau of
126 any of its divisions.

127 (c) Notwithstanding the provisions of paragraph (B) of
128 this subdivision, if the commissioner, bureau or any of
129 divisions and the defendants or respondents to any admin-
130 istrative or judicial action settle the action, then the parties
131 may negotiate a separate settlement of attorneys' fees to be
132 paid by the defendants or respondents above and beyond
133 the amount recovered by the commissioner, the bureau or
134 any of its divisions. In the event that such a settlement of
135 attorneys' fees is made, it must be submitted to the court or
136 administrative law judge for approval.

137 (D) Any attorney regularly employed by the bureau
138 or by the office of the attorney general may not receive
139 any remuneration for his or her services other than such
140 attorney's regular salary. Any attorneys' fees awarded for
141 such an employed attorney shall be payable to the com-
142 missioner;

143 (18) With the approval of the compensation programs
144 performance council created pursuant to section one,
145 article three of this chapter, to promulgate rules under

146 which agencies of this state shall not grant, issue, or renew
147 any contract, license, permit, certificate, or other authority
148 to conduct a trade, profession, or business to or with any
149 employing unit whose account is in default with the com-
150 missioner with regard to the administration of this chapter
151 and with regard to the administration of chapter
152 twenty-three of this code. The term "agency" includes any
153 unit of state government such as officers, agencies, divi-
154 sions, departments, boards, commissions, authorities, or
155 public corporations. An employing unit is not in default
156 if it has entered into repayment agreements with the ap-
157 propriate divisions of the bureau and remains in compli-
158 ance with its obligations under the repayment agreements.

159 The rules shall provide that, before granting, issuing,
160 or renewing any contract, license, permit, certificate, or
161 other authority to conduct a trade, profession, or business
162 to or with any employing unit, the designated agencies
163 shall review a list or lists, provided by the appropriate
164 divisions of the bureau, of employers that are in default.
165 If the employing unit's name is not on the list, the agency,
166 unless it has actual knowledge that the employing unit is
167 in default with a division of the bureau, may grant, issue,
168 or renew the contract, license, permit, certificate, other
169 authority to conduct a trade, profession, or business. The
170 list may be provided to the agency in the form of a com-
171 puterized database or databases that the agency can access.
172 Any objections to such refusal to issue or renew shall be
173 reviewed under the appropriate provisions of this chapter
174 or of chapter twenty-three of this code, or both, whichever
175 is applicable. The rules provided for by this subdivision
176 shall be promulgated pursuant to the provisions of subdi-
177 visions (b) and (c), section seven, article three of this chap-
178 ter as if they were rules being promulgated for the purpos-
179 es of chapter twenty-three of this code. The prohibition
180 against granting, issuing, or renewing any contract, license,
181 permit, certificate, or other authority under this subdivi-
182 sion are not operative until the rules are promulgated and
183 are in effect, except as provided in subdivision (6), section
184 eight, article three, chapter twenty-two or otherwise by law.

185 The rules may be promulgated or implemented in
186 phases so that specific agencies or specific types of con-

187 tracts, licenses, permits, certificates, or other authority to
 188 conduct trades, professions, or businesses will be subject
 189 to the rules beginning on different dates. The presump-
 190 tions of ownership or control contained in the division of
 191 environmental protection's surface mining reclamation
 192 regulations promulgated under the provisions of article
 193 three, chapter twenty-two of this code are not applicable or
 194 controlling in determining the identity of employing units
 195 who are in default for the purposes of this subdivision.
 196 The rules shall also provide a procedure allowing any
 197 agency or interested person, after being covered under the
 198 rules for at least one year, to petition the council to be
 199 exempt from the provisions of the rules. Rules subjecting
 200 all applicable agencies and contracts, licenses, permits,
 201 certificates, or other authority to conduct trades, profes-
 202 sions, or businesses to the requirements of this subdivision
 203 shall be promulgated no later than the first day of January,
 204 two thousand; and

205 (19) Deposit to the credit of the appropriate special
 206 revenue account or fund, notwithstanding any other provi-
 207 sion of this code and to the extent allowed by federal law,
 208 all amounts of delinquent payments or overpayments,
 209 interest and penalties thereon, and attorneys' fees and
 210 costs collected under the provisions of this chapter and
 211 chapter twenty-three of this code. The amounts collected
 212 shall not be treated by the auditor or treasurer as part of
 213 the general revenue of the state.

§21A-2-6c. Payment withholding and interception.

1 (a) All state, county, district and municipal officers
 2 and agents making contracts on behalf of the state of West
 3 Virginia or any political subdivision thereof shall withhold
 4 payment in the final settlement of such contracts until the
 5 receipt of a certificate from the commissioner to the effect
 6 that all payments, interest and penalties thereon accrued
 7 against the contractor under this chapter and under chap-
 8 ter twenty-three of this code have been paid or that provi-
 9 sions satisfactory to the commissioner have been made for
 10 payment. Any official violating this subsection is guilty
 11 of a misdemeanor, and, on conviction thereof, shall be
 12 fined not more than one thousand dollars or county im-

13 prisoned for not more than one year in the jail, or both
14 fined and imprisoned.

15 (b) Any agency of the state, for the limited purpose
16 of intercepting, pursuant to section sixteen, article five of
17 this chapter and pursuant to section five-a of article two,
18 chapter twenty-three of this code, any payment by or
19 through the state to an employer who is in default in pay-
20 ment of contributions, premiums, deposits, interest, or
21 penalties under the provisions of this chapter or of chapter
22 twenty-three of this code, shall assist the commissioner in
23 collecting the payment that is due. For this purpose, dis-
24 closure of joint delinquency and default lists of employers
25 with respect to unemployment compensation and workers'
26 compensation contributions, premiums, interest, deposits,
27 or penalties is authorized. The lists may be in the form of
28 a computerized database to be accessed by the auditor, the
29 department of tax and revenue, the department of admin-
30 istration, the division of highways, or other appropriate
31 state agency or officer.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-2. Termination of coverage.

1 Except as otherwise provided in section three of this
2 article, an employing unit, with the exception of any em-
3 ploying unit for which service in employment is defined
4 in subdivision (10), section sixteen, article one-a of this
5 chapter, shall cease to be an employer subject to this chap-
6 ter only as of the first day of any calendar year and only
7 if it files with the commissioner not later than January
8 thirty-first of such year, a written application for termina-
9 tion of coverage, as of such first day of January, and the
10 commissioner finds that within the preceding calendar
11 year the employing unit did not pay wages of one thou-
12 sand five hundred dollars or more in any calendar quarter
13 for employment subject to this chapter and during that
14 calendar year no service was performed for it with respect
15 to which it was liable for any tax against which credit may
16 be taken for contributions required to be paid into the
17 unemployment compensation fund of this state; and any
18 employing unit for which service in employment is de-
19 fined in subdivision (10), section sixteen, article one-a of

20 this chapter, shall cease to be an employer subject to this
 21 chapter only as of the first day of any calendar year and
 22 only if it files with the commissioner not later than Janu-
 23 ary thirty-first of such year, a written application for ter-
 24 mination of coverage, as of such first day of January, and
 25 the commissioner finds that there were no twenty different
 26 days, each day being in a different calendar week within
 27 the preceding calendar year, within which such employing
 28 unit had four or more individuals in employment subject
 29 to this chapter: *Provided*, That the commissioner may for
 30 good cause extend the time for filing application for ter-
 31 mination of coverage, effective as of the first day of the
 32 next succeeding quarter after the application is approved.

§21A-5-3. Voluntary coverage; elective coverage by political subdivisions.

1 (a) An employing unit, not otherwise subject to the
 2 provisions of this chapter, which files with the commis-
 3 sioner its written election to become an employer subject
 4 hereto for not less than two calendar years, shall, with the
 5 written approval of such election by the commissioner,
 6 become an employer subject hereto to the same extent as
 7 all other employers, as of the date stated in such approval,
 8 and shall cease to be subject hereto as of January one of
 9 any calendar year subsequent to such two calendar years,
 10 only if during January of such year it has filed with the
 11 commissioner a written notice to that effect.

12 (b) Any employing unit for which services that do not
 13 constitute employment as defined in this chapter are per-
 14 formed, may file with the commissioner a written election
 15 that all such services performed by individuals in its em-
 16 ploy in one or more distinct establishments or places of
 17 business are employment for all the purposes of this chap-
 18 ter for not less than two calendar years. Upon the written
 19 approval of such election by the commissioner, such ser-
 20 vices are employment subject to this chapter from and
 21 after the date stated in such approval. Such services shall
 22 cease to be deemed employment subject hereto as of Janu-
 23 ary first of any calendar year subsequent to such two cal-
 24 endar years, only if during January of such year such

25 employing unit has filed with the commissioner a written
26 notice to that effect.

27 (c) An employing unit which is or becomes an em-
28 ployer subject to this chapter within any calendar year is
29 subject to this chapter during the whole of such calendar
30 year.

31 (d) Any political subdivision of this state may elect to
32 cover under this chapter service performed by employees
33 in all of the hospitals and institutions of higher education,
34 as defined in sections twenty and twenty-one, article
35 one-a of this chapter, operated by such political subdivi-
36 sion. Any such election of coverage is to be made by
37 filing with the commissioner a notice of such election at
38 least thirty days prior to the effective date of such election.
39 Any political subdivision electing coverage under this
40 subsection shall make payments in lieu of contributions
41 with respect to benefits attributable to such employment as
42 provided with respect to nonprofit organizations in section
43 three-a of this article. The provisions of section fifteen,
44 article six of this chapter with respect to benefit rights
45 based on service for state and nonprofit institutions of
46 higher education are applicable also to service covered by
47 an election under this subsection. The amounts required to
48 be paid in lieu of contributions by any political subdivi-
49 sion under this subsection shall be billed and payment
50 made as provided in section thirteen of this article with
51 respect to similar payments by nonprofit organizations.
52 An election under this subsection may be terminated, by
53 filing with the commissioner written notice not later than
54 thirty days preceding the last day of the calendar year in
55 which the termination is to be effective. Such termination
56 becomes effective as of the first day of the next ensuing
57 calendar year with respect to services performed after that
58 date.

**§21A-5-3b. Financing benefits paid to employees of govern-
mental entities; liability of governmental enti-
ties for payments.**

1 Benefits paid to employees of governmental entities
2 referred to in paragraph (B), subdivision (9), section six-
3 teen, article one-a of this chapter, shall be financed in the

4 same manner and in accordance with the provisions of
5 section three-a, article five of this chapter; except that for
6 extended benefits reimbursement shall be one hundred
7 percent of the benefits paid.

8 Any governmental entity which, pursuant to the provi-
9 sions of this chapter, is, or becomes, subject to this chapter,
10 is liable for payments and shall pay contributions in ac-
11 cordance with the provisions of this article and of this
12 chapter, unless it elects to make payments in lieu of contri-
13 butions as set forth in section three-a.

14 Governmental entities electing to make payments in
15 lieu of contributions are liable for the full amount of ex-
16 tended benefits paid for weeks of unemployment.

**§21A-5-4. Required payments; failure to make required pay-
ments; criminal penalties.**

1 (a) An employer is liable for payments in respect to
2 wages paid for employment occurring during each year in
3 which he or she is subject to this chapter.

4 (b) Any person, firm, partnership, company, corpora-
5 tion, or association who, as an employer, is subject to the
6 provisions of this chapter, and who knowingly and willful-
7 ly fails to make any payment or file a report as required
8 by the provisions of this chapter within the time periods
9 specified by law, is guilty of an offense as follows:

10 (1) Any employer who knowingly and willfully fails
11 to make any payment or file a report within the time peri-
12 od specified by law for two calendar quarters, which quar-
13 ters need not be consecutive but are within twenty-five
14 quarters of each other, is guilty of a misdemeanor and:

15 (A) Upon a first conviction under this subdivision,
16 shall be fined not less than five hundred dollars nor more
17 than one thousand dollars; or

18 (B) Upon a second conviction under this subdivision,
19 shall be fined not less than one thousand dollars nor more
20 than five thousand dollars, imprisoned for not longer than
21 thirty days or both fined and imprisoned.

22 (2) Any employer who, having been twice convicted
23 of the offense specified in subdivision (1) of this subsec-

24 tion, knowingly and willfully fails to make any payment
25 or file a report as required by the provisions of this chap-
26 ter within the time period specified by law for two calen-
27 dar quarters, which quarters need not be consecutive but
28 are within twenty-five quarters of each other, is guilty of a
29 felony and, upon conviction thereof, shall be fined not less
30 than five thousand dollars nor more than ten thousand
31 dollars, or imprisoned in the penitentiary for a definite
32 term of imprisonment which is not less than one year nor
33 more than two years, or both fined and imprisoned.

34 (3) Any employer who knowingly and willfully fails
35 to make any payment or file a report within the time peri-
36 od specified by law for four calendar quarters, which
37 quarters need not be consecutive but are within thirty six
38 quarters of each other, is guilty of a felony and, upon
39 conviction thereof, shall be fined not less than five thou-
40 sand dollars nor more than twenty-five thousand dollars,
41 or imprisoned in the penitentiary for a definite term of
42 imprisonment which is not less than one year nor more
43 than two years, or both fined and imprisoned.

44 (c) In charging a person with a second or subsequent
45 offense under the provisions of paragraph (B), subdivision
46 (1), subsection (b) of this section or under subdivision (2),
47 subsection (b) of this section, the warrant, indictment or
48 information must set forth the date and particulars of the
49 previous offense or offenses. No person may be convict-
50 ed of a second or subsequent offense unless the conviction
51 for the previous offense has become final and unless a
52 prior offense occurred within the ten year period next
53 preceding the second or subsequent offense. The venue
54 for prosecution of any violation of this subsection is either
55 the county in which the defendant's principal business
56 operations are located or in Kanawha County where the
57 fund is located.

§21A-5-10b. Transfer of business.

1 If a subject employer transfers his or her entire orga-
2 nization, trade or business, or substantially all the assets
3 thereof, to another employer, the commissioner shall com-
4 bine the contribution records and the benefit experience
5 records of the transferring and acquiring employers. The

6 acquiring employer's contribution rate for the remainder
7 of the calendar year shall not be affected by the transfer
8 but such rate shall apply to the whole of his or her busi-
9 ness, including the portion acquired by the transfer,
10 through the following thirty-first day of December. If a
11 subject employer makes such transfer to an employing
12 unit which is not an employer on the date of the transfer,
13 such subject employer's rate continues as the rate of the
14 acquiring employing unit until the next effective rate date.
15 If an employing unit acquires simultaneously the entire
16 organization, trade or business, or substantially all the
17 assets thereof, of two or more covered employers, the
18 successor shall be assigned as a contribution rate the then
19 current rate of the transferring employer which had, in the
20 calendar quarter immediately preceding the date of the
21 transfer, the higher or highest payroll. If a subject em-
22 ployer transfers his or her entire organization, trade or
23 business, or substantially all the assets thereof, to two or
24 more employers or employing units, apportionment of the
25 contribution records and benefit experience records of the
26 transferring employer shall be made between the acquir-
27 ing units in accordance with the ratio that the total assets
28 acquired by each transferee bears to the total assets trans-
29 ferred by the transferring employer as of the date of the
30 transfers. The current contribution rate of the transferring
31 employer continues as the rate of each transferee who or
32 which is an employing unit until the next effective rate
33 date; the current contribution rate of each transferee who
34 or which is an employer continues as his or her or its rate
35 until the next effective rate date. For the succeeding cal-
36 endar year the rate of each transferee shall be determined
37 as provided in section ten of this article. As to any trans-
38 fers which occur prior to the thirty-first day of July of the
39 current calendar year such rate remains effective for the
40 balance of that calendar year: *Provided*, That if the trans-
41 fers occur subsequent to the thirty-first day of July such
42 rate remains effective for the balance of that calendar year
43 and the rate for the succeeding calendar year shall, not-
44 withstanding anything to the contrary provided in section
45 seven of this article, be recomputed on the basis of the
46 combined experience of the transferring employers as of
47 the thirty-first day of July of the year in which the trans-

48 fers occur. In case the transferring employer is delinquent
49 in the payment of contributions or interest thereon the
50 acquiring employer is not entitled to any benefit of the
51 contribution record of the transferring employer unless
52 payment of such delinquent contributions and interest
53 thereon is assumed by the acquiring employer. The com-
54 missioner shall upon joint request of the transferor and
55 transferee furnish the transferee a statement of the amount
56 of any contribution and interest due and unpaid by the
57 transferor. A statement so furnished is controlling for the
58 purposes of the foregoing proviso.

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

63 A reorganized employer keeps the contribution rate
64 of the employing unit before the reorganization until the
65 thirty-first day of December immediately following the
66 date of reorganization and is liable for all contributions,
67 interest and penalties owed by the employing unit. Effec-
68 tive with the first day of January of the calendar year im-
69 mediately following reorganization, a reorganized em-
70 ployer will have his or her contribution rate based on all
71 of his or her experience with the fund in accordance with
72 section ten of this article. If the predecessor does not
73 remain in business after the transfer of all or part of the
74 assets, business, organization, or trade of the predecessor
75 employer: (1) The successor employer is liable for all
76 contributions, interest and penalties owed by the predeces-
77 sor employer at the time of the transfer; and (2) if two or
78 more successor employers receive the transfer, the succes-
79 sor employers are liable in the same proportion as the
80 assets of the unit being transferred is to the total assets of
81 the predecessor employer.

§21A-5-16. Collection of payments.

1 (a) The commissioner in the name of the state may
2 commence a civil action against an employer who, after
3 due notice, defaults in any payment, interest or penalty
4 thereon required by this chapter. Civil actions under this
5 section shall be given preference on the calendar of the

6 court over all other civil actions except petitions for judi-
7 cial review under article seven of this chapter and cases
8 arising under the workers' compensation law. Upon pre-
9 vailing in any such civil action, the commissioner is enti-
10 tled to recover attorneys' fees and costs of action from the
11 employer.

12 (b) Any payment, interest and penalty thereon due
13 and unpaid under this chapter is a debt due the state in
14 favor of the commissioner. It is a personal obligation of
15 the employer immediately due and owing and is, in addi-
16 tion thereto, a lien that may be enforced as other judg-
17 ment liens are enforced through the provisions of chapter
18 thirty-eight of this code and the same shall be deemed by
19 the circuit court to be a judgment lien for this purpose
20 against all the property of the employer: *Provided*, That
21 no such lien is enforceable as against a purchaser (includ-
22 ing lien creditor) of real estate or personal property for a
23 valuable consideration, without notice, unless docketed as
24 provided in article ten-c, chapter thirty-eight of this code.

25 (c) In addition to all other civil remedies prescribed
26 herein the commissioner may in the name of the state,
27 after giving appropriate notice as required by due process,
28 distrain upon any personal property, including intangibles,
29 of any employer delinquent for any payment, interest and
30 penalty thereon. If the commissioner has good reason to
31 believe that such property or a substantial portion thereof
32 is about to be removed from the county in which it is
33 situated, upon giving appropriate notice, either before or
34 after the seizure, as is proper in the circumstances, he or
35 she may likewise distrain in the name of the state before
36 such delinquency occurs. For purposes of effecting a
37 distraint under this subsection, the commissioner may
38 require the services of a sheriff of any county in the state
39 in levying distress in the county in which the sheriff is an
40 officer and in which the employer's personal property is
41 situated. A sheriff so collecting any payments, interest
42 and penalties thereon is entitled to compensation as
43 provided by law for his or her services in the levy and
44 enforcement of executions. Upon prevailing in any dis-
45 traint action, the commissioner is entitled to recover his or
46 her attorney fees and costs of action from the employer.

47 (d) In case a business subject to the payments, interest
48 and penalties thereon imposed under this chapter is oper-
49 ated in connection with a receivership or insolvency pro-
50 ceeding in any state court in this state, the court under
51 whose direction such business is operated shall, by the
52 entry of a proper order or decree in the cause, make pro-
53 vision, so far as the assets in administration will permit, for
54 the regular payment of such payments as the same be-
55 come due.

56 (e) The secretary of state of this state shall withhold
57 the issuance of any certificate of dissolution or withdrawal
58 in the case of any corporation organized under the laws of
59 this state, or organized under the laws of another state and
60 admitted to do business in this state, until notified by the
61 commissioner that all payments, interest and penalties
62 thereon against any such corporation which is an employ-
63 er under this chapter have been paid or that provision
64 satisfactory to the commissioner has been made for pay-
65 ment.

66 (f) In any case where an employer defaults in pay-
67 ments, interest or penalties thereon, for as many as two
68 calendar quarters, which quarters need not be consecutive,
69 and remains delinquent after due notice, the commission-
70 er may bring action in the circuit court of Kanawha coun-
71 ty to enjoin that employer from continuing to carry on
72 the business in which such liability was incurred: *Provid-*
73 *ed,* That the commissioner may as an alternative to this
74 action require such delinquent employer to file a bond in
75 the form prescribed by the commissioner with satisfactory
76 surety in an amount not less than fifty percent more than
77 the payments, interest and penalties due.

78 (g) Amounts of payments and penalties collected
79 under this section shall be deposited to the credit of the
80 unemployment compensation trust fund. Amounts of
81 interest, attorneys' fees and costs collected under this
82 section shall be paid into the employment security special
83 administration fund. Any such amounts are not to be
84 treated by the auditor or treasurer as part of the general
85 revenue of the state.

§21A-5-17. Interest and rate on past-due payments; penalties for late payment and reporting.

1 (a) Payments, including penalties, unpaid on the date
2 on which due and payable, as prescribed by the commis-
3 sioner, shall bear interest at the rate of one percent per
4 month until payment plus accrued interest is received by
5 the commissioner. Interest shall be compounded quarter-
6 ly until payment plus accrued interest is received by the
7 commissioner.

8 Interest collected pursuant to this section shall be paid
9 into the employment security special administration fund.

10 (b) Each employer who fails to timely pay, in whole
11 or in part, the contribution due with any report for any
12 quarter commencing on and after the first day of July, one
13 thousand nine hundred ninety-six, shall pay a late pay-
14 ment penalty of the greater of fifty dollars or ten percent
15 of the contribution due, but not to exceed five hundred
16 dollars. Such late penalty is due immediately along with
17 the payment of the outstanding amount of contribution.
18 Penalties collected pursuant to this section shall be paid
19 into the unemployment compensation trust fund.

§21A-5-20. Qualifying wages for regular benefits of newly covered workers during transition period on the basis of previously uncovered services.

1 Wages for insured work includes wages paid for pre-
2 viously uncovered service. For the purposes of this sec-
3 tion, the term "previously uncovered services" means ser-
4 vices:

5 (1) Which were not employment as defined in section
6 sixteen of article one-a of this chapter, or by election
7 pursuant to section three of article five of this chapter, at
8 any time during the one-year period ending December
9 thirty-one, one thousand nine hundred seventy-five; and

10 (2) Which (A) Are agricultural labor, or domestic
11 services as defined in subdivisions (12) and (13), section
12 sixteen, article one-a of this chapter or (B) are services
13 performed by an employee of this state or a political sub-
14 division thereof, or a nonprofit educational institution as

15 provided in paragraphs (B) and (C) of subdivision (9),
16 section sixteen of article one-a; except to the extent that
17 assistance under Title II of the Emergency Jobs and Un-
18 employment Assistance Act of 1974 was paid on the basis
19 of such services.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1c. Voluntary withholding program.

1 (a) An individual filing a new claim for unemploy-
2 ment compensation shall, at the time of filing such claim,
3 be advised by the appropriate bureau employee that:

4 (1) Unemployment compensation is subject to federal
5 income tax;

6 (2) Requirements exist pertaining to estimated tax
7 payments;

8 (3) The individual may elect to have federal income
9 tax deducted and withheld from the individual's payment
10 of unemployment compensation at the amount specified
11 in the federal internal revenue code; and

12 (4) The individual may change a previously elected
13 withholding status.

14 (b) Amounts deducted and withheld from unemploy-
15 ment compensation shall remain in the unemployment
16 fund until transferred to the federal taxing authority as
17 payment of income tax.

18 (c) The commissioner shall follow all procedures
19 specified by the United States department of labor and the
20 federal internal revenue service pertaining to the deduct-
21 ing and withholding of income tax.

22 (d) Amounts shall be deducted and withheld in accor-
23 dance with the priorities established in rules developed by
24 the commissioner.

25 (e) This section shall not be effective prior to pay-
26 ments made after the thirty-first day of December, one
27 thousand nine hundred and ninety-six.

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

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

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

22 The maximum benefit rate shall be sixty-six and
23 two-thirds percent of the average weekly wage in West
24 Virginia.

25 On the first day of July of each year, the commission-
26 er shall determine the maximum weekly benefit rate upon
27 the basis of the formula set forth above and shall establish
28 wage classes as are required, increasing or decreasing the
29 amount of the base period wages required for each wage
30 class by one hundred fifty dollars, establishing the weekly
31 benefit rate for each wage class by rounded dollar amount
32 to be fifty-five percent of one fifty-second of the median
33 dollar amount of wages in the base period for such wage
34 class, and establishing the maximum benefit for each wage
35 class as an amount equal to twenty-six times the weekly
36 benefit rate. The maximum weekly benefit rate, when
37 computed by the commissioner, in accordance with the
38 foregoing provisions, shall be rounded to the next lowest
39 multiple of one dollar.

BENEFIT TABLE

A		B		C	Maximum
Wage Class		Wages in Base Period		Weekly Benefit Rate	Benefit in Benefit Year for Total and/or Partial Unemployment
Under		\$2,200.00		Ineligible	
1	1	\$2,200.00	- 2,349.99	24.00	\$ 624.00
2	2	2,350.00	- 2,499.99	25.00	650.00
3	3	2,500.00	- 2,649.99	27.00	702.00
4	4	2,650.00	- 2,799.99	28.00	728.00
5	5	2,800.00	- 2,949.99	30.00	780.00
6	6	2,950.00	- 3,099.99	31.00	806.00
7	7	3,100.00	- 3,249.99	33.00	858.00
8	8	3,250.00	- 3,399.99	35.00	910.00
9	9	3,400.00	- 3,549.99	36.00	936.00
10	10	3,550.00	- 3,699.99	38.00	988.00
11	11	3,700.00	- 3,849.99	39.00	1,014.00
12	12	3,850.00	- 3,999.99	41.00	1,066.00
13	13	4,000.00	- 4,149.99	43.00	1,118.00
14	14	4,150.00	- 4,299.99	44.00	1,144.00
15	15	4,300.00	- 4,449.99	46.00	1,196.00
16	16	4,450.00	- 4,599.99	47.00	1,222.00
17	17	4,600.00	- 4,749.99	49.00	1,274.00
18	18	4,750.00	- 4,899.99	51.00	1,326.00
19	19	4,900.00	- 5,049.99	52.00	1,352.00
20	20	5,050.00	- 5,199.99	54.00	1,404.00
21	21	5,200.00	- 5,349.99	55.00	1,430.00
22	22	5,350.00	- 5,499.99	57.00	1,482.00

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23	23	5,500.00	-	5,649.99	58.00	1,508.00
24	24	5,650.00	-	5,799.99	60.00	1,560.00
25	25	5,800.00	-	5,949.99	62.00	1,612.00
26	26	5,950.00	-	6,099.99	63.00	1,638.00
27	27	6,100.00	-	6,249.99	65.00	1,690.00
28	28	6,250.00	-	6,399.99	66.00	1,716.00
29	29	6,400.00	-	6,549.99	68.00	1,768.00
30	30	6,550.00	-	6,699.99	70.00	1,820.00
31	31	6,700.00	-	6,849.99	71.00	1,846.00
32	32	6,850.00	-	6,999.99	73.00	1,898.00
33	33	7,000.00	-	7,149.99	74.00	1,924.00
34	34	7,150.00	-	7,299.99	76.00	1,976.00
35	35	7,300.00	-	7,449.99	78.00	2,028.00
36	36	7,450.00	-	7,599.99	79.00	2,054.00
37	37	7,600.00	-	7,749.99	81.00	2,106.00
38	38	7,750.00	-	7,899.99	82.00	2,132.00
39	39	7,900.00	-	8,049.99	84.00	2,184.00
40	40	8,050.00	-	8,199.99	85.00	2,210.00
41	41	8,200.00	-	8,349.99	87.00	2,262.00
42	42	8,350.00	-	8,499.99	89.00	2,314.00
43	43	8,500.00	-	8,649.99	90.00	2,340.00
44	44	8,650.00	-	8,799.99	92.00	2,392.00
45	45	8,800.00	-	8,949.99	93.00	2,418.00
46	46	8,950.00	-	9,099.99	95.00	2,470.00
47	47	9,100.00	-	9,249.99	97.00	2,522.00
48	48	9,250.00	-	9,399.99	98.00	2,548.00
49	49	9,400.00	-	9,549.99	100.00	2,600.00
50	50	9,550.00	-	9,699.99	101.00	2,626.00

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51	51	9,700.00	-	9,849.99	103.00	2,678.00
52	52	9,850.00	-	9,999.99	104.00	2,704.00
53	53	10,000.00	-	10,149.99	106.00	2,756.00
54	54	10,150.00	-	10,299.99	108.00	2,808.00
55	55	10,300.00	-	10,449.99	109.00	2,834.00
56	56	10,450.00	-	10,599.99	111.00	2,886.00
57	57	10,600.00	-	10,749.99	112.00	2,912.00
58	58	10,750.00	-	10,899.99	114.00	2,964.00
59	59	10,900.00	-	11,049.99	116.00	3,016.00
60	60	11,050.00	-	11,199.99	117.00	3,042.00
61	61	11,200.00	-	11,349.99	119.00	3,094.00
62	62	11,350.00	-	11,499.99	120.00	3,120.00
63	63	11,500.00	-	11,649.99	122.00	3,172.00
64	64	11,650.00	-	11,799.99	124.00	3,224.00
65	65	11,800.00	-	11,949.99	125.00	3,250.00
66	66	11,950.00	-	12,099.99	127.00	3,302.00
67	67	12,100.00	-	12,249.99	128.00	3,328.00
68	68	12,250.00	-	12,399.99	130.00	3,380.00
69	69	12,400.00	-	12,549.99	131.00	3,406.00
70	70	12,550.00	-	12,699.99	133.00	3,458.00
71	71	12,700.00	-	12,849.99	135.00	3,510.00
72	72	12,850.00	-	12,999.99	136.00	3,536.00
73	73	13,000.00	-	13,149.99	138.00	3,588.00
74	74	13,150.00	-	13,299.99	139.00	3,614.00
75	75	13,300.00	-	13,449.99	141.00	3,666.00
76	76	13,450.00	-	13,599.99	143.00	3,718.00
77	77	13,600.00	-	13,749.99	144.00	3,744.00
78	78	13,750.00	-	13,899.99	146.00	3,796.00

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79	79	13,900.00	-	14,049.99	147.00	3,822.00
80	80	14,050.00	-	14,199.99	149.00	3,874.00
81	81	14,200.00	-	14,349.99	150.00	3,900.00
82	82	14,350.00	-	14,499.99	152.00	3,952.00
83	83	14,500.00	-	14,649.99	154.00	4,004.00
84	84	14,650.00	-	14,799.99	155.00	4,030.00
85	85	14,800.00	-	14,949.99	157.00	4,082.00
86	86	14,950.00	-	15,099.99	158.00	4,108.00
87	87	15,100.00	-	15,249.99	160.00	4,160.00
88	88	15,250.00	-	15,399.99	162.00	4,212.00
89	89	15,400.00	-	15,549.99	163.00	4,238.00
90	90	15,550.00	-	15,699.99	165.00	4,290.00
91	91	15,700.00	-	15,849.99	166.00	4,316.00
92	92	15,850.00	-	15,999.99	168.00	4,368.00
93	93	16,000.00	-	16,149.99	170.00	4,420.00
94	94	16,150.00	-	16,299.99	171.00	4,446.00
95	95	16,300.00	-	16,449.99	173.00	4,498.00
96	96	16,450.00	-	16,599.99	174.00	4,524.00
97	97	16,600.00	-	16,749.99	176.00	4,576.00
98	98	16,750.00	-	16,899.99	177.00	4,602.00
99	99	16,900.00	-	17,049.99	179.00	4,654.00
100	100	17,050.00	-	17,199.99	181.00	4,706.00
101	101	17,200.00	-	17,349.99	182.00	4,732.00
102	102	17,350.00	-	17,499.99	184.00	4,784.00
103	103	17,500.00	-	17,649.99	185.00	4,810.00
104	104	17,650.00	-	17,799.99	187.00	4,862.00
105	105	17,800.00	-	17,949.99	189.00	4,914.00
106	106	17,950.00	-	18,099.99	190.00	4,940.00

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107	107	18,100.00	-	18,249.99	192.00	4,992.00
108	108	18,250.00	-	18,399.99	193.00	5,018.00
109	109	18,400.00	-	18,549.99	195.00	5,070.00
110	110	18,550.00	-	18,699.99	196.00	5,096.00
111	111	18,700.00	-	18,849.99	198.00	5,148.00
112	112	18,850.00	-	18,999.99	200.00	5,200.00
113	113	19,000.00	-	19,149.99	201.00	5,226.00
114	114	19,150.00	-	19,299.99	203.00	5,278.00
115	115	19,300.00	-	19,449.99	204.00	5,304.00
116	116	19,450.00	-	19,599.99	206.00	5,356.00
117	117	19,600.00	-	19,749.99	208.00	5,408.00
118	118	19,750.00	-	19,899.99	209.00	5,434.00
119	119	19,900.00	-	20,049.99	211.00	5,486.00
120	120	20,050.00	-	20,199.99	212.00	5,512.00
121	121	20,200.00	-	20,349.99	214.00	5,564.00
122	122	20,350.00	-	20,499.99	216.00	5,616.00
123	123	20,500.00	-	20,649.99	217.00	5,642.00
124	124	20,650.00	-	20,799.99	219.00	5,694.00
125	125	20,800.00	-	20,949.99	220.00	5,720.00
126	126	20,950.00	-	21,099.99	222.00	5,772.00
127	127	21,100.00	-	21,249.99	223.00	5,798.00
128	128	21,250.00	-	21,399.99	225.00	5,850.00
129	129	21,400.00	-	21,549.99	227.00	5,902.00
130	130	21,550.00	-	21,699.99	228.00	5,928.00
131	131	21,700.00	-	21,849.99	230.00	5,980.00
132	132	21,850.00	-	21,999.99	231.00	6,006.00
133	133	22,000.00	-	22,149.99	233.00	6,058.00
134	134	22,150.00	-	22,299.99	235.00	6,110.00

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135	135	22,300.00	-	22,449.99	236.00	6,136.00
136	136	22,450.00	-	22,599.99	238.00	6,188.00
137	137	22,600.00	-	22,749.99	239.00	6,214.00
138	138	22,750.00	-	22,899.99	241.00	6,266.00
139	139	22,900.00	-	23,049.99	243.00	6,318.00
140	140	23,050.00	-	23,199.99	244.00	6,344.00
141	141	23,200.00	-	23,349.99	246.00	6,396.00
142	142	23,350.00	-	23,499.99	247.00	6,422.00
143	143	23,500.00	-	23,649.99	249.00	6,474.00
144	144	23,650.00	-	23,799.99	250.00	6,500.00
145	145	23,800.00	-	23,949.99	252.00	6,552.00
146	146	23,950.00	-	24,099.99	254.00	6,604.00
147	147	24,100.00	-	24,249.99	255.00	6,630.00
148	148	24,250.00	-	24,399.99	257.00	6,682.00
149	149	24,400.00	-	24,549.99	258.00	6,708.00
150	150	24,550.00	-	24,699.99	260.00	6,760.00
151	151	24,700.00	-	24,849.99	262.00	6,812.00
152	152	24,850.00	-	24,999.99	263.00	6,838.00
153	153	25,000.00	-	25,149.99	265.00	6,890.00
154	154	25,150.00	-	25,299.99	266.00	6,916.00
155	155	25,300.00	-	25,449.99	268.00	6,968.00
156	156	25,450.00	-	25,599.99	269.00	6,994.00
157	157	25,600.00	-	25,749.99	271.00	7,046.00
158	158	25,750.00	-	25,899.99	273.00	7,098.00
159	159	25,900.00	-	26,049.99	274.00	7,124.00
160	160	26,050.00	-	26,199.99	276.00	7,176.00
161	161	26,200.00	-	26,349.99	277.00	7,202.00
162	162	26,350.00	-	26,499.99	279.00	7,254.00

163	163	26,500.00	-	26,649.99	281.00	7,306.00
164	164	26,650.00	-	26,799.99	282.00	7,332.00
165	165	26,800.00	-	26,949.99	284.00	7,384.00
166	166	26,950.00	-	27,099.99	285.00	7,410.00
167	167	27,100.00	-	27,249.99	287.00	7,462.00
168	168	27,250.00	-	27,399.99	289.00	7,514.00
169	169	27,400.00	-	AND OVER	290.00	7,540.00

170 After he or she has established such wage classes, the
171 commissioner shall prepare and publish a table setting
172 forth such information.

173 Average weekly wage shall be computed by dividing
174 the number of employees in West Virginia earning wages
175 in covered employment into the total wages paid to em-
176 ployees in West Virginia in covered employment, and by
177 further dividing said result by fifty-two, and shall be deter-
178 mined from employer wage and contribution reports for
179 the previous calendar year which are furnished to the
180 department on or before the first day of June following
181 such calendar year. The average weekly wage, as deter-
182 mined by the commissioner, shall be rounded to the next
183 higher dollar.

184 The computation and determination of rates as afore-
185 said shall be completed annually before the first day of
186 July, and any such new wage class, with its corresponding
187 wages in base period, weekly benefit rate, and maximum
188 benefit in a benefit year established by the commissioner
189 in the foregoing manner effective on the first day of July,
190 shall apply only to a new claim established by a claimant
191 on and after said first day of July, and does not apply to
192 continued claims of a claimant based on his or her new
193 claim established before said first day of July.

**§21A-6-15. Benefit payments for service with nonprofit orga-
nizations, state hospitals, institutions of higher
education, educational institutions and govern-
mental entities.**

1 (a) Benefits based on service in employment as de-
2 fined in subdivisions (9) and (10), section sixteen, article
3 one-a of this chapter, are payable in the same amount, on
4 the same terms and subject to the same conditions as com-
5 pensation payable on the basis of other service subject to
6 this chapter; except that benefits based on service in an
7 instructional, research or principal administrative capacity
8 in an institution of higher education shall not be paid to
9 an individual for any week of unemployment which be-
10 gins during the period between two successive academic
11 years, or during a similar period between two regular
12 terms, whether or not successive, or during a period of
13 paid sabbatical leave provided for in the individual's con-
14 tract, if the individual has a contract or contracts to per-
15 form services, in any such capacity for any institution or
16 institutions of higher education for both such academic
17 years or both such terms.

18 (b) Benefits based on service in employment defined
19 in subdivisions (9) and (10), section sixteen, article
20 one-a of this chapter, are payable in the same amount, on
21 the same terms and subject to the same conditions as bene-
22 fits payable on the basis of other service subject to this
23 chapter, except that:

24 (1) With respect to services in an instructional, research
25 or principal administrative capacity for an educational
26 institution, benefits shall not be paid based on such servic-
27 es for any week commencing during the period between
28 two successive academic years or terms, or during a similar
29 period between two regular but not successive terms, or
30 during a period of paid sabbatical leave provided for in
31 the individual's contract, to any individual if such individ-
32 ual performs such services in the first of such academic
33 years or terms and if there is a contract or a reasonable
34 assurance that such individual will perform services in any
35 such capacity for any educational institution in the second
36 of such academic years or terms or after such holiday or
37 vacation period.

38 (2) With respect to services in any other capacity for
39 an educational institution, benefits shall not be paid on the
40 basis of such services to any individual for any week

41 which commences during a period between two successive
42 academic years or terms if such individual performs such
43 services in the first of such academic years or terms and
44 there is a reasonable assurance that such individual will
45 perform such services in the second of such academic
46 years or terms, except that if compensation is denied to
47 any individual under this subsection and such individual
48 was not offered an opportunity to perform such services
49 for the educational institution for the second of such aca-
50 demic years or terms, such individual is entitled to a retro-
51 active payment of compensation for each week for which
52 the individual filed a timely claim for compensation and
53 for which compensation was denied solely by reason of
54 this clause.

55 (3) With respect to services described in subdivisions
56 (1) and (2) of this subsection, benefits shall not be paid
57 to any individual for any week which commences during
58 an established and customary vacation period or holiday
59 recess if such individual performs such services in the
60 period immediately before such vacation period or holi-
61 day recess, and there is a reasonable assurance that such
62 individual will perform such services in the period imme-
63 diately following such vacation period or holiday recess.

64 (4) Benefits payable on the basis of services in any
65 such capacities as specified in subdivisions (1) and (2) of
66 this subsection shall be denied as specified in subdivisions
67 (1), (2) and (3) of this subsection to any individual who
68 performed such services in an educational institution while
69 in the employ of an educational service agency. For pur-
70 poses of this subdivision the term "educational service
71 agency" means a governmental agency or governmental
72 entity which is established and operated exclusively for the
73 purpose of providing such services to one or more educa-
74 tional institutions.

ARTICLE 8. UNEMPLOYMENT COMPENSATION FUND.

§21A-8-15. Administrative use of money credited to account of state in unemployment trust fund pursuant to §903 of Social Security Act.

1 (a) Money credited to the account of this state in the
2 unemployment trust fund by the secretary of the treasury
3 of the United States of America pursuant to section nine
4 hundred three of the Social Security Act, as amended, may
5 not be requisitioned from this state's account or used
6 except for the payment of benefits and for the payment of
7 expenses incurred for the administration of this chapter.
8 Such money may be requisitioned pursuant to section ten
9 of this article for the payment of benefits. Such money
10 may also be requisitioned and used for the payment of
11 expenses incurred for the administration of this chapter
12 but only pursuant to a specific appropriation by the legis-
13 lature and only if the expenses are incurred and the mon-
14 ey requisitioned after the enactment of an appropriation
15 law which specifies the purposes for which such money is
16 appropriated and the amounts appropriated therefor.
17 Such appropriation is subject to the following conditions:

18 (1) The period within which such money may be obli-
19 gated is limited to a period ending not more than two
20 years after the effective date of the appropriation law; and

21 (2) The amount which may be obligated is limited to
22 an amount which does not exceed the amount by which
23 (A) the aggregate of the amounts transferred to the ac-
24 count of this state pursuant to section 903 of the social
25 security act exceeds, (B) the aggregate of the amounts
26 used by this state pursuant to this chapter and charged
27 against the amounts transferred to the account of this state.

28 (b) For purposes of subdivision (2) of subsection (a),
29 amounts obligated for administrative purposes pursuant to
30 an appropriation shall be chargeable against transferred
31 amounts at the exact time the obligation is entered into.
32 The appropriation, obligation, and expenditure or other
33 disposition of money appropriated under subdivision (2)
34 shall be accounted for in accordance with standards estab-
35 lished by the United States secretary of labor.

36 (c) Money requisitioned for the payment of expenses
37 of administration pursuant to this section shall be deposit-
38 ed in the employment security administration fund, but,
39 until expended, shall remain a part of the unemployment
40 compensation fund. The commissioner shall maintain a

41 separate record of the deposit, obligation, expenditure, and
42 return of funds so deposited. If any money so deposited
43 is, for any reason, not to be expended for the purpose for
44 which it was appropriated, or, if it remains unexpended at
45 the end of the period specified by the law appropriating
46 such money, it shall be withdrawn and returned to the
47 secretary of the treasury of the United States for credit to
48 this state's account in the unemployment trust fund.

ARTICLE 9. UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND.

§21A-9-9. Reed Act appropriations.

1 (a) There is hereby appropriated out of funds made
2 available to this state under section 903 of the social secu-
3 rity act, as amended, the sum of four hundred thirty-four
4 thousand five hundred seventy-four dollars and eighty
5 four cents, or so much thereof as may be necessary, to be
6 used, for the purpose of property improvements and/or
7 automation enhancements of the unemployment insurance
8 or job service activities within the bureau of employment
9 programs.

10 (b) No part of the money hereby appropriated may be
11 obligated after the ninth day of March, one thousand nine
12 hundred ninety-eight.

13 (c) The amount obligated pursuant to this section shall
14 not exceed at any time the amount by which (1) the ag-
15 gregate of the amounts transferred to the account of this
16 state pursuant to section 903 of the social security act
17 exceeds (2) the aggregate of the amounts obligated for
18 administration and paid out for benefits and required by
19 law to be charged against the amounts transferred to the
20 account of this state.

21 (d) This section is effective on and after the ninth day
22 of March, one thousand nine hundred ninety-six.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-17. Right to amend or repeal chapter; application of certain provisions.

1 The Legislature reserves the right to amend or repeal
2 all or any part of this chapter and no private rights shall
3 vest against any legislative amendment or change or re-
4 peal. All rights, privileges, or immunities conferred by
5 this chapter or by acts done pursuant thereto shall exist
6 subject to the power of the Legislature to amend or repeal
7 this chapter at any time.

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

Randy Schoover
Chairman Senate Committee

Rudy Leavitt
Chairman House Committee

Originating in the House.

Takes effect from passage.

Dorella Holmes
Clerk of the Senate

Gregory W. Bray
Clerk of the House of Delegates
Earl Ray Tomblin
President of the Senate

Bill Callahan
Speaker of the House of Delegates

The within is approved this the 18th
day of March, 1996.

Gaston Caperton
Governor

PR. THE

Gover R

Date

3/14/96

Time

3:40pm