

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939



ENROLLED

HOUSE BILL No. 275

(By Mr. Speaker, Mr. Thomas)



PASSED March 8, 1939

In Effect April 1, 1939 ~~Passage~~

ENROLLED

House Bill No. 275

(BY MR. SPEAKER, MR. THOMAS)

[Passed March 8, 1939; in effect April 1, 1939.]

AN ACT to amend and reenact section three, article one; sections fifteen and seventeen, article two; sections two and seven, article five; sections one, two, four, nine, ten, eleven and thirteen, article six; sections four, seven, eight, nine, ten, eleven, thirteen, fifteen, seventeen, twenty-two, twenty-three, twenty-five and twenty-six, article seven; and section thirteen, article ten; to add section twelve-a to article six; to repeal section eight, article two; sections three and twelve, article six, and sections five and six, article seven; to reenact sections fifteen, sixteen and seventeen, article ten; all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-six, and as amended by chapter one hundred, acts of

the Legislature, regular session, one thousand nine hundred thirty-seven, relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That section three, article one; sections fifteen and seventeen, article two; sections two and seven, article five; sections one, two, four, nine, ten, eleven and thirteen, article six; sections four, seven, eight, nine, ten, eleven, thirteen, fifteen, seventeen, twenty-two, twenty-three, twenty-five and twenty-six, article seven; and section thirteen, article ten be amended and reenacted; that section twelve-a be added to article six; that section eight, article two; sections three and twelve, article six, and sections five and six, article seven be repealed; that sections fifteen, sixteen and seventeen, article ten be reenacted; all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-six, and as amended by chapter one hundred, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, so as to read as follows:

Article 1. Department of Unemployment Compensation.

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

3 “Administration fund” means the unemployment compen-
4 sation administration fund, from which the administrative
5 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 an-
10 nual payrolls of an employer for the last three or five pre-
11 ceding years, whichever is the higher.

12 “Base period” means the twelve consecutive month period
13 ending on the December thirty-first next preceding an in-
14 dividual’s benefit year.

15 “Benefit year” with respect to any individual, means the
16 twelve-month period beginning with April first and ending
17 with March thirty-first which includes the period for which
18 claim for benefit is made by such individual.

19 “Benefits” means the money payable to an individual with
20 respect to his unemployment.

21 “Board” means board of review.

22 “Calendar quarter” means the period of three consecutive
23 calendar months ending on March thirty-one, June thirty,

24 September thirty, or December thirty-one, excluding, how-
25 ever, any calendar quarter or portion thereof which occurs
26 prior to January one, one thousand nine hundred thirty-seven,
27 or the equivalent thereof as the director may by regulation
28 prescribe.

29 "Director" means the unemployment compensation di-
30 rector.

31 "Employing Unit" means an individual, or type of organi-
32 zation, including any partnership, association, trust, estate,
33 joint stock company, insurance company, corporation (domes-
34 tic or foreign), or the receivership, trustee in bankruptcy,
35 trustee or successor thereof, or the legal representative of
36 a deceased person which has on January one, one thousand
37 nine hundred thirty-five, or subsequent thereto, had in its
38 employ one or more individuals performing service within
39 this state.

40 "Employer" means an employing unit which for some
41 portion of a day, not necessarily simultaneously, in each of
42 twenty different weeks, which weeks need not be consecutive,
43 within either the current year or the preceding year, has had
44 in employment eight or more individuals (irrespective of

45 whether the same individuals were or were not employed on
46 each of such days).

47 "Employment," subject to the other provisions of this
48 subsection, means:

49 (1) Service, including service in interstate commerce, per-
50 formed for wages or under any contract of hire, written or
51 oral, express or implied.

52 (2) The term "employment" shall include an individual's
53 entire service, performed within or both within and without
54 this state if: (a) The service is localized in this state; or (b)
55 The service is not localized in any state but some of the service
56 is performed in this state; and (i) the base of operations,
57 or, if there is no base of operations, then the place from
58 which such service is directed or controlled, is in this state;
59 or (ii) the base of operations or place from which such service
60 is directed or controlled is not in any state in which some
61 part of the service is performed but the individual's residence
62 is in this state.

63 (3) Service not covered under paragraph (2) of this sub-
64 section and performed entirely without this state, with respect
65 to no part of which contributions are required and paid under

66 an unemployment compensation law of any other state or of
67 the federal government, shall be deemed to be **employment**
68 subject to this act if the individual performing such services
69 is a resident of this state and the director approves the elec-
70 tion of the employing unit for whom such services are per-
71 formed that the entire service of such individual shall be
72 deemed to be employment subject to this act.

73 (4) Service shall be deemed to be localized within a state
74 if: (a) The service is performed entirely within such state;
75 or (b) the service is performed both within and without such
76 state, but the service performed without such state is inci-
77 dental to the individual's service within the state: For ex-
78 ample, is temporary or transitory in nature or consists of
79 isolated transactions.

80 (5) Services performed by an individual for wages shall
81 be deemed to be employment subject to this act unless and
82 until it is shown to the satisfaction of the director that:
83 (a) Such individual has been and will continue to be free
84 from control or direction over the performance of such serv-
85 ices, both under his contract of service and in fact; and (b)
86 such service is either outside the usual course of the business

87 for which such service is performed or that such service is
88 performed outside of all the places of business of the enterprise
89 for which such service is performed; and (c) such individual
90 is customarily engaged in an independently established trade,
91 occupation, profession, or business.

92 The term "employment" shall not include :

93 (1) Services performed in the employ of this state or any
94 political subdivision thereof, or any instrumentality of this
95 state or its subdivisions.

96 (2) Service performed directly in the employ of another
97 state or its political subdivisions.

98 (3) Service performed in the employ of the
99 United States or an instrumentality of the United
100 States.

101 (4) Service performed after June thirty, one thousand
102 nine hundred thirty-nine, with respect to which unemploy-
103 ment compensation is payable under the Railroad Unemploy-
104 ment Insurance Act (fifty-two Stat. one thousand ninety-
105 four), and service with respect to which unemployment
106 benefits are payable under an unemployment compensation
107 system for maritime employees established by an Act of

108 Congress. The director may enter into agreements with the
109 proper agency established under such act of congress to
110 provide reciprocal treatment to individuals who, after acquir-
111 ing potential rights to benefits under this chapter, have ac-
112 quired rights to unemployment compensation under an act
113 of congress, or who have, after acquiring potential rights to
114 unemployment compensation under an act of congress, ac-
115 quired rights to benefits under this chapter. Such agreements
116 shall become effective ten days after such publication as
117 complies with the general rules of the department.

118 (5) Agricultural labor.

119 (6) Domestic service in a private home.

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

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

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

126 (10) Service performed in the employ of an employing
127 unit organized and operated exclusively for religious, chari-
128 table, scientific, literary, or educational purpose or for pre-

129 vention of cruelty to children or animals, no part of the net
130 earnings of which inure to the benefit of any private share-
131 holder or individual.

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

136 "Fund" means the unemployment compensation fund estab-
137 lished by this chapter.

138 "Payments" means the money required to be paid into
139 the state unemployment compensation fund as provided by
140 article five of this chapter.

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

143 "Total and partial unemployment":

144 (1) An individual shall be deemed "totally unemployed"
145 in any week in which such individual is separated from em-
146 ployment for any employing unit and during which he per-
147 forms no services and with respect to which no wages are
148 payable to him.

149 (2) An individual shall be deemed "partially unem-

150 ployed" in any calendar quarter in which pay roll periods
151 of less than full time work occur and in which, solely because
152 of lack of work, the wages payable to him, including wages
153 for employment not subject to this act, are less than the
154 amount appearing in the line opposite such individual's wage
155 class in column one of Table B as contained in Section 11,
156 of Article VI, hereof.

157 (3) As used in this subsection, the term "wages" shall
158 include only that part of remuneration for odd jobs or sub-
159 sidiary work, or both, which is in excess of three dollars in
160 any one week, and the term "services" shall not include that
161 part of odd jobs or subsidiary work, or both, for which re-
162 muneration equal to or less than three dollars in any one
163 week is payable.

164 (4) An individual's week of unemployment shall be
165 deemed to commence only after his registration at an employ-
166 ment office, except as the director may by regulation other-
167 wise prescribe.

168 "Wages" means all remuneration payable for personal
169 services, including commissions and bonuses and the cash
170 value of all remuneration payable in any medium other than

171 cash. Gratuities customarily received by an individual in
172 the course of his employment from persons other than his
173 employing unit shall be treated as wages paid by his employ-
174 ing unit, if accounted for and reported to such employing
175 unit.

176 The reasonable cash value of remuneration payable in any
177 medium other than cash shall be estimated and determined
178 in accordance with rules prescribed by the director.

179 "Week" means a calendar week, ending at midnight Satur-
180 day, or the equivalent thereof, as determined in accordance
181 with the regulations prescribed by the director.

182 "Weekly benefit amount" means the amount of benefit an
183 individual would be entitled to receive for one week of total
184 unemployment.

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

Article 2. The Director of Unemployment Compensation.

Section 8. This section is hereby repealed.

Sec. 15. *State Employment Service.* The director shall
2 appoint upon a non-partisan merit basis the head of the

3 division of the employment service and shall fix his salary
4 and prescribe his duties.

Sec. 17. *Federal-State Cooperation.* The director shall
2 have all powers and duties necessary to secure to the state
3 the benefits of congressional action for the promotion and
4 maintenance of a system of public employment offices. To
5 this end the provisions of the act referred to in the preceding
6 section and such additional congressional action consistent
7 with the above act are accepted by the state and the state
8 pledges its observance and compliance therewith.

9 The department of unemployment compensation is desig-
10 nated the agent of this state for the purpose of compliance
11 with the act of congress entitled "An act to provide for the
12 establishment of a national employment system and for co-
13 operation with states in the promotion of such system, and
14 for other purposes," approved June six, one thousand nine
15 hundred thirty-three, as amended.

Article 5. Employer Coverage and Responsibility.

Section 2. *Duration.* Except as provided in section three
2 of this article, an employing unit shall cease to be an employer
3 subject to this chapter only as for the first day of January

4 of 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. 7. *Separate Accounts.* (1) The director shall main-
2 tain a separate account for each employer, and shall credit
3 his account with all the contributions paid on his own behalf
4 in excess of one per centum of his annual pay roll for each
5 calendar year. But nothing in this act shall be construed
6 to grant any employer or individuals in his service prior
7 claims or rights to the amounts paid by him into the fund
8 either on his own behalf or on behalf of such individuals.
9 Benefits paid to an eligible individual shall be charged, in
10 the amount hereinafter provided, against the account of his
11 most recent employer, except that if such individual had not
12 earned within the completed calendar quarter and the ex-
13 pired portion of the uncompleted calendar quarter imme-
14 diately preceding the first week of any continuous period

15 of unemployment, wages for employment by such most recent
16 employer equal to more than fourteen times his weekly benefit
17 amount, such benefits may also be charged against the account
18 of his next most recent employer, in the inverse chronological
19 order in which the employment of such individual occurred.
20 The maximum amount so charged against the account of any
21 employer shall not exceed one-sixth of the wages payable
22 to such individual by each such employer for employment
23 which occurs on and after the first day of such individual's
24 base period, and shall not exceed sixty-five dollars per com-
25 pleted calendar quarter or portion thereof, which occurs on
26 and after the first day of such individual's base period. The
27 director shall by general rules prescribe the manner in which
28 benefits shall be charged against the accounts of several em-
29 ployers for whom an individual performed employment at
30 the same time.

31 (2) The director may prescribe regulations for the estab-
32 lishment, maintenance, and dissolution of joint accounts by
33 two or more employers, and shall, in accordance with such
34 regulations and upon application by two or more employers
35 to establish such an account, or to merge their several in-

36 dividual accounts in a joint account, maintain such joint
37 account as if it constituted a single employer's account.

38 (3) The director shall, for the year one thousand nine
39 hundred forty-one and for each calendar year thereafter,
40 classify employers in accordance with their actual experience
41 in the payment of contributions on their own behalf and with
42 respect to benefits charged against their accounts, with a view
43 to fixing such contribution rates as will reflect such ex-
44 perience.

Article 6. 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 during his benefit
11 year for a waiting period of three weeks prior to the week

12 for which he claims benefits for total unemployment: *Pro-*
13 *vided, however,* That if the claim for benefits is first filed
14 in the month of February, the waiting period shall be two
15 weeks, and if first filed in the month of March, the waiting
16 period shall be one week.

17 (5) He has within his base period earned wages for em-
18 ployment equal to not less than one hundred fifty dollars.

Sec. 2. *Waiting Period Construed.* The waiting period of
2 three weeks need not be consecutive, but may be accumulated
3 during the benefit year. If the benefit year ends during
4 consecutive weeks of total unemployment for any individual,
5 such individual shall serve a new waiting period of three
6 weeks before benefits accruing in the new benefit year shall
7 be payable.

8 During the waiting period, the individual must be eligible
9 in all respects, except for the requirements of subsection (two)
10 of section one of this article.

Sec. 3. This section is hereby repealed.

Sec. 4. *Disqualification for Benefits.* Upon the determina-
2 tion of the facts by the director an individual shall be dis-
3 qualified for benefits:

4 (1) For the week in which he left work voluntarily with-
5 out good cause and for three weeks which immediately follow.

6 (2) For the week in which he has been discharged for
7 misconduct connected with his work and for six weeks which
8 immediately follow.

9 (3) For the week in which he failed without good cause,
10 to apply for available suitable work, accept suitable work
11 when offered, or return to his customary self-employment
12 when directed to do so by the director and for three weeks
13 which immediately follow.

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

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

25 (a) Wages in lieu of notice;

26 (b) Compensation for temporary partial disability under
27 the workmen's compensation law for any state or under a
28 similar law of the United States;

29 (c) Old age benefits under title two of the social security
30 act or similar payments under any act of congress.

31 (d) Unemployment compensation benefits under the laws
32 of the United States or any other state.

Sec. 9. *Place of Payment.* Benefits shall be paid through
2 employment offices or, if the director by rules so prescribes,
3 through unemployment compensation offices, in accordance
4 with such regulations as the director shall prescribe.

Sec. 10. *Benefit Rate; Total Unemployment.* Each eligible
2 individual who is totally unemployed in any week shall be
3 paid benefits with respect to that week at the weekly rate ap-
4 pearing in Column (C) in Table A in this paragraph, on line
5 on which, in Column (A) there is indicated the employee's
6 wage class. The employee's wage class shall be determined by
7 the total amount of wages earned by him in covered employ-
8 ment in his base period as shown in Column (B) in Table A.

TABLE A

Wage Class (Column A)	Wages in Base Period (Column B)	Weekly Benefit Amount (Column C)	Maximum Benefit In Benefit Year for Total and/or Partial Unem- ployment	
			Weeks (Column D)	Amount (Column E)
	Under—\$150.00	(Ineligible)		
1	\$ 150.00— 199.99	\$ 3.00	14	\$ 42.00
2	200.00— 249.99	3.50	14	49.00
3	250.00— 299.99	4.00	14	56.00
4	300.00— 349.99	4.50	14	63.00
5	350.00— 399.99	5.00	14	70.00
6	400.00— 449.99	5.50	14	77.00
7	450.00— 499.99	6.00	14	84.00
8	500.00— 549.99	6.50	14	91.00
9	550.00— 599.99	7.00	14	98.00
10	600.00— 649.99	7.50	14	105.00
11	650.00— 699.99	8.00	14	112.00
12	700.00— 749.99	8.50	14	119.00
13	750.00— 799.99	9.00	14	126.00
14	800.00— 849.99	9.50	14	133.00
15	850.00— 899.99	10.00	14	140.00
16	900.00— 949.99	10.50	14	147.00
17	950.00— 999.99	11.00	14	154.00
18	1000.00—1049.99	11.50	14	161.00
19	1050.00—1099.99	12.00	14	168.00
20	1100.00—1149.99	12.50	14	175.00
21	1150.00—1199.99	13.00	14	182.00
22	1200.00—1249.99	13.50	14	189.00
23	1250.00—1299.99	14.00	14	196.00
24	1300.00—1349.99	14.50	14	203.00
25	Over —1350.00	15.00	14	210.00

Sec. 11. *Rate of Benefit; Partial Unemployment.* An eligible individual who is partially unemployed in any calendar quarter shall, upon claim therefor filed within sixty days after the close of such calendar quarter, be paid benefits for such partial unemployment in an amount for the calendar quarter in accordance with his wage class and the actual amount of his wages in such calendar quarter as shown in Table B in this paragraph hereinafter contained, less any benefits paid or payable to such individual for total unemployment in such

10 calendar quarter. Such partial benefits shall be paid without
11 regard to the current employment status of such individual
12 and shall be paid without regard to the provisions of subsec-
13 tions (1), (3), and (4) of section 1 of this article.

TABLE B

If an employee's remuneration in any calendar quarter in which payroll periods of less than full time work occur for such individual, is less than the amount shown below in column 1, opposite his wage class, he is entitled to receive as partial benefit for the quarter the number of weekly benefit amounts appearing at the head of the column in which appears the lowest amount which exceeds his actual remuneration for the quarter, less the number of weekly benefit amounts paid or payable to him for total unemployment during such quarter.

WAGE CLASS	WAGES IN BASE PERIOD	WEEKLY BENEFIT AMOUNT														
COLUMN A	COLUMN B	COLUMN C	1	2	3	4	5	6	7	8	9	10	11	12	13	
1	\$150.....	\$ 199.99	\$ 3.00	\$ 45.00	\$ 41.40	\$ 37.80	\$ 34.20	\$ 30.60	\$ 27.00	\$ 23.40	\$19.80	\$16.20	\$12.60	\$ 9.00	\$ 5.40	\$1.80
2	200.....	249.99	3.50	52.50	48.30	44.10	39.90	35.70	31.50	27.30	23.10	18.90	14.70	10.50	6.30	2.10
3	250.....	299.99	4.00	60.00	55.20	50.40	45.60	40.80	36.00	31.20	26.40	21.60	16.80	12.00	7.20	2.40
4	300.....	349.99	4.50	67.50	62.10	56.70	51.30	45.90	40.50	35.10	29.70	24.30	18.90	13.50	8.10	2.70
5	350.....	399.99	5.00	75.00	69.00	63.00	57.00	51.00	45.00	39.00	33.00	27.00	21.00	15.00	9.00	3.00
6	400.....	449.99	5.50	82.50	75.90	69.30	62.70	56.10	49.50	42.90	36.30	29.70	23.10	16.50	9.90	3.30
7	450.....	499.99	6.00	90.00	82.80	75.60	68.40	61.20	54.00	46.80	39.60	32.40	25.20	18.00	10.80	3.60
8	500.....	549.99	6.50	97.50	89.70	81.90	74.10	66.30	58.50	50.70	42.90	35.10	27.30	19.50	11.70	3.90
9	550.....	599.99	7.00	105.00	96.60	88.20	79.80	71.40	63.00	54.60	46.20	37.80	29.40	21.00	12.60	4.20
10	600.....	649.99	7.50	112.50	103.50	94.50	85.50	76.50	67.50	58.50	49.50	40.50	31.50	22.50	13.50	4.50
11	650.....	699.99	8.00	120.00	110.40	100.80	91.20	81.60	72.00	62.40	52.80	43.20	33.60	24.00	14.40	4.80
12	700.....	749.99	8.50	127.50	117.30	107.10	96.90	86.70	76.50	66.30	56.10	45.90	35.70	25.50	15.30	5.10
13	750.....	799.99	9.00	135.00	124.20	113.40	102.60	91.80	81.00	70.20	59.40	48.60	37.80	27.00	16.20	5.40
14	800.....	849.99	9.50	142.50	131.10	119.70	108.30	96.90	85.50	74.10	62.70	51.30	39.90	28.50	17.10	5.70
15	850.....	899.99	10.00	150.00	138.00	126.00	114.00	102.00	90.00	78.00	66.00	54.00	42.00	30.00	18.00	6.00
16	900.....	949.99	10.50	157.50	144.90	132.30	119.70	107.10	94.50	81.90	69.30	56.70	44.10	31.50	18.90	6.30
17	950.....	999.99	11.00	165.00	151.80	138.60	125.40	112.20	99.00	85.80	72.60	59.40	46.20	33.00	19.80	6.60
18	1000.....	1049.99	11.50	172.50	158.70	144.90	131.10	117.30	103.50	89.70	75.90	62.10	48.30	34.50	20.70	6.90
19	1050.....	1099.99	12.00	180.00	165.60	151.20	136.80	122.40	108.00	93.60	79.20	64.80	50.40	36.00	21.60	7.20
20	1100.....	1149.99	12.50	187.50	172.50	157.50	142.50	127.50	112.50	97.50	82.50	67.50	52.50	37.50	22.50	7.50
21	1150.....	1199.99	13.00	195.00	179.40	163.80	148.20	132.60	117.00	101.40	85.80	70.20	54.60	39.00	23.40	7.80
22	1200.....	1249.99	13.50	202.50	186.30	170.10	153.90	137.70	121.50	105.30	89.10	72.90	56.70	40.50	24.30	8.10
23	1250.....	1299.99	14.00	210.00	193.20	176.40	159.60	142.80	126.00	109.20	92.40	75.60	58.80	42.00	25.20	8.40
24	1300.....	1349.99	14.50	217.50	200.10	182.70	165.30	147.90	130.50	113.10	95.70	78.30	60.90	43.50	26.10	8.70
25	over.....	1350.00	15.00	225.00	207.00	189.00	171.00	153.00	135.00	117.00	99.00	81.00	63.00	45.00	27.00	9.00

Sec. 12. This section is hereby repealed.

Sec. 12-A. *Suspension of Partial Benefit Rights.* If at any
2 time the unemployment compensation fund, including the
3 trust fund, clearing account and benefit account, and exclud-
4 ing therefrom an amount, estimated by the director, equal to
5 the sum of the benefit liabilities then accrued and unpaid,
6 shall fall below the sum of \$5,000,000.00, the director, with
7 the concurrence of a majority of the Advisory Council, and
8 with the consent and approval of the Governor, may suspend
9 the right to receive benefit for periods of partial unemploy-
10 ment not then completed, and no right to benefit for periods
11 of partial unemployment completed or occurring during the
12 period of such suspension shall then or thereafter accrue. At
13 any time subsequent to such suspension the director, with the
14 concurrence of a majority of the Advisory Council, and with
15 the consent and approval of the Governor, may rescind, and
16 whenever the unemployment compensation fund, including
17 the trust fund, clearing account and benefit account, and ex-
18 cluding therefrom an amount, estimated by the director,
19 equal to the sum of the benefit liabilities then accrued and
20 unpaid, reaches the sum of \$10,000,000.00, the director shall

21 rescind such suspension as to periods of partial unemploy-
22 ment not then completed.

Sec. 13. *Method of Charging Benefits.* The director shall
2 compute wage credits for each individual by crediting him
3 with the wages earned by him for employment by employers
4 during his base period. The maximum total amount of bene-
5 fits payable to any eligible individual during any benefit year
6 shall not exceed the amount appearing in Column (E) on line
7 indicating individual's wage class, of Table A, in this article
8 hereinabove contained.

Article 7. Claim Procedure.

Section 4. *Initial Determination.* A deputy shall promptly
2 investigate a claim and shall, after the establishment of the
3 facts, determine whether or not such claim is valid, and, if
4 valid, shall determine:

5 (1) The week with respect to which benefits will com-
6 mence.

7 (2) The amount of benefit.

8 (3) The maximum duration of benefits.

9 After determination, the deputy shall promptly notify the
10 claimant and the last employer of his findings and decision.

Sec. 5. This section is hereby repealed.

Sec. 6. This section is hereby repealed.

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

5 (1) A single examiner.

6 (2) A tribunal of three examiners assigned by the board.

7 (3) A member of the board.

8 (4) The board.

Sec. 8. *Appeal from Deputy's Decision.* A claimant or
2 other interested party may file an appeal from the decision of
3 the deputy within twenty calendar days after notice of the
4 decision has been delivered or mailed to the claimant and last
5 employer as provided in section four of this article. The de-
6 cision of the deputy shall be final and benefits shall be paid
7 or denied in accordance therewith unless an appeal is filed
8 within such time.

9 Upon appeal from the determination of a deputy, an in-
10 dividual shall be entitled to a fair hearing and reasonable
11 opportunity to be heard before an appeal tribunal as pro-

12 vided in section seven of this article.

13 Within ten days after receipt by the board of notice of
14 appeal from the decision of a deputy, the board shall fix the
15 time and place for hearing such appeal.

16 Upon consideration of all the evidence the appeal tribunal
17 shall make a decision, and shall notify the claimant and last
18 employer of its findings and decision.

Sec. 9. *Finality of Examiner's Decision.* A claimant or
2 other interested party may file an appeal to the board from
3 the decision of an appeal tribunal within twenty days after
4 notice of the decision has been delivered or mailed to the
5 claimant and last employer as provided in section eight of this
6 article. The decision of the appeal tribunal shall be final and
7 benefits shall be paid or denied in accordance therewith un-
8 less an appeal is filed within such time.

Sec. 10. *Board Review.* The board may, after proper no-
2 tice and opportunity for hearing,

3 (1) On its own motion affirm, modify, or set aside a
4 decision of an appeal tribunal.

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

7 (3) Permit parties to the decision of an appeal tribunal to
8 initiate 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 appeal tribunal allowing
5 benefits, the benefits shall be paid regardless of any further
6 appeal; but if the decision of the board is reversed on ap-
7 peal, an employer's account shall not be charged with the
8 benefits so paid.

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

- 4 (1) The conduct and determination of benefit cases ap-
5 pealed to it, or to 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 determin-
11 ation of questions of fact according to the predominance of

12 the evidence.

Sec. 15. *Report of Decision.* The board shall notify the
2 claimant and last employer of its findings and decision on
3 an appeal.

Sec. 17. *Finality of Board's Decision.* The decision of
2 the board shall be final and benefits shall be paid or denied
3 in accordance therewith, unless a claimant or interested party
4 appeals to a court within twenty days after mailing or noti-
5 fication of the board's decision.

Sec. 22. *Judicial Review.* Within twenty days after a de-
2 cision of the board has become final, any party aggrieved
3 may 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-one of
2 this article, a decision of the board taken to the circuit court
3 of Kanawha county for judicial review shall be tried as any
4 other civil action, provided, however, that such actions shall
5 have preference on the calendar of the court over all other
6 civil actions, except cases arising under the workmen's com-

7 pension law.

Sec. 25. *Service in Action.* Service in such action shall be
2 upon the chairman of the board or such person as he may
3 designate, and service upon him shall be treated as completed
4 service upon all parties to the original dispute. The chair-
5 man of the board or such person as he may designate shall
6 immediately upon receipt of service forward a copy of such
7 service by registered mail to each defendant.

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

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

Article 10. General Provisions.

Section 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
4 at his request by the prosecuting attorney of any county in
5 which the defendant resides, or by an attorney of the de-
6 partment.

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 re-
 4 maining provisions shall not be affected thereby.

Sec. 16. *Acts Repealed.* Acts or parts of acts in conflict
 2 with or superseded by the provisions of this act are hereby
 3 repealed.

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

I hereby certify that the foregoing is a true and correct copy of the original as the same appears on the records of the Secretary of State, and that the same has been compared with the original and found to be a true and correct copy of the original.

..... to the Secretary of State



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

E. O. Wiseman

Chairman Senate Committee

W. G. Bulter

Chairman House Committee

Originated in the *House of Delegates*

Takes effect *April 1, 1939* passage.

Shawhinley

Clerk of the Senate

W. S. Hall

Clerk of the House of Delegates

W. M. C. ...

President of the Senate

James K. House

Speaker House of Delegates

I certify that the foregoing act, having been presented to the Governor for his approval, and not having been returned by him to the House of the Legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval. ^{The within} this the ^{day of} *March*, 1939.

This the *17th* day of *March*, 1939 Governor.

1939 *W. S. O'Brien*

SECRETARY OF STATE