

WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1936



ENROLLED

HOUSE BILL No. 1

(By Mr. *Speaker*, *Mr. Thomas*)



PASSED *December 16,* 1936

In Effect *from* Passage

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(By MR. SPEAKER, MR. THOMAS)

[Passed December 16, 1936; in effect from passage.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, by adding chapter twenty-one-A, creating a Department of Unemployment Compensation.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding chapter twenty-one-A, creating a Department of Unemployment Compensation, as follows:

Article I. Department of Unemployment Compensation.

Section 1. *Purpose.* The purpose of this chapter is to
2 provide reasonable and effective means for the promotion
3 of social and economic security by reducing as far as practi-
4 cable the hazards of unemployment. In the furtherance of

5 this objective, the Legislature establishes a compulsory
6 system of unemployment reserves in order to

7 (1) Provide a measure of security to the families of
8 unemployed persons.

9 (2) Guard against the menace to health, morals, and
10 welfare arising from unemployment.

11 (3) Maintain as great purchasing power as possible,
12 with a view to sustaining the economic system during
13 periods of economic depression.

14 (4) Stimulate stability of employment as a requisite
15 of social and economic security.

16 (5) Allay and prevent the debilitating consequences of
17 poor relief assistance.

18 To give effect to these purposes the Legislature establishes
19 the following system in the belief that the purposes are
20 reasonably within the sphere of governmental control and
21 that the agencies created for their accomplishment are the
22 fairest and most effective devices now available.

Sec. 2. *Short Title.* This chapter may be cited as the

2 "Unemployment Compensation Law."

Sec. 3. *Definitions.* As used in this chapter, unless the
2 context clearly requires otherwise:

3 "Administration fund" means the Unemployment Com-
4 pensation Administration Fund, from which the administra-
5 tive expenses under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages pay-
7 able by an employer (regardless of the time of payment)
8 for employment during one year.

9 "Average annual payroll" means the average of the
10 annual payrolls of an employer for the last three or five
11 preceding years, whichever is the higher.

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

14 "Board" means Board of Review.

15 "Director" means the Unemployment Compensation Di-
16 rector.

17 "Employing unit" means an individual, or type of or-
18 ganization, including any partnership, association, trust,
19 estate, joint stock company, insurance company, corpora-
20 tion, domestic or foreign, or the receivership, trustee in
21 bankruptcy, trustee or successor thereof, or the legal rep-

22 representative of a deceased person which has on January one,
23 one thousand nine hundred thirty-five, or subsequent thereto,
24 had in its employ one or more individuals performing serv-
25 ice within the state.

26 "Employer" means an employing unit which for some
27 portion of a day, not necessarily simultaneously, in each of
28 twenty different weeks, which weeks need not be consecutive
29 within either the current year or the preceding year, has
30 had in employment eight or more individuals (irrespective
31 of whether the same individuals were or were not employed
32 on each of such days).

33 "Employment" means service, (including service in inter-
34 state commerce) performed for wages, if:

35 (1) Performed in this state by an individual unless such
36 service is incidental to the individual's service performed
37 elsewhere.

38 (2) Performed elsewhere but incidental to an individ-
39 ual's service in this state, unless payments are made upon
40 such services under an unemployment compensation law
41 of another state.

42 The term "employment" shall not include

43 (1) Service performed in employ of this state or any
44 political subdivision thereof:

45 (a) On an unemployment work relief project designated
46 as such by the director.

47 (b) In a regular position on an annual salary basis.

48 (c) As a teacher or administrative officer in a public
49 school, college, or university.

50 (2) Service performed in the employ of another state, its
51 political subdivisions or instrumentality of that state or its
52 subdivisions.

53 (3) Service performed in the employ of the United States
54 or an instrumentality of the United States.

55 (4) Service with respect to which unemployment compensa-
56 tion is payable under an unemployment compensation system
57 established by an act of Congress. The director may enter
58 into agreements with the proper agency established under
59 such act of Congress to provide reciprocal treatment to in-
60 dividuals who, after acquiring potential rights to benefits
61 under this chapter, have acquired rights to unemployment
62 compensation under an act of Congress, or who have, after

63 acquiring potential rights to unemployment compensation
64 under an act of Congress, acquired rights to benefits under
65 this chapter. Such agreements shall become effective ten
66 days after such publication as complies with the general
67 rules of the department.

68 (5) Agricultural labor.

69 (6) Domestic service in a private home.

70 (7) Service performed as an officer or member of a crew
71 of a vessel on the navigable waters of the United States.

72 (8) Service performed by an individual in the employ of
73 his son, daughter, or spouse.

74 (9) Service performed by a child under the age of
75 twenty-one years in the employ of his father or mother.

76 (10) Service performed in the employ of an employing
77 unit organized and operated exclusively for religious,
78 scientific, literary, or educational purpose or for prevention
79 of cruelty to children or animals no part of the net earnings
80 of which inure to the benefit of any private shareholder or
81 individual.

82 "Employment office" means a free public employment
83 office or branch thereof, operated by this state or maintained

84 as a part of a state-controlled system of public employment
85 offices.

86 "Fund" means the Unemployment Compensation Fund
87 established by this chapter.

88 "Partial unemployment" means work for less than full-
89 time during a week for which an individual's wages fails to
90 equal two dollars more than the weekly benefit amount he
91 would be entitled to receive if totally unemployed and
92 eligible.

93 "Payments" means the money required to be paid into
94 the State Unemployment Compensation Fund as provided by
95 article five of this chapter.

96 "State" includes in addition to the states of the United
97 States, Alaska, Hawaii, and the District of Columbia.

98 "Total unemployment" means total lack of work during
99 a week in which an individual performs no service for which
100 wages are payable to him.

101 "Wages" means all remuneration payable for personal
102 services, including commissions and bonuses and the cash
103 value of all remuneration payable in any medium other than
104 cash. Gratuities customarily received by an individual in

105 the course of his employment from persons other than his
106 employing unit shall be treated as wages paid by his em-
107 ploying unit.

108 The reasonable cash value of remuneration payable in any
109 medium other than cash, and the reasonable amount of
110 gratuities shall be estimated and determined in accordance
111 with rules prescribed by the director.

112 "Week" means a calendar week, ending at midnight
113 Saturday, or the equivalent thereof, as determined in accord-
114 ance with the regulations prescribed by the director.

115 "Week of employment" means each week occurring after
116 March thirty-one, one thousand nine hundred thirtysix,
117 within which an individual performs employment for an
118 employing unit which has satisfied the conditions set forth
119 in the definition of "employer" prescribed by this section;
120 but does not include a week in which the plurality of an
121 individual's total working hours are performed without the
122 state in service for which payments in respect to such
123 plurality are required under an unemployment compensation
124 law of another state or an unemployment compensation law
125 of the United States.

126 "Weekly benefit amount" means the amount of benefit
127 an individual would be entitled to receive for one week of
128 total unemployment.

129 "Year" means a calendar year, or the equivalent thereof
130 as determined by the director.

Sec. 4. *Department of Unemployment Compensation.*

2 There is created a Department of Unemployment Compensa-
3 tion, composed of a division of unemployment compensation
4 and a division of employment service, and such other divi-
5 sion or units as the director determines to be necessary.

Sec. 5. *Federal State Cooperation.* The department shall

2 cooperate with the Social Security Board of the federal govern-
3 ment, similar agencies of the several states, and such other
4 agencies as are concerned with the problem of employment
5 security and public assistance and relief.

Sec. 6. *Employment Stabilization.* The department, through

2 the director and the advisory council, shall take all steps, to:

3 (1) Reduce and prevent unemployment.

4 (2) Encourage and assist in the adoption of practical
5 methods of vocational training and guidance.

6 (3) Encourage the establishment by the state and local

7 subdivisions of public works reserves to finance construction
8 programs in times of unemployment.

9 (4) Promote reemployment and employment readjust-
10 ment between industries.

11 (5) Conduct researches and investigations toward these
12 ends, and publish the results.

Sec. 7. *Employment Agencies Transfer.* The "State Public
2 Employment Agency" now maintained in the department of
3 labor shall be transferred on January one, one thousand nine
4 hundred thirty-seven, and shall be made the State Employ-
5 ment Service Division of the department of unemployment
6 compensation.

Sec. 8. *Cooperation within the State.* Officers of the state
2 and of its political subdivisions shall furnish to the director
3 upon his request such information relative to the purposes
4 of this chapter as they may have in their possession.

Article II. The Director of Unemployment Compensation.

Section 1. *Appointment.* The department shall be in
2 charge of a director of unemployment compensation. The
3 director shall be appointed by the Governor, by and with the

4 advice and consent of the Senate, for a term of six years and
5 shall hold his office subject to the will and pleasure of the
6 Governor.

Sec. 2. *Qualifications.* The director shall be selected with
2 special reference to his training, experience, and capacity.

3 He shall not be a candidate for or hold any other public
4 office or trust, nor shall he be a member of a political com-
5 mittee. If he becomes a candidate for a public office or be-
6 comes a member of a political committee, his office as
7 director shall be immediately vacated. He shall devote his
8 entire time to the duties of his office.

Sec. 3. *Oath.* The director, before entering upon the duties
2 of his office, shall take and subscribe to the oath prescribed
3 by article four, section five of the State Constitution. The
4 oath shall be filed with the Secretary of State.

Sec. 4. *Offices.* The office of the director shall be located
2 at the capitol. The director shall keep his offices open at all
3 reasonable times for the transaction of public business.

Sec. 5. *Compensation.* The director shall receive a yearly
2 salary of six thousand dollars, and the necessary traveling
3 expenses incident to the performance of his duties. Requisi-

4 tion for traveling expenses shall be accompanied by a sworn
5 itemized statement which shall be filed with the auditor and
6 preserved as a public record.

Sec. 6. *Powers and Duties.* The director shall be the
2 executive and administrative head of the department and
3 shall have the power and duty, to:

4 (1) Exercise general supervision of and make regulations
5 for the government of the department.

6 (2) Prescribe uniform rules pertaining to investigations,
7 departmental hearings, and promulgate rules and regula-
8 tions.

9 (3) Supervise fiscal affairs and responsibilities of the
10 department.

11 (4) Prescribe the qualifications of, appoint, remove, and
12 fix the compensation of the officers and employees of the
13 department.

14 (5) Organize and administer the department so as to com-
15 ply with the requirements of this chapter and the standards
16 required by federal legislation.

17 (6) Make reports in such form and containing such in-
18 formation as the federal Social Security Board may from

19 time to time require, and comply with such provisions as the
20 federal Social Security Board may from time to time find
21 necessary to assure the correctness and verification of such
22 reports.

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

30 (8) Keep an accurate and complete record of all depart-
31 mental 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 department.

34 (9) Sign and execute in the name of the state, by "The
35 State Department of Unemployment Compensation," any
36 contract or agreement with the federal government, its
37 agencies, other states, their subdivisions, or private persons.

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

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

42 (12) Make recommendations, and an annual report to the
43 Governor concerning the condition, operation, and function-
44 ing of the department.

45 (13) Invoke any legal, equitable or special remedy for the
46 enforcement of orders or the provisions of this chapter.

47 (14) Exercise any other power necessary to standardize
48 administration, expedite departmental business, assure the
49 establishment of fair rules and regulations and promote the
50 efficiency of the service.

Sec. 7. *Organization of the Department.* The director
2 shall establish within the department the division of unem-
3 ployment compensation, and the division of unemployment
4 service and such other units as will promote efficiency and
5 economy in administration.

Sec. 8. *Exemption of Employees of the Employment Ser-*
2 *vice Division.* The provisions of sections nine to twelve of
3 this article shall not apply to assistants and employees in the
4 Employment Service division so as to reduce in any way the
5 standards and requirements of the act of Congress entitled

6 "An act to provide for the establishment of a national em-
7 ployment system and for cooperation with states in the pro-
8 motion of such system, and for other purposes" approved
9 June six, one thousand nine hundred thirty-three, as
10 amended; but wherever the provisions of this article impose
11 a higher standard, compliance of employment service em-
12 ployees shall be required.

Sec. 9. *Assistants and Employees.* Upon a non-partisan
2 merit basis the director shall appoint the division and unit
3 heads, and such assistants and employees as may be necessary
4 to the efficient operation of the department. He shall fix
5 their compensation in accordance with the provisions of sec-
6 tion ten of this article.

Sec. 10. *Classification of Services and Compensation.* The
2 director shall by uniform regulation:

3 (1) Classify the different types of services to be performed
4 for the department.

5 (2) Prescribe the qualifications of education, training, and
6 experience for the appointees and employees of each class.

7 (3) Fix a maximum and minimum salary for each class.

8 The difference between the maximum and minimum for any
9 class shall not exceed one thousand dollars.

Sec. 11. *Examinations and Annual Merit Ratings.* The
2 director shall hold examinations to determine the technical
3 and professional qualifications of applicants for positions.
4 The examinations shall be a guide to the director in making
5 his appointments.

6 The director shall annually rate the employees according
7 to their merit and shall determine whether they are maintain-
8 ing standards of eligibility.

Sec. 12. *Dismissal, Termination, Lay-off, Suspension.*

2 The director shall establish regulations governing dismissals,
3 terminations, lay-offs, and suspensions. Severance of em-
4 ployees, relationship with the department shall be in accord-
5 ance with these regulations. All severances shall be for good
6 cause. Failure to maintain technical or professional qualifi-
7 cations shall be a good cause for severance.

Sec. 13. *Delegation of Duties.* All powers and duties
2 vested in the director may be delegated by him to his ap-

3 pointees and employees; but the director shall be responsible
4 for their acts.

Sec. 14. *Deputies.* For the original determination of
2 claims, the director shall appoint a necessary number of
3 deputies as his representatives.

Sec. 15. *State Employment Service.* The director shall
2 appoint upon a non-partisan merit basis the head of the divi-
3 sion of the employment service and shall fix his salary and
4 prescribe his duties, in accordance with the requirements of
5 section eight of this article.

Sec. 16. *Employment Offices.* The director shall establish
2 and maintain free public employment offices in such places
3 as necessary for the proper administration of this chapter and
4 for the purpose of performing the duties within the purview
5 of the act of Congress entitled "An Act to provide for the
6 establishment of a national employment system and for co-
7 operation with states in the promotion of such system, and
8 for other purposes," approved June six, one thousand nine
9 hundred thirty-three, as amended.

Sec. 17. *Federal-State Cooperation.* The head of the em-
2 ployment service division shall have all powers and duties

3 necessary to secure to the state the benefits of Congressional
4 action for the promotion and maintenance of a system of
5 public employment offices. To this end the provisions of the
6 act referred to in the preceding section and such additional
7 Congressional action consistent with the above act may be
8 accepted by the state and the state pledges its observance
9 and compliance therewith.

10 The State Employment Service Division is designated the
11 agent of this state for the purposes of compliance with the
12 act of Congress entitled "An Act to provide for the establish-
13 ment of a national employment system and for cooperation
14 with states in the promotion of such system, and for other
15 purposes," approved June six, one thousand nine hundred
16 thirtythree, as amended. The director shall appoint the head
17 of the service and all appointees and employees in accord-
18 ance with the regulations prescribed by the director of the
19 United States Employment Service.

Sec. 18. *Acceptance of Aid.* For the purpose of establish-
2 ing and maintaining free public employment offices, the
3 director may enter into agreements with any political sub-
4 division of the state or with any private non-profit organiza-

5 tion, and as part of such an agreement the director may ac-
6 cept money, services, or quarters as a contribution to the em-
7 ployment service account.

Sec. 19. *Legal Assistants.* The attorney general and his
2 assistants and the prosecuting attorneys of the several coun-
3 ties shall render to the director without additional compensa-
4 tion such legal services as in the discharge of his duties he
5 shall require.

6 The director may employ temporarily or as regular members
7 of the department additional legal counsel. The remunera-
8 tion of such counsel shall be paid from the administration
9 fund.

Sec. 20. *Rules and Regulations.* The director may issue
2 rules and regulations in accordance with such regular pro-
3 cedure as the director shall prescribe.

Sec. 21. *Oaths and Witnesses.* The director and his
2 specially authorized representatives shall have the power
3 to administer oaths, take depositions, certify official acts, and
4 issue subpoenas to compel the attendance of witnesses and
5 production of papers necessary as evidence in connection with
6 a dispute or the administration of this chapter.

Sec. 22. *Subpoenas.* The director or his authorized representative shall have the power to issue subpoena for the production of persons and papers in all proceedings within the purview of this chapter. In case a person refuses to obey such subpoena the director or his representative may invoke the aid of any circuit court in order that the testimony or evidence be produced. Upon proper showing, such court shall issue a subpoena or order requiring such persons to appear before the director or his representative and produce all evidence and give all testimony touching the matter in question.

A person failing to obey such order may be punished by such court as for contempt.

Sec. 23. *Publication.* The director shall print for public

distribution:

(1) The text of this chapter.

(2) The regulations and general rules of the division.

(3) Such other material as the director deems relevant and suitable for the more effective administration of the chapter.

Article III. Advisory Council.

Section 1. *Creation.* There is hereby created in the Department of Unemployment Compensation a "State Advisory Council" composed of six members.

Sec. 2. *Appointment.* The members shall be appointed by the Governor, by and with the advice and consent of the Senate.

Sec. 3. *Term of Office.* The term of office of the members of the council shall be six years, except that the Governor, upon the adoption of this chapter, shall appoint the members upon the following basis: Two members for a term of six years; two members for a term of four years; two members for a term of two years. As these appointments expire, all appointments shall be for six-year terms.

In case of a vacancy, the Governor shall make an appointment for the remainder of the unexpired term.

Members shall be subject to removal at the will and pleasure of the Governor.

Sec. 4. *Qualifications.* The members of the council shall be selected with special reference to their ability and fitness to effectuate the purposes of this chapter.

Two members of the council shall be selected as representa-

5 tives of employer interests; two members shall be selected as
6 representatives of employee interests; and two members shall
7 represent the interests of the general public.

Sec. 5. *Disqualifications.* A member shall not be a candi-
2 date for, or hold, any other public office or trust, nor shall
3 he be a member of any political committee. If a member be-
4 comes a candidate for, or is appointed to, any other public
5 office or political committee, his office as a member of the
6 council shall automatically be vacated.

Sec. 6. *Oath of Office.* Members of the council shall take
2 and subscribe to the constitutional oath before entering upon
3 their duties. Their oaths shall be filed with the Secretary of
4 State.

Sec. 7. *Honorarium and Traveling Expenses.* Each member
2 of the council shall receive an honorarium of fifteen dollars
3 for each day actually served in attendance at meetings of the
4 Council and such traveling expenses as are incurred in the
5 performance of his duties under the provisions of this chapter.
6 Requisition for traveling expenses shall be accompanied
7 by a sworn and itemized statement which shall be filed with
8 the Auditor and permanently preserved as a public record.

9 Members shall not be compensated for more than thirty
10 days' service in any year.

Sec. 8. *Offices.* The offices and meeting place of the council
2 shall be at the capital.

Sec. 9. *Meetings.* The council shall hold four regular
2 meetings each year as follows: On the first Monday in
3 January, April, July, and October. Special meetings may be
4 convened on the call of the director, the Governor, or a
5 majority of the members.

Sec. 10. *Quorum.* A majority of the members of the council
2 shall constitute a quorum for the conduct of council business.

Sec. 11. *Advisory Powers and Duties.* The council shall
2 be an advisory body to the director and as such shall have
3 the following advisory powers and duties:

4 (1) Study and consider the entire field of legislation and
5 administration concerning Unemployment Compensation.

6 (2) Advise the director concerning the organization and
7 administration of the department.

8 (3) Recommend to the director policies and practices
9 relative to his duties.

10 (4) Advise and make recommendations to the Governor
11 or to the Legislature relative to the unemployment policy of
12 the state.

13 (5) Advise the director with respect to the special prob-
14 lems of different industries, regions, or economic groups of
15 the state.

16 (6) Advise the director with respect to the preparation
17 and amendment of the rules and regulations relative to this
18 chapter.

19 (7) Exercise any other advisory powers necessary or
20 reasonably implied within the provisions and purposes of this
21 chapter.

Sec. 12. *Local Advisory Councils.* The advisory council

2 may appoint local advisory councils for the study, considera-
3 tion, and reporting of any particular local situation.

4 The local council shall be appointed for a limited and
5 temporary period only. Members of the local council shall
6 serve without compensation.

7 The local council shall make such reports as the advisory
8 council stipulates in its order of appointment.

Article IV. Board of Review.

Section 1. *Appointment.* There is hereby created on October first, one thousand nine hundred thirty-seven, a Board of Review, consisting of three members. They shall devote their entire time to the duties of their offices.

Sec. 2. *Appointment.* On October first, one thousand nine hundred thirty-seven, the Governor, by and with the advice and consent of the Senate, shall appoint the members of the Board of Review for terms of six years, except that the terms of the members first taking office shall be two, four, and six years, respectively, as designated by the Governor at the time of their appointment. Vacancies shall be filled by the Governor for the unexpired term. The Governor shall designate one member as chairman of the board.

Sec. 3. *Qualifications.* The members of the board shall be selected with special reference to their ability and fitness to adjudicate claims. Selections shall be upon a non-partisan merit basis. The Governor shall not appoint a person who is identified with the interests of either employers or employees.

Sec. 4. *Oath of Office.* Members of the board shall take

2 and subscribe to the constitutional oath before entering
3 upon their duties. Their oaths shall be filed with the secre-
4 tary of state.

Sec. 5. *Compensation.* Each member of the Board shall
2 receive an annual salary of four thousand dollars and the
3 necessary traveling expenses incurred in the performance
4 of his duties.

5 Requisition for traveling expenses shall be accompanied
6 by a sworn and itemized statement which shall be filed
7 with the Auditor and permanently preserved as a public
8 record.

9 The salaries and the expenses of the members shall be
10 paid from the administration fund.

Sec. 6. *Meetings.* The offices and meeting place of the
2 Board shall be at the capitol; but the board may sit at such
3 other places as the prompt and efficient hearing of claims
4 may require.

Sec. 7. *Quorum.* A majority of the members of the board
2 shall constitute a quorum for the hearing of appealed claims.

Sec. 8. *Removal.* After hearing, and upon cause shown,
2 the Governor may remove a member of the board.

Sec. 9. *Powers and Duties.* The board shall have the

2 following powers and duties, to

3 (1) Hear and determine all disputed claims presented to
4 it in accordance with the provisions of article seven.

5 (2) Appoint examiners and fix their salaries.

6 (3) Organize from salaried examiners such appeal
7 tribunals as are necessary for the expedition of disputed
8 claim procedure.

9 (4) Establish procedure for the hearing of disputed
10 claims.

11 (5) Take oaths, examine witnesses, and issue subpoenas.

12 (6) Establish the amount of witness fees.

13 (7) Keep such records and make such reports as are
14 necessary for disputed claims.

15 (8) Exercise such additional powers as may be necessary
16 for the proper conduct of a system of administrative review
17 of disputed claim.

Sec. 10. *Appointment of Examiners.* The Board may

2 appoint such examiners as are necessary to hear appeals

3 from determinations of deputies. The board shall fix the

4 examiners' salaries which shall be paid from the administra-
5 tion fund.

6 Appointment shall be made upon a non-partisan merit
7 basis. The board shall not appoint a person who is identified
8 with the interests of either employers or employees.

Sec. 11. *Oaths and Witnesses.* The board, appeal tribunal,
2 or examiner will have the power to administer oaths, take de-
3 positions, certify official acts, and issue subpoenas to compel
4 the attendance of witnesses and the production of papers
5 necessary as evidence in connection with a dispute or dis-
6 puted claim.

Sec. 12. *Subpoenas.* The board, appeal tribunal, or ex-
2 aminer shall have the power to issue subpoenas for the pro-
3 duction of persons and papers in all proceedings within their
4 jurisdiction. In case a person refuses to obey such subpoena
5 the board, appeal tribunal, or examiner may invoke the aid
6 of a circuit court in order that the testimony or evidence
7 be produced. Upon proper showing such court shall issue
8 an order requiring such persons to appear before the board,
9 appeal tribunal, or examiner and produce all evidence and
10 give all testimony touching the matter in question. A

11 person failing to obey such order may be punished by the
12 court as for contempt.

Article V. Employer Coverage and Responsibility.

Section 1. *Employer Coverage.* An employing unit which
2 is or becomes an employer subject to this chapter during
3 any year shall be subject to the provisions of the chapter
4 for the whole of the year.

Sec. 2. *Duration.* Except as provided in section three of
2 this article, an employing unit shall cease to be an employer
3 subject to this chapter only as of the first day of January of
4 any year, and only if it files with the director, prior to the
5 fifth day of January of such year, a written application for
6 termination of coverage, and the director finds that there
7 were no twenty different days, each day being in a different
8 week within the preceding calendar year, within which such
9 employing unit employed eight or more individuals in em-
10 ployment subject to this chapter.

Sec. 3. *Voluntary Coverage.* Upon written election filed
2 with the director, an employing unit not subject to this
3 chapter, or an employer of services which do not constitute
4 employment under this chapter, may, upon the written ap-

5 proval of the director qualify under this chapter for a period
6 of not less than two years. An employing unit which vol-
7 untarily elects to become an employer subject to this chap-
8 ter shall be treated as an employer for all purpose for the
9 full period of its election.

10 In the case of voluntary coverage, an employing unit or
11 employer may withdraw as of January first of any calendar
12 year, if thirty days prior to that date it files written notice
13 of its intention with the director.

 Sec. 4. *Payments.* On and after January first, one thou-
2 sand nine hundred thirty-six, an employer shall be liable for
3 payments in respect to wages payable for employment oc-
4 curring during each year.

 Sec. 5. *Rate of Contribution.* An employer shall make pay-
2 ments to the unemployment compensation fund equal to the
3 following percentages of wages payable by him with respect
4 to employment as follows:

5 Nine-tenths of one per cent with respect to employment
6 during the year, one thousand nine hundred thirty-six.

7 One and eight-tenths per cent with respect to employment
8 during the year, one thousand nine hundred thirty-seven.

9 Two and seven-tenths per cent with respect to employ-
10 ment during the years, one thousand nine hundred thirty
11 eight, one thousand nine hundred thirty-nine, one thousand
12 nine hundred forty, and thereafter.

13 The percentage determined by sections eight to thirteen of
14 this article.

Sec. 6. *Pooled Fund.* All payments shall be made to the
2 unemployment compensation fund. All payments to the
3 fund shall be pooled and available to pay benefits to any
4 individual entitled thereto under this chapter, irrespective
5 of the source of the payment. Nothing in this chapter shall
6 be construed to grant to an employer or individual in his
7 service prior claim or right to the amount paid by him to the
8 unemployment compensation fund.

Sec. 7. *Separate Account.* The director shall maintain a
2 separate account for each employer, crediting his account
3 with all the payments which he has made and charging his
4 account with all benefits which under article six were
5 chargeable against weeks of employment in his service.

Sec. 8. *Merit Rating: Classification.* For the year one
2 thousand nine hundred forty-one and each year thereafter.

3 the director shall classify employers according to the ratio
4 of payments credited and benefits charged to their account,
5 with a view to fixing such payment-rates as will reflect their
6 employment experience.

Sec. 9. *Merit Ratings: Fund Stabilization.* An employer's
2 payment-rate shall be reduced only as of January one of a
3 calendar year and shall not be reduced below two and seven-
4 tenths per cent:

5 (1) Prior to January one, one thousand nine hundred
6 forty-one.

7 (2) Thereafter, unless the total assets of the fund, ex-
8 cluding payments payable at the beginning of the year,
9 exceed the total benefits paid from the fund within the last
10 preceding year.

11 No employer's rate shall be less than one and eight-tenths
12 per cent, unless the assets of the entire fund are at such
13 time at least twice the total benefits paid from the fund
14 within the last preceding year.

Sec. 10. *Merit Rating: Decreased Rates.* After the require-
2 ments of section nine have been complied with, an em-

3 ployer's payment shall remain two and seven-tenths per cent,
4 until:

5 (1) There has elapsed three years throughout which an
6 individual in his employ could have received benefits if un-
7 employed and eligible.

8 (2) His payments exceed the benefits charged to his
9 account by an amount equal to at least seven and one-half
10 per cent of his average annual payroll, in which case his
11 rate shall be one and eight-tenths per cent.

12 (3) His payments exceed the benefits charged to his
13 account by an amount equal to at least ten per cent of his
14 average annual payroll, in which case his rate shall be
15 nine-tenths of one per cent.

16 The director shall determine an employer's compliance
17 with these requirements.

Sec. 11. *Merit Ratings: Increased Rates.* If the total pay-
2 ments of an employer for all past periods or the last sixty
3 consecutive calendar months (whichever period is the more
4 advantageous to the employer) are less than the total
5 benefits charged against his account during the same period,
6 his rate shall be three and sixtenths per cent, unless he shows

7 to the satisfaction of the director that such experience is
8 due to an act of God, fire, or other catastrophe, or act of
9 civil or military authority, directly affecting the place in
10 which individuals were employed by him, in which case the
11 rate shall be two and seven-tenths per cent.

Sec. 12. *Auxiliary Rates.* If the director determines that
2 the above rates work inequities and hardships upon par-
3 ticular individuals or industries he may hold an investiga-
4 tion after proper notice and hearing and establish other
5 rates more in consonance with the risk of each employer
6 and more nearly calculated to increase stabilization of em-
7 ployment. Rates fixed by the director shall be subject to
8 the following limitations:

9 (1) The combined rates of all employers shall yield ap-
10 proximately two and seven-tenths per cent of the total
11 annual payrolls.

12 (2) The rate for a particular employer shall not be less
13 than two and seventenths per cent until there has been
14 three years throughout which an individual in his employ
15 could have received benefits if unemployed and eligible.

Sec. 13. *Method of Payment.* All payments shall be made
2 in accordance with rules and regulations of the director.

Sec. 14. *Deduction of Wages Prohibited.* An employer
2 shall not deduct payments in whole or in part from the wages
3 of an individual in his employ.

Sec. 15. *Fractions.* In any payment, a fractional part of
2 a cent shall be disregarded unless it amount to one-half cent
3 or more, in which case, it shall be increased to one cent.

Sec. 16. *Collection of Payments.* The director in the name
2 of the state shall commence a civil action against an employer,
3 who, after due notice, defaults in any payment or interest
4 thereon. If judgment is against the employer he shall pay
5 the costs of the action.

6 Civil actions under this section shall be given preference
7 on the calendar of the court over all other civil actions ex-
8 cept petitions for judicial review under this chapter and
9 cases arising under the Workmen's Compensation Law.

Sec. 17. *Interest on Past-due Payments.* Payments un-
2 paid on the date on which due and payable, as prescribed by
3 the director, shall bear interest at the rate of one per cent
4 per month until payment plus accrued interest is received by

5 the director.

6 Interest collected pursuant to this section shall be paid
7 into the Unemployment Compensation Fund.

8 Sec. 18. *Priorities.* In the event of any distribution of an
9 employer's assets pursuant to an order of the court under a
10 law of this state, payments then or thereafter due shall be
11 paid in full prior to all other claims except taxes and claims
12 for wages. Wage claims in excess of two hundred fifty dollars
13 per claimant or earned more than six months before the com-
14 mencement of the proceeding, shall not be entitled to priority.

15 In the event of an employer's adjudication in bankruptcy,
16 judicially confirmed extension proposal or composition, under
17 the Federal Bankruptcy Act of one thousand eight hundred
18 ninetyeight, as amended, payments then or thereafter due
19 shall be entitled to such priority as is provided in section
20 sixty-four (b) of that act, as amended.

21 Sec. 19. *Refunds.* Within one year after date on which pay-
22 ment or interest thereon is due, an employer, who has paid
23 such payment or interest, may make application for:
24 (1) An adjustment thereof in connection with subsequent
25 payments.

6 (2) A refund thereof if adjustment cannot be made.

7 If the director determines that payments and interest were
8 erroneously collected, he shall make the adjustment, without
9 interest, in connection with subsequent payments of the em-
10 ployer, or if such adjustment cannot be made, refund the
11 amount without interest from the Unemployment Compensa-
12 tion Fund.

13 For like cause and within the same period the director,
14 on his own initiative, may make an adjustment or refund.

Article VI. Employee Eligibility; Benefits.

Section 1. *Eligibility Qualifications.* An unemployed in-
2 dividual shall be eligible to receive benefits, only if the director
3 finds that:

4 (1) He has registered for work at and thereafter con-
5 tinues to report at an employment office in accordance with
6 the regulations of the director.

7 (2) He has made a claim for benefits in accordance with
8 the provisions of article seven of this chapter.

9 (3) He is able to work, and is available for work.

10 (4) He has been totally unemployed for a waiting period

11 of two weeks prior to the week for which he claims benefits
12 for total unemployment.

13 (5) He has had at least thirteen weeks of employment
14 within the fifty-two consecutive weeks preceding the first
15 week in any continuous period of unemployment.

Sec. 2. *Waiting Period Construed.* The waiting period of
2 two weeks need not be consecutive but may be accumulated
3 during the thirteen consecutive weeks preceding the week
4 for which benefits are claimed. This requirement shall not
5 interrupt the payment of benefits for consecutive weeks of
6 unemployment; but the waiting period must occur after bene-
7 fits could first become payable to an individual under this
8 chapter.

9 During the waiting period the individual must be eligible
10 in all respects except for the requirements of subsections two
11 and five, section one of this article.

Sec. 3. *Extension of Employment Period.* If the director
2 finds that during the period of fifty-two weeks required by
3 sub-section five, section one of this article, or the period of
4 one hundred and four weeks required by section twelve of this
5 article, an individual has been:

6 (1) Incapable of work because of some physical or mental
7 disability,

8 (2) Engaged in self-employment,

9 (3) Engaged in the performance of services not subject to
10 this chapter,

11 either or both periods shall be extended by the duration of
12 the incapacity, self-employment, or services. No such exten-
13 sions shall exceed fifty-two additional weeks.

Sec. 4. *Disqualification for Benefits.* Upon the determi-
2 nation of the facts by the director or his deputy, an individual
3 shall be disqualified for benefits:

4 (1) For the week in which he left work voluntarily with-
5 out good cause and for not less than one nor more than five
6 weeks which immediately follow.

7 (2) For the week in which he has been discharged for
8 misconduct connected with his work and for not less than
9 one nor more than nine weeks which immediately follows.

10 (3) For the week in which he failed, without good cause,
11 to apply for available suitable work, accept suitable work
12 when offered, or return to his customary self-employment

13 when directed to do so by the director and for not less than
14 one nor more than five weeks which immediately follow.

15 (4) For a week in which his total or partial unemploy-
16 ment is due to a stoppage of work which exists because of a
17 labor dispute at the factory, establishment, or other premises
18 at which he was last employed, unless the director is satis-
19 fied that he was not (one) participating, financing, or inter-
20 ested in such dispute, and (two) did not belong to a grade
21 or class of workers who were participating, financing, or
22 directly interested in the labor dispute which resulted in
23 the stoppage of work.

24 (5) For a week with respect to which he is receiving or
25 has received:

- 26 (a) Wages in lieu of notice;
- 27 (b) Compensation for temporary partial disability under
28 the Workmen's Compensation Law of any state or under a
29 similar law of the United States;
- 30 (c) Old age benefits under Title II of the Social Security
31 Act or similar payments under any act of Congress.

Sec. 5. *Suitable Work.* In determining whether work is
2 suitable for an individual, the director shall consider:

- 3 (1) The degree of risk involved to the individual's health,
4 safety, and morals.
- 5 (2) The individual's physical fitness and prior training.
- 6 (3) His experience and prior earnings.
- 7 (4) His length of unemployment.
- 8 (5) His prospects of securing local work in his customary
9 occupation.
- 10 (6) The distance of the available work from his residence.

Sec. 6. *Suitable Work: Further Requirements.* Notwith-

2 standing any other provisions of this chapter, no work shall
3 be deemed suitable and benefits shall not be denied to an in-
4 dividual, otherwise eligible, for refusing to accept new work
5 under any of the following conditions:

- 6 (1) If the position offered is vacant due directly to a
7 strike, lockout, or other labor dispute.
- 8 (2) If the wages, hours, or other conditions of the work
9 offered are substantially less favorable to the individual than
10 those prevailing for similar work in the locality.
- 11 (3) If as a condition of being employed the individual
12 would be required to join a company union or to resign from
13 or refrain from joining any bona-fide labor organization.

Sec. 7. *Disqualification in Case of Labor Dispute: Ex-*
2 *ception.* In case separate branches of work commonly con-
3 ducted as separate businesses are conducted in separate de-
4 partments on the same premises, each department shall, for
5 the purposes of subsection four, section four, be treated as a
6 separate establishment.

Sec. 8. *Payment of Benefits.* Benefits shall become payable
2 from the fund twenty-four months after the first day when
3 payments first accrue.

Sec. 9. *Place of Payment.* Benefits shall be paid through
2 employment offices in accordance with such regulations as
3 the director shall prescribe.

Sec. 10. *Amount of Benefits: Total Unemployment.* Each
2 eligible individual who is totally unemployed in any week
3 shall be paid benefits with respect to that week at the rate
4 of fifty per cent of his fulltime weekly wage, but no more
5 than fifteen dollars per week nor less than five dollars, or
6 threefourths of his full-time weekly wage, whichever is the
7 lesser.

8 Benefits shall be computed to the next highest multiple
9 of twenty cents.

Sec. 11. *Amount of Benefits: Partial Unemployment.* An
2 eligible individual who is partially unemployed in any week
3 shall be paid with respect to such week a partial benefit.
4 Such partial benefit shall be an amount which if added to
5 his wages for such week would exceed his weekly benefit
6 amount by two dollars.

7 If such partial benefit for any week equal less than two
8 dollars it shall not be payable unless and until the accumu-
9 lated total of such partial benefits with respect to weeks
10 occurring within the thirteen preceding weeks equals two
11 dollars or more.

Sec. 12. *Ratio of Benefits.* An eligible individual shall be
2 paid benefits with respect to his total or partial unemploy-
3 ment in the ratio of one-fourth of his weekly benefit amount
4 to each uncharged week of employment occurring within the
5 one hundred four consecutive weeks preceding the first week
6 in any continuous period of unemployment, except that his
7 aggregate benefits thus payable within any period of fifty-
8 two consecutive weeks shall not exceed twelve times his
9 weekly benefit amount.

Sec. 13. *Method of Charging Benefits.* An individual's
2 total benefits shall be limited in accordance with the pro-
3 visions of section twelve of this article and shall be charged
4 against his weeks of employment in the inverse chronological
5 order in which such weeks occurred.

Sec. 14. *Two or More Employers.* In no event shall any
2 one calendar week be charged as more than one week of em-
3 ployment. If during any week an individual has rendered
4 services for more than one employer his benefit shall be
5 chargeable only against the week of employment for the em-
6 ployer by whom the plurality of his wages for such week was
7 payable.

Sec. 15. *Partial Benefits.* If the amount chargeable against
2 a particular week of employment is less than one-fourth of
3 the weekly benefit amount, the manner in which and the extent
4 to which such charge shall be made shall be fixed by the
5 director according to a general rule.

Sec. 16. *Full-time Weekly Hours.* An individual's full-
2 time weekly hours shall be determined as follows:

3 (1) The hours worked by an individual in all those weeks
4 of employment in which he worked thirty hours or more

5 occurring within the fifty-two weeks preceding the first week
6 in any continuous period of unemployment shall be added to-
7 gether.

8 (2) The total hours shall be divided by the number of
9 weeks in which more than thirty hours were worked.

10 (3) The resulting weekly average shall constitute the in-
11 dividual's fulltime weekly hours.

12 (4) If the application of the above method produces un-
13 reasonable or arbitrary results in a particular case, the
14 director shall prescribe fair and reasonable methods of deter-
15 mination.

Sec. 17. *Hourly Rate of Earnings.* An individual's hourly
2 rate of earnings shall be determined by dividing the total
3 wages for his full-time weekly hours occurring within the
4 thirteen weeks preceding the first week in any continuous
5 period of unemployment by the total number of hours of
6 employment within such weeks. The quotient so obtained
7 shall be his hourly rate of earnings until a subsequent deter-
8 mination is made. If such method of determination is un-
9 reasonable or arbitrary in a particular case, the hourly rate

10 of earnings shall be determined by the director in accordance
11 with fair and reasonable methods.

Sec. 18. *Full-time Weekly Wage.* The full-time weekly
2 wage shall be the product of the full-time weekly hours as
3 determined in section sixteen and the hourly rate of earn-
4 ings as determined in section eighteen of this article.

Sec. 19. *Uniform Hour and Rate Determination.* After
2 fair notice and opportunity to be heard, the director may
3 determine the full-time weekly hours customarily worked
4 and the hourly rate of earnings customarily received by
5 individuals employed in any trade or industry or any type
6 of employment within the state. After such hearing he may
7 determine and publish uniform rates within industries for
8 different types of employment and for different portions of
9 the state. Until such determinations are amended or re-
10 scinded, the rates so fixed shall be the basis for determining
11 the full-time weekly wage.

12 Upon application in writing the director may exempt any
13 individual from the application of such uniform rates if the
14 applicant demonstrates their unfairness or inapplicability to
15 him.

Sec. 20. *Seasonal and Parttime Employment.* The director
2 shall study and investigate the prevalence of parttime and
3 seasonal employment in the state. He shall prepare a plan
4 covering the protections of this chapter with respect to in-
5 dividuals in part-time and seasonal employment and shall
6 submit such plan to the Legislature, which convenes in Janu-
7 ary, one thousand nine hundred thirty-nine.

Article VII. Claim Procedure.

Section 1. *Claims.* Claims for benefit shall be made in
2 accordance with the rules and regulations prescribed by the
3 director.

Sec. 2. *Display of Regulations.* An employer shall post
2 and maintain in places readily accessible to individuals in
3 his service the claim procedure regulations presented by the
4 director. At the time of discharge an employer shall furnish
5 an individual with a copy of the regulations. The director
6 shall provide an employer copies of the regulations without
7 cost.

Sec. 3. *Deputies.* The director shall appoint deputies to
2 investigate and originally determine all claims for benefits.

Sec. 4. *Initial Determination.* A deputy shall promptly
2 investigate a claim and shall, after the establishment of the
3 facts, determine

4 (1) The validity of the claim.

5 (2) The week with respect to which benefits will commence.

6 (3) The amount of benefit.

7 (4) The maximum duration of benefit.

8 The deputy, then, shall promptly notify the claimant and
9 interested parties of his findings and decisions.

Sec. 5. *Reference.* If, after the establishment of the facts,
2 the deputy is in doubt concerning the claim he shall refer the
3 claim and any question involved to the board.

4 If in any case the payment or denial of benefit will be
5 determined by the provisions of subsection four, section four,
6 article six, the deputy shall transmit his full findings of
7 fact with respect to that subsection to the board for their
8 decision.

Sec. 6. *Board Procedure: Referred Cases.* The board shall
2 follow the same procedure in referred cases as in disputed
3 cases. The board shall upon such findings and such additional
4 evidence as it may procure make a decision and transmit it
5 to the deputy.

6 The deputy shall promptly notify the claimant and inter-
7 ested parties of the findings and decisions.

Sec. 7. *Appeal Tribunals.* The board shall determine the
2 manner of hearing appeals from the decision of a deputy
3 and may direct in particular cases or in particular areas that
4 the appeal be heard by :

- 5 (1) A single examiner.
- 6 (2) A tribunal of three examiners assigned by the board.
- 7 (3) A member of the board.

Sec. 8. *Appeal from Deputy's Decision.* Upon appeal from
2 the determination of a deputy, an individual shall be entitled
3 to a fair hearing and reasonable opportunity to be heard
4 before an appeal tribunal as provided in section seven of
5 this article.

6 Upon a consideration of all the evidence the appeal tribunal
7 shall make a decision, and shall notify the parties of its
8 findings and decision.

Sec. 9. *Finality of Examiner's Decision.* The decision of
2 an appeal tribunal shall be final and benefits shall be paid
3 or denied in accordance therewith, unless a claimant or
4 interested party files an appeal to the board within :

5 (1) Five calendar days after the delivery of notification
6 of the examiner's decision, or

7 (2) Seven calendar days after mailing of notification to
8 his last known address.

Sec. 10. *Board of Review.* The board may, after proper
2 notice and opportunity for hearing,

3 (1) On its own motion affirm, modify, or set aside a de-
4 cision of an examiner.

5 (2) Direct the taking of additional evidence in a disputed
6 claim.

7 (3) Permit parties to an examiner's decision to initiate
8 further appeals before it.

Sec. 11. *Benefits Pending Appeal.* If an appeal is filed,
2 benefits for the period prior to final determination of the
3 board shall be paid only after such determination. If the
4 board affirms the decision of the examiner allowing benefits,
5 the benefits shall be paid regardless of any further appeal;
6 but if the decision of the board is reversed on appeal, an
7 employer's account shall not be charged with the benefits so
8 paid.

Sec. 12. *Quorum.* All hearings before the board shall be
2 before at least a quorum of its members.

Sec. 13. *Procedure.* The board shall establish, and may
2 from time to time modify and amend, rules and regulations
3 relative to disputed claims for:

4 (1) The conduct and determination of benefit cases ap-
5 pealed to it, or to an examiner, or an appeal tribunal.

6 (2) The form of all papers and records thereof.

7 (3) The time, place, and manner of hearings.

8 (4) Determining the rights of the parties; and the rules
9 need not conform to the common law or statutory rules of
10 evidence and procedure and may provide for the determina-
11 tion of questions of fact according to the predominance of the
12 evidence.

Sec. 14. *Records.* The board shall keep full and complete
2 records of all proceedings concerning a disputed claim. All
3 testimony upon a disputed claim shall be recorded but need
4 not be transcribed unless the claim is appealed.

Sec. 15. *Report of Decision.* The board shall notify,
2 promptly, the parties to an appeal of its findings and de-
3 cision.

Sec. 16. *Exclusion of Interested Party.* A person interested in the determination of any disputed claim arising under this chapter shall not participate on behalf of the director or the board in the determination thereof.

Sec. 17. *Finality of Board's Decision.* The decision of the board shall be final and benefits shall be paid or denied in accordance therewith, unless a claimant or interested party appeals to a court within ten days after mailing or notification of the board's decision.

Sec. 18. *Claim Procedure Cost.* Witness fees of subpoenaed witnesses shall be charged to the administration fund.

Sec. 19. *Administrative Relief First.* A person claiming an interest under the provisions of this article shall exhaust his remedies before the board before seeking judicial review.

Sec. 20. *Board a Necessary Party.* The board shall be made a party to every judicial action which involves its decisions. The board may be represented in such actions by an attorney of the department or at the board's request, by the attorney general.

Sec. 21. *Findings of Fact.* In a judicial proceeding to review a decision of the board, the findings of fact, if sup-

3 ported by the evidence and in the absence of fraud, shall be
4 conclusive, and the jurisdiction of the court confined to
5 questions of law.

Sec. 22. *Judicial Review.* Within ten days after a decision
2 of the board has become final, any party aggrieved may
3 secure judicial review of the decision by commencing an
4 action against the board in the circuit court of Kanawha
5 county. Parties to the proceedings before the board shall be
6 made defendants.

Sec. 23. *Trial.* Except as limited by section twenty of this
2 article, a decision of the board taken to the circuit court of
3 Kanawha county for judicial review shall be tried as any
4 other civil action.

Sec. 24. *Exceptions and Bond.* In any judicial proceeding
2 arising under this chapter it shall not be necessary to enter
3 exception to the rulings of the board and no bond shall be
4 required for entering an appeal.

Sec. 25. *Service.* Service in such an action shall be upon
2 the director or such person as he may designate, and service
3 upon him shall be treated as completed service upon all
4 parties to the original dispute. The director shall immediately

5 upon receipt of service forward a copy of such service by
6 registered mail to each defendant.

Sec. 26. *Transcript of Record.* The director shall certify
2 and file with the court all documents and papers and a
3 transcript of all testimony taken in a disputed claim together
4 with its findings of fact and decision thereon.

5 Upon its own motion the board may also certify to the
6 court questions of law involved in any of the board's de-
7 cisions.

Sec. 27. *Appeal.* The appeal from the decision of the cir-
2 cuit court of Kanawha county may be taken to the supreme
3 court of appeals. The cases shall go from the circuit court of
4 Kanawha county only on writ of certiorari and need be heard
5 only at the session of the supreme court.

Sec. 28. *Effect of Judicial Decision.* Upon the final deter-
2 mination of such judicial proceeding the board shall enter
3 an order in accordance with the court's determination.

Sec. 29. *Supersedeas.* A petition for judicial review shall
2 not act as supersedeas or stay unless the board shall so
3 order.

Article VIII. Unemployment Compensation Fund.

Section 1. *Establishment.* There is hereby established as a
2 special fund, separate and apart from all public moneys or
3 funds of the state, an unemployment compensation fund. The
4 fund shall consist of:

5 (1) All payments collected under this chapter and all
6 interest thereon.

7 (2) All fines and penalties collected under the provisions
8 of this chapter.

9 (3) Interest earned upon money in the fund.

10 (4) Property or securities acquired through the use of
11 the fund.

12 (5) Earnings of such property or securities.

13 All money in the fund shall be mingled and undivided.

Sec. 2. *Administration.* The director shall be the custodian
2 of the fund and shall administer it exclusively for the pur-
3 poses of this chapter.

Sec. 3. *Bond.* The director shall give a separate surety
2 bond in the sum of fifty thousand dollars for the faithful
3 management of the fund. The bond shall be in a form pre-
4 scribed by the attorney general and approved by the Gov-

5 error. The premiums upon the bond shall be paid out of the
6 administration fund.

7 The bond shall be filed with the secretary of state.

8 Sec. 4. *Accounts in Deposit.* The director shall maintain
2 in the fund three separate accounts :

3 (1) A clearing account.

4 (2) An unemployment trust fund account.

5 (3) A benefit account.

6 Sec. 5. *Clearing Account.* Upon the receipt of payments
2 and other moneys payable into the fund under this chapter,
3 the director shall immediately deposit them in the clearing
4 account. Refunds payable under section twenty of article
5 five shall be made from the clearing account. Such refunds
6 shall be made upon warrants issued by the director.

7 Sec. 6. *Unemployment Trust Fund Account.* The unem-
2 ployment trust fund account shall consist of money deposited
3 with the secretary of the treasury of the United States to the
4 credit of this state in the unemployment trust fund.

5 Sec. 7. *Deposit with Federal Government.* After clear-
2 ance, moneys in the clearing account shall be deposited im-
3 mediately with the secretary of the treasury of the United

4 States to the credit of the account of this state in the unem-
5 ployment trust fund, established under section nine hundred
6 four of the Social Security Act. The deposit of these funds
7 shall not be conditioned by the requirements imposed upon
8 public funds of this state.

Sec. 8. *Benefit Account.* The benefit account shall consist
2 of moneys requisitioned from this state's account in the un-
3 employment trust fund.

Sec. 9. *Deposit of Funds.* Money in the clearing and benefit
2 accounts shall be deposited by the director with the consent
3 of the Governor in any bank or public depository in which
4 public funds of the state may be deposited. No public deposit
5 insurance charge or premium shall be paid out of the unem-
6 ployment compensation fund.

Sec. 10. *Withdrawals.* Except as provided in section thirteen
2 of this article, money shall be requisitioned from this state's
3 account in the unemployment trust fund solely for the pay-
4 ment of benefits. The director may requisition from the un-
5 employment trust fund such amounts, not exceeding the
6 amount of the account, as he determines to be necessary for
7 the payment of benefits for a reasonable future period.

8 Upon receipt of the money he shall deposit it in the benefit
9 account.

Sec. 11. *Issuance of Warrants.* The director shall issue his
2 warrants for the payment of benefits solely from the benefit
3 account. Expenditures of money in the benefit account and
4 refunds from the clearing account shall not be subject to
5 limitations imposed upon the release of public funds in the
6 custody of state officers.

7 All warrants issued by the director shall bear his signature.

Sec. 12. *Unclaimed Amounts.* Amounts unclaimed or un-
2 paid at the expiration of the period for which sums have
3 been requisitioned, shall be deducted from the estimates for
4 succeeding periods, or in the discretion of the director may
5 be redeposited with the secretary of the treasury of the
6 United States in the unemployment trust fund.

Sec. 13. *Termination of State Act.* In case title nine of
2 the Federal Social Security Act is declared unconstitutional
3 by the Supreme Court of the United States or is repealed by
4 Congress or amended with the result that no portion of the
5 contributions required by this chapter may be credited
6 against the federal excise tax levied by title nine of such act,

7 the provisions of this chapter by virtue of that fact shall
8 become inoperative.

9 All assets standing to the credit of the state in the Unem-
10 ployment Trust Fund in the United States Treasury shall
11 be requisitioned promptly by the director. The assets of the
12 state's account in the trust fund shall be placed in the Un-
13 employment Compensation Fund and together with the assets
14 in that fund shall be refunded pro rata to the contributors.

15 Money in the administration fund received from the fed-
16 eral government shall be dealt with by the state treasurer
17 pursuant to the conditions of the grant thereof to the State
18 of West Virginia, and any assets therein which have been
19 appropriated thereto out of the general treasury of the state
20 by the Legislature shall revert to such general fund in the
21 state treasury.

22 Corresponding action shall be taken with respect to assets
23 in the unemployment compensation fund, the unemploy-
24 ment trust fund, and the administration fund, in the event
25 that this act shall be repealed by the Legislature, or declared
26 invalid under the state constitution by the Supreme Court
27 of Appeals of West Virginia or invalid under the United

28 States constitution by the Supreme Court of the United
29 States.

30 The director is hereby granted continuing authority for
31 the purposes of action provided for by this section in case any
32 of the above contingencies occur.

Article IX. Unemployment Compensation Administration Fund.

Section 1. *Administration Fund.* There is hereby created
2 in the state treasury a special fund to be known as the
3 unemployment compensation administration fund. All moneys
4 in this fund shall be expended solely for the purpose of de-
5 fraying the cost of the administration of this chapter.

Sec. 2. *Appropriation.* The moneys deposited with this
2 fund are hereby appropriated and made available to the
3 order of the director.

Sec. 3. *Contents of Fund.* The fund shall consist of:

- 2 (1) Moneys appropriated by the state.
- 3 (2) Moneys received from the United States, or any
4 agency thereof, including the Social Security Board and the
5 United States Employment Service.
- 6 (3) Moneys received from any other source.

Sec. 4. *Disbursements.* This fund shall be administered

2 and disbursed in the same manner and under the same con-
3 ditions as other special funds of the state treasury.

Sec. 5. *Lapse.* Balances to the credit of the administration
2 fund shall not lapse at any time, but shall be continuously
3 available to the director for expenditure consistent with this
4 chapter.

Sec. 6. *Bond.* The treasurer shall give a separate and
2 additional bond conditioned upon the faithful performance
3 of his duties with regard to the administration fund. The
4 bond shall be in the amount of fifteen thousand dollars and
5 in the form prescribed by the attorney general and approved
6 by the Governor. Premiums on the bond shall be a charge
7 on the administration fund.

Sec. 7. *Employment Service Account.* For the purpose
2 of maintaining the employment offices established by this
3 chapter and for the purpose of cooperating with the United
4 States Employment Service, a special employment service
5 account shall be maintained as a part of the administration
6 fund.

Article X. General Provisions.

Section 1. *Waiver of Rights.* An agreement to waive, re-
2 lease or commute rights to benefits, or other rights, accruing
3 under this chapter shall be invalid.

4 An agreement by an individual to pay all or any portion
5 of an employer's payment shall be invalid.

Sec. 2. *Assignment of Benefits: Exceptions.* An assign-
2 ment, pledge or encumbrance of any benefit due or payable
3 under this chapter shall be invalid. Right to benefits shall
4 be exempt from levy, execution, attachment, or other processes
5 for the collection of debt. Benefits received by an individual
6 so long as they are not mingled with other funds of the
7 recipient, shall be exempt from process for the collection of
8 a debt. The waiver of any exemption provided in this section
9 shall be void.

10 Collection of debts incurred for necessities furnished to
11 an individual, his spouse, or dependents, during a period of
12 unemployment shall be exempt from the operation of the
13 above provision.

Sec. 3. *Limitation of Fees.* No fee shall be charged an

2 individual in any proceeding under this act by the depart-
3 ment or its representatives.

Sec. 4. *Records and Reports.* An employing unit shall
2 keep true and accurate employment records containing such
3 information as the director may prescribe. The record shall
4 be open to inspection by the director at any reasonable time.

Sec. 5. *Attorney Fees.* An individual may be represented
2 by counsel or authorized agent before the board of review,
3 an appeal tribunal, or examiner, or a court; but the amount
4 of the fee for such service shall be subject to the regulation
5 of the board.

6 A person who charges or accepts a fee for such service in
7 an amount unapproved by the board shall be guilty of a mis-
8 demeanor. Charging an unapproved amount shall constitute
9 grounds for disbarment.

Sec. 6. *Self-incrimination.* A person shall not be excused
2 from attending and testifying or producing books, papers,
3 correspondence, memoranda, or other records before the
4 director or the board or in obedience to the subpoena of the
5 board or the director, or a duly authorized representative
6 of the board or the director, in any proceeding brought

7 under this chapter on the ground that the testimony or
8 evidence may tend to incriminate him, or subject him to a
9 penalty or forfeiture. An individual shall not be prosecuted
10 or subjected to penalty or forfeiture on account of testimony
11 given, or evidence produced subject to such subpoena, if
12 prior to giving such testimony or producing such evidence
13 he has claimed his privilege against selfincrimination.

14 This section shall not exempt an individual from prosecu-
15 tion and punishment for perjury.

Sec. 7. False Representation. A person who makes a false
2 statement or representation, knowing it to be false, or who
3 knowingly fails to disclose a material fact in order to obtain
4 or increase a benefit under this chapter, either for himself
5 or another, shall be guilty of a misdemeanor and upon con-
6 viction punished by a fine of not less than twenty dollars nor
7 more than fifty dollars, or by imprisonment for not longer
8 than thirty days, or both.

9 Each false statement or representation, or failure to dis-
10 close a material fact shall constitute a separate offense.

Sec. 8. Misrepresentation. A person, who by reason of
2 non-disclosure or misrepresentation, either by himself or an-

3 other (irrespective of whether such non-disclosure or mis-
4 representation was known or fraudulent) has received a sum
5 as a benefit under this chapter shall either have such sum
6 deducted from a future benefit payable to him or shall repay
7 to the director the amount which he has received.

8 Collection shall be made in the same manner as collection
9 of past due payments.

Sec. 9. *Penalty for Deduction or Waiver.* An employer

2 who directly or indirectly:

3 (1) Makes or accepts a deduction from an individual's
4 wage for the purpose of financing an employer's payment, or

5 (2) Requires or accepts a waiver of a right given an
6 individual by this act,

7 shall be guilty of a misdemeanor, and upon conviction shall
8 be fined not less than one hundred dollars nor more than
9 one thousand dollars.

Sec. 10. *General Penalty.* A person who wilfully violates
2 a provision of this chapter or a rule or regulation thereunder
3 for which a specific penalty has not been imposed shall be
4 guilty of a misdemeanor and upon conviction shall be fined

5 not less than twenty dollars nor more than two hundred
6 dollars.

7 Each day such violation continues shall be a separate
8 offense.

Sec. 11. *Information.* The director may require an em-
2 ploying unit to provide sworn or unsworn reports concern-
3 ing:

4 (1) The number of individuals in its employ.

5 (2) Individually their hours of labor.

6 (3) Individually the rate and amount of wages.

7 (4) Such other information as is reasonably connected
8 with the administration of this chapter,

9 Information thus obtained shall not be published or be
10 open to public inspection so as to reveal the identity of the
11 employing unit. A claimant of benefit, however, shall be
12 supplied with information from such records to the extent
13 necessary for the proper presentation of his claim.

14 A person who violates the provisions of this section shall
15 be guilty of a misdemeanor, and upon conviction shall be
16 fined not less than twenty dollars nor more than two hun-

17 and dollars, or imprisoned not longer than ninety days, or
18 both.

Sec. 12. *Representation in Court.* The director, through
2 his attorney, may represent the interest of the state in any
3 civil action to enforce the provisions of this chapter.

Sec. 13. *Criminal Actions.* Criminal actions to enforce
2 the provisions of this chapter, or rules or regulations issued
3 thereunder, shall be prosecuted by the attorney general, or at
4 his request by the prosecuting attorney of any county in
5 which the defendant resides.

Sec. 14. *Non-liability of State.* Benefits under this act shall
2 be due and payable only to the extent that moneys are avail-
3 able to the credit of the unemployment compensation fund.
4 Neither the state nor the director shall be liable for any
5 claim in excess of the credit of the fund.

Sec. 15. *Constitutionality.* The provisions of this act shall
2 be construed as severable, and should any provision be held
3 unconstitutional, or for any other reason invalid, the remain-
4 ing provisions shall not be affected thereby.

Sec. 16. *Acts Repealed.* Acts or parts of acts in conflict

2 with or superceded by the provisions of this act are hereby
3 repealed.

Sec. 17. *Savings Clause.* The Legislature reserves the right
2 to amend or repeal all or any part of this chapter and no
3 private rights shall vest against any legislative amendment
4 or change or repeal. All rights, privileges, or immunities
5 conferred by this chapter or by acts done pursuant thereto
6 shall exist subject to the power of the Legislature to amend
7 or repeal this chapter at any time.

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

Clinton Howard
.....
Chairman Senate Committee

Reed Walker
.....
Chairman House Committee

Originated in the *House of Delegates*

Takes effect *from* passage.

Charles Finley
.....
Clerk of the Senate

Geo. S. Hae
.....
Clerk of the House of Delegates

Geo. E. Hodges
.....
President of the Senate

James Kay Thomas
.....
Speaker House of Delegates.

The within *approved* this the *17th*

day of *December* 1936.

H. B. Kemp
.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. **DEC 18 1936**
Wm. S. O'BRIEN,
Secretary of State