WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED
Com. Sub. For
HOUSE BILL No. 4862

(By Delegates Givens, Johnson,
Thomas and Grear)

Passed March 7, 1996
In Effect From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4862
(BY DELEGATES GIVENS, JOHNSON, THOMAS AND GREEAR)

[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-
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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nine, both of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said chapter be further amended by adding thereto a new article, designated article one-a; that section six, article two of said chapter be amended and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.


The terms and phrases defined by this article have the stated meanings when used in this chapter unless the context clearly requires otherwise.


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

§21A-1A-3. Annual payroll.

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

§21A-1A-4. Average annual payroll.
"Average annual payroll" means the average of the last three annual payrolls of an employer.

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

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

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

"Benefit year" with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his or her last preceding benefit year: Provided, That if a claim is effective on the first day of a quarter, the benefit year will be fifty-three weeks in order to prevent an overlapping of the base period wages: Provided, however, That for any benefit year beginning on or after the first day of January, one thousand nine hundred ninety-five, if a claim is effective on the second day of a quarter and the benefit year includes the twenty-ninth day of February, the benefit year will be fifty-three weeks in order to prevent an overlapping of the base period wages. An initial claim for benefits filed in accordance with the provisions of this chapter is a valid claim within the purposes of this definition if the individual has been paid wages in his or her base period sufficient to make him or her eligible for benefits under the provisions of this chapter.

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

§21A-1A-10. Board.

1 "Board" means board of review.


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


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


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


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


1 "Employer" means:

2 (1) Any employing unit which for some portion of a day, not necessarily simultaneously, in each of twenty different calendar weeks, which weeks need not be consec-
utive, within either the current calendar year, or the pre-
ceeding calendar year, has had in employment four or
more individuals irrespective of whether the same individ-
uals were or were not employed on each of such days;

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

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

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

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

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

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

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

(10) Any employing unit for which agricultural labor, as defined in subdivision (12) of the definition of "employment", is performed; or

(11) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of "employment", is performed.


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

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

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

(3) Any service performed, including service in interstate commerce, by any officer of a corporation;

(4) An individual's entire service, performed within or both within and without this state if: (A) The service is localized in this state; or (B) the service is not localized in any state but some of the service is performed in this state and: (i) The base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

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

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

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

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

(9) (A) Service performed by an individual in the
employ of this state or any of its instrumentalities (or in
the employ of this state and one or more other states or
their instrumentalities) for a hospital or institution of higher
education located in this state: Provided, That such
service is excluded from "employment" as defined in the
federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that act and is not excluded from "employment" under subdivision (11), section seventeen of this article;

(B) Service performed in the employ of this state or any of its instrumentalities or political subdivisions thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any foregoing and one or more other states or political subdivisions: Provided, That such service is excluded from "employment" as defined in the federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under subdivision (15), section seventeen of this article; and

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

(10) Service performed by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

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

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

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

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

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

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

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

(12) Service performed by an individual in agricultural labor as defined in subdivision (5), section seventeen of this article when:

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

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

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

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

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

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

(B) Notwithstanding the foregoing definition of "employment", if the services performed during one half or more of any pay period by an employee for the person employing him or her constitute employment, all the services of such employee for such period are employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him or her do not constitute employment, then none of the services of such employee for such period are 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 any political subdivision thereof, or any instrumentality of this state or its subdivisions, except as otherwise provided herein;

3 (2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in paragraph (A), subdivision (9) of the definition of "employment";

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

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

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

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;
(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

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

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

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

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

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

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

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

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

(11) Service performed: (A) In the employ of a
church or convention or association of churches, or an
organization which is operated primarily for religious
purposes and which is operated, supervised, controlled or
principally supported by a church or convention or asso-
ciation of churches; or (B) by a duly ordained, commis-
sioned or licensed minister of a church in the exercise of
his or her ministry or by a member of a religious order in
the exercise of duties required by such order; or (C) in a
facility conducted for the purpose of carrying out a pro-
gram of rehabilitation for individuals whose earning ca-
pacity is impaired by age or physical or mental deficiency
or injury or providing remunerative work for individuals
who because of their impaired physical or mental capacity
cannot be readily absorbed in the competitive labor mar-
ket by an individual receiving such rehabilitation or remu-
nerative work; or (D) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (E) by an inmate of a custodial or penal institution;

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

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

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

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

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


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


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


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


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

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;
(2) Is legally authorized in this state to provide a program of education beyond high school;

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

(4) Is a public or other nonprofit institution.

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


"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.


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


"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.


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

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

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

"Total and partial unemployment" means:

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

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


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

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

(1) That part of the remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For
the purposes of this section, the term "employment" in- 
cludes service constituting employment under any unem- 
ployment compensation law of another state; or which as a 
condition for full tax credit against the tax imposed by the 
Federal Unemployment Tax Act is required to be covered 
under this chapter; and, except that for the purposes of 
sections one, ten, eleven and thirteen, article six of this 
chapter, all remuneration earned by an individual in em- 
ployment shall be credited to the individual and included 
in his or her computation of base period wages: Provided, 
That the remuneration paid to an individual by an em- 
ployer with respect to employment in another state or 
other states upon which contributions were required of 
and paid by such employer under an unemployment com- 
pensation law of such other state or states shall be included 
as a part of the remuneration equal to the amounts of 
eight thousand dollars herein referred to. In applying 
such limitation on the amount of remuneration that is 
taxable, an employer shall be accorded the benefit of all 
or any portion of such amount which may have been paid 
by its predecessor or predecessors: Provided, however, 
That if the definition of the term "wages" as contained in 
Section 3306(b) of the Internal Revenue Code of 1954, as 
amended, is amended to include remuneration in excess of 
eight thousand dollars, paid to an individual by an em- 
ployer under the federal Unemployment Tax Act during 
any calendar year, wages for the purposes of this defini- 
tion shall include remuneration paid in a calendar year to 
an individual by an employer subject to this chapter or his 
or her predecessor with respect to employment during any 
calendar year up to an amount equal to the amount of 
remuneration taxable under the federal Unemployment 
Tax Act;

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

(3) Any payment made by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made by an employer to, or on behalf of, an individual in its employ or his or her beneficiary: (A) From or to a trust described in Section 401(a) which is exempt from tax under Section 501(a) of the federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan which, at the time of such payment, is a plan described in Section 403 (a) of the federal Internal Revenue Code;

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

(7) Remuneration paid by an employer in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer to an individual in its employ after the month in which he or she attains the age of sixty-five,
if he or she did not work for the employer in the period for which such payment is made;

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

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, That the term totally or partially unemployed does not include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation; or (C) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

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

§21A-1A-29. Week.

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


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

§21A-1A-31. Year.
"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.


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

1. Exercise general supervision of and make rules for the government of the bureau;
2. Prescribe uniform rules pertaining to investigations, departmental hearings, and promulgate rules;
3. Supervise fiscal affairs and responsibilities of the bureau;
4. Prescribe the qualifications of, appoint, remove, and fix the compensation of the officers and employees of the bureau, subject to the provisions of section ten, article four of this chapter, relating to the board of review;
5. Organize and administer the bureau so as to comply with the requirements of this chapter and chapter twenty-three of this code and to satisfy any conditions established in applicable federal legislation;
6. Make reports in such form and containing such information as the United States department of labor may from time to time require, and comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports;
7. Make available to any agency of the United States charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of the recipient's rights to further compensation under this chapter;
8. Keep an accurate and complete record of all bureau proceedings; record and file all bonds and contracts
and assume responsibility for the custody and preservation of all papers and documents of the bureau;

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

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

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

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

(13) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter and chapter twenty-three of this code;

(14) Exercise any other power necessary to standardize administration, expedite bureau business, assure the establishment of fair rules and promote the efficiency of the service;

(15) Keep an accurate and complete record and prepare a monthly report of the number of persons employed and unemployed in the state, which report shall be made available upon request to members of the public and press;

(16) Provide at bureau expense a program of continuing professional, technical and specialized instruction for the personnel of the bureau;

(17) In addition to the authority granted to the commissioner by section eighteen of this article and notwithstanding anything to the contrary elsewhere in this code, utilize any attorney regularly employed by the bureau or the office of the attorney general to represent the commissioner, the bureau or any of its divisions in any matter. In addition, the commissioner, with the approval of the compensation programs performance council, is authorized to retain counsel for any purpose in the administration of
this chapter or in the administration of chapter twenty-three of this code relating to the collection of any amounts due from employers to the bureau or any of its divisions. The compensation programs performance council shall solicit proposals from counsel who are interested in representing the commissioner, the bureau or any of its divisions under the terms of this subdivision. Thereafter, the compensation programs performance council shall select such attorneys as it determines necessary to pursue the collection objectives of this subdivision.

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

(B) In the event that any collections action, other than a collections action against a claimant, initiated either by retained counsel or other counsel on behalf of the commissioner, the bureau or any of its divisions results in a judgment or settlement in favor of the commissioner, the bureau or any of its divisions, then the court or, if there was no judicial component to the action, the administrative law judge, shall determine the amount of attorneys' fees that shall be paid by the defendants or respondents to the retained or other counsel representing the commissioner, the bureau or any of its divisions. If the court is to determine the amount of attorneys' fees, it shall include in its determination the amount of fee that should be paid for the representation of the commissioner, the bureau or its divisions in pursuing the administrative component, if any, of the action. The amount so paid shall be fixed by the court or the administrative law judge in an amount no less than twenty percent of its recovery. Any additional amount of attorneys' fees shall be determined by use of the following factors:
(i) The counsel's normal hourly rate or, if the counsel is an employee of the bureau or is an employee of the office of the attorney general, such hourly rate as the court or the administrative law judge shall determine to be customary based upon the attorney's experience and skill level;

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

(iii) The complexity of the issues involved in the action;

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

(v) The overhead costs incurred by counsel with regard to the use of paralegals and other office staff, experts, and investigators; and

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

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

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

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

which agencies of this state shall not grant, issue, or renew any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit whose account is in default with the commissioner with regard to the administration of this chapter and with regard to the administration of chapter twenty-three of this code. The term "agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations. An employing unit is not in default if it has entered into repayment agreements with the appropriate divisions of the bureau and remains in compliance with its obligations under the repayment agreements.

The rules shall provide that, before granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit, the designated agencies shall review a list or lists, provided by the appropriate divisions of the bureau, of employers that are in default. If the employing unit's name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default with a division of the bureau, may grant, issue, or renew the contract, license, permit, certificate, other authority to conduct a trade, profession, or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to such refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter or of chapter twenty-three of this code, or both, whichever is applicable. The rules provided for by this subdivision shall be promulgated pursuant to the provisions of subdivisions (b) and (c), section seven, article three of this chapter as if they were rules being promulgated for the purposes of chapter twenty-three of this code. The prohibition against granting, issuing, or renewing any contract, license, permit, certificate, or other authority under this subdivision are not operative until the rules are promulgated and are in effect, except as provided in subdivision (6), section eight, article three, chapter twenty-two or otherwise by law.

The rules may be promulgated or implemented in phases so that specific agencies or specific types of con-
tracts, licenses, permits, certificates, or other authority to
conduct trades, professions, or businesses will be subject
to the rules beginning on different dates. The presumptions
of ownership or control contained in the division of
environmental protection’s surface mining reclamation
regulations promulgated under the provisions of article
three, chapter twenty-two of this code are not applicable or
controlling in determining the identity of employing units
who are in default for the purposes of this subdivision.
The rules shall also provide a procedure allowing any
agency or interested person, after being covered under the
rules for at least one year, to petition the council to be
exempt from the provisions of the rules. Rules subjecting
all applicable agencies and contracts, licenses, permits,
certificates, or other authority to conduct trades, profes-
sions, or businesses to the requirements of this subdivision
shall be promulgated no later than the first day of January,
two thousand; and

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

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

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

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.


Except as otherwise provided in section three of this
article, an employing unit, with the exception of any em-
ploying unit for which service in employment is defined
in subdivision (10), section sixteen, article one-a of this
chapter, shall cease to be an employer subject to this chap-
ter only as of the first day of any calendar year and only
if it files with the commissioner not later than January
thirty-first of such year, a written application for termina-
tion of coverage, as of such first day of January, and the
commissioner finds that within the preceding calendar
year the employing unit did not pay wages of one thou-
sand five hundred dollars or more in any calendar quarter
for employment subject to this chapter and during that
calendar year no service was performed for it with respect
to which it was liable for any tax against which credit may
be taken for contributions required to be paid into the
unemployment compensation fund of this state; and any
employing unit for which service in employment is de-
finite in subdivision (10), section sixteen, article one-a of
this chapter, shall cease to be an employer subject to this
chapter only as of the first day of any calendar year and
only if it files with the commissioner not later than Janu-
ary thirty-first of such year, a written application for ter-
minal of coverage, as of such first day of January, and
the commissioner finds that there were no twenty different
days, each day being in a different calendar week within
the preceding calendar year, within which such employing
unit had four or more individuals in employment subject
to this chapter: Provided, That the commissioner may for
good cause extend the time for filing application for ter-
minal of coverage, effective as of the first day of the
next succeeding quarter after the application is approved.

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

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

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

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

(d) Any political subdivision of this state may elect to
cover under this chapter service performed by employees
in all of the hospitals and institutions of higher education,
as defined in sections twenty and twenty-one, article
one-a of this chapter, operated by such political subdi-
vision. Any such election of coverage is to be made by
filing with the commissioner a notice of such election at
least thirty days prior to the effective date of such election.
Any political subdivision electing coverage under this
subsection shall make payments in lieu of contributions
with respect to benefits attributable to such employment as
provided with respect to nonprofit organizations in section
three-a of this article. The provisions of section fifteen,
article six of this chapter with respect to benefit rights
based on service for state and nonprofit institutions of
higher education are applicable also to service covered by
an election under this subsection. The amounts required to
be paid in lieu of contributions by any political subdivi-

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

Benefits paid to employees of governmental entities
referred to in paragraph (B), subdivision (9), section six-
teen, article one-a of this chapter, shall be financed in the
same manner and in accordance with the provisions of
section three-a, article five of this chapter; except that for
extended benefits reimbursement shall be one hundred
percent of the benefits paid.

Any governmental entity which, pursuant to the provi­sions of this chapter, is, or becomes, subject to this chapter,
is liable for payments and shall pay contributions in ac­cordance with the provisions of this article and of this
chapter, unless it elects to make payments in lieu of con­tributions as set forth in section three-a.

Governmental entities electing to make payments in
lieu of contributions are liable for the full amount of ex­tended benefits paid for weeks of unemployment.

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

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

(b) Any person, firm, partnership, company, corpora­tion, or association who, as an employer, is subject to the
provisions of this chapter, and who knowingly and willful­ly fails to make any payment or file a report as required
by the provisions of this chapter within the time periods
specified by law, is guilty of an offense as follows:

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

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

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

(2) Any employer who, having been twice convicted
of the offense specified in subdivision (1) of this subsec-
tion, knowingly and willfully fails to make any payment or file a report as required by the provisions of this chapter within the time period specified by law for two calendar quarters, which quarters need not be consecutive but are within twenty-five quarters of each other, is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than ten thousand dollars, or imprisoned in the penitentiary for a definite term of imprisonment which is not less than one year nor more than two years, or both fined and imprisoned.

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

(c) In charging a person with a second or subsequent offense under the provisions of paragraph (B), subdivision (1), subsection (b) of this section or under subdivision (2), subsection (b) of this section, the warrant, indictment or information must set forth the date and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense unless the conviction for the previous offense has become final and unless a prior offense occurred within the ten year period next preceding the second or subsequent offense. The venue for prosecution of any violation of this subsection is either the county in which the defendant’s principal business operations are located or in Kanawha County where the fund is located.


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

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

A reorganized employer keeps the contribution rate of the employing unit before the reorganization until the thirty-first day of December immediately following the date of reorganization and is liable for all contributions, interest and penalties owed by the employing unit. Effective with the first day of January of the calendar year immediately following reorganization, a reorganized employer will have his or her contribution rate based on all of his or her experience with the fund in accordance with section ten of this article. If the predecessor does not remain in business after the transfer of all or part of the assets, business, organization, or trade of the predecessor employer: (1) The successor employer is liable for all contributions, interest and penalties owed by the predecessor employer at the time of the transfer; and (2) if two or more successor employers receive the transfer, the successor employers are liable in the same proportion as the assets of the unit being transferred is to the total assets of the predecessor employer.


(a) The commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment, interest or penalty thereon required by this chapter. Civil actions under this section shall be given preference on the calendar of the
court over all other civil actions except petitions for judicial review under article seven of this chapter and cases arising under the workers' compensation law. Upon prevailing in any such civil action, the commissioner is entitled to recover attorneys' fees and costs of action from the employer.

(b) Any payment, interest and penalty thereon due and unpaid under this chapter is a debt due the state in favor of the commissioner. It is a personal obligation of the employer immediately due and owing and is, in addition thereto, a lien that may be enforced as other judgment liens are enforced through the provisions of chapter thirty-eight of this code and the same shall be deemed by the circuit court to be a judgment lien for this purpose against all the property of the employer: Provided, That no such lien is enforceable as against a purchaser (including lien creditor) of real estate or personal property for a valuable consideration, without notice, unless docketed as provided in article ten-c, chapter thirty-eight of this code.

(c) In addition to all other civil remedies prescribed herein the commissioner may in the name of the state, after giving appropriate notice as required by due process, distraint upon any personal property, including intangibles, of any employer delinquent for any payment, interest and penalty thereon. If the commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, upon giving appropriate notice, either before or after the seizure, as is proper in the circumstances, he or she may likewise distraint in the name of the state before such delinquency occurs. For purposes of effecting a distraint under this subsection, the commissioner may require the services of a sheriff of any county in the state in levying distraint in the county in which the sheriff is an officer and in which the employer's personal property is situated. A sheriff so collecting any payments, interest and penalties thereon is entitled to compensation as provided by law for his or her services in the levy and enforcement of executions. Upon prevailing in any distraint action, the commissioner is entitled to recover his or her attorney fees and costs of action from the employer.
(d) In case a business subject to the payments, interest and penalties thereon imposed under this chapter is operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or decree in the cause, make provision, so far as the assets in administration will permit, for the regular payment of such payments as the same become due.

(e) The secretary of state of this state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until notified by the commissioner that all payments, interest and penalties thereon against any such corporation which is an employer under this chapter have been paid or that provision satisfactory to the commissioner has been made for payment.

(f) In any case where an employer defaults in payments, interest or penalties thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains delinquent after due notice, the commissioner may bring action in the circuit court of Kanawha county to enjoin that employer from continuing to carry on the business in which such liability was incurred: Provided, That the commissioner may as an alternative to this action require such delinquent employer to file a bond in the form prescribed by the commissioner with satisfactory surety in an amount not less than fifty percent more than the payments, interest and penalties due.

(g) Amounts of payments and penalties collected under this section shall be deposited to the credit of the unemployment compensation trust fund. Amounts of interest, attorneys' fees and costs collected under this section shall be paid into the employment security special administration fund. Any such amounts are not to be treated by the auditor or treasurer as part of the general revenue of the state.
§21A-5-17. Interest and rate on past-due payments; penalties for late payment and reporting.

(a) Payments, including penalties, unpaid on the date on which due and payable, as prescribed by the commissioner, shall bear interest at the rate of one percent per month until payment plus accrued interest is received by the commissioner. Interest shall be compounded quarterly until payment plus accrued interest is received by the commissioner.

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

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

Wages for insured work includes wages paid for previously uncovered service. For the purposes of this section, the term "previously uncovered services" means services:

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

(2) Which (A) Are agricultural labor, or domestic services as defined in subdivisions (12) and (13), section sixteen, article one-a of this chapter or (B) are services performed by an employee of this state or a political subdivision thereof, or a nonprofit educational institution as
provided in paragraphs (B) and (C) of subdivision (9), section sixteen of article one-a; except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

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

(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised by the appropriate bureau employee that:

1. Unemployment compensation is subject to federal income tax;
2. Requirements exist pertaining to estimated tax payments;
3. The individual may elect to have federal income tax deducted and withheld from the individual’s payment of unemployment compensation at the amount specified in the federal internal revenue code; and
4. The individual may change a previously elected withholding status.

(b) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal taxing authority as payment of income tax.

(c) The commissioner shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld in accordance with the priorities established in rules developed by the commissioner.

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

§21A-6-10. Benefit rate — Total unemployment; annual computation and publication of rates.
Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in the benefit table in this section, on the line on which in Column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section twenty-seven, article one-a of this chapter. The employee's wage class shall be determined by his or her base period wages as shown in Column (B) in the benefit table. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of sixty dollars as a result of odd-job or subsidiary work, or is paid a bonus in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.

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

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

On the first day of July of each year, the commissioner shall determine the maximum weekly benefit rate upon the basis of the formula set forth above and shall establish wage classes as are required, increasing or decreasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty-five percent of one fifty-second of the median dollar amount of wages in the base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next lowest multiple of one dollar.
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After he or she has established such wage classes, the commissioner shall prepare and publish a table setting forth such information.

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

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

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.
(a) Benefits based on service in employment as defined in subdivisions (9) and (10), section sixteen, article one-a of this chapter, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services, in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

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

(1) With respect to services in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or after such holiday or vacation period.

(2) With respect to services in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week
which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this subsection and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause.

(3) With respect to services described in subdivisions (1) and (2) of this subsection, benefits shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(4) Benefits payable on the basis of services in any such capacities as specified in subdivisions (1) and (2) of this subsection shall be denied as specified in subdivisions (1), (2) and (3) of this subsection to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subdivision the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational 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.
(a) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section nine hundred three of the Social Security Act, as amended, may not be requisitioned from this state’s account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to section ten of this article for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money requisitioned after the enactment of an appropriation law which specifies the purposes for which such money is appropriated and the amounts appropriated therefor. Such appropriation is subject to the following conditions:

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

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

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

(c) Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a
separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

ARTICLE 9. UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND.


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

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

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

(d) This section is effective on and after the ninth day 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.
The Legislature reserves the right to amend or repeal all or any part of this chapter and no private rights shall vest against any legislative amendment or change or repeal. All rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal 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

Randy A. Beamer  
Chairman House Committee

Originating in the House.

Takes effect from passage.

Warren E. Holmes  
Clerk of the Senate

Gregory M. Bray  
Clerk of the House of Delegates

Earl Ray Tomlin  
President of the Senate

Robert C. Atchison  
Speaker of the House of Delegates

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

Governor