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
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that section eight, article two; sections three and twelve, article six, and sections five and six, article seven be repealed; that sections fifteen, sixteen and seventeen, article ten be reenacted; all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred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:
"Administration fund" means the unemployment compensation administration fund, from which the administrative expenses under this chapter shall be paid.

"Annual payroll" means the total amount of wages payable by an employer (regardless of the time of payment) for employment during one year.

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

"Base period" means the twelve consecutive month period ending on the December thirty-first next preceding an individual's benefit year.

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

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

"Board" means board of review.

"Calendar quarter" means the period of three consecutive calendar months ending on March thirty-one, June thirty,
September thirty, or December thirty-one, excluding, however, any calendar quarter or portion thereof which occurs prior to January one, one thousand nine hundred thirty-seven, or the equivalent thereof as the director may by regulation prescribe.

"Director" means the unemployment compensation director.

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

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

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

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

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

(3) Service not covered under paragraph (2) of this subsection and performed entirely without this state, with respect 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
for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

The term "employment" shall not include:

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

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

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

(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (fifty-two Stat. one thousand ninety-four), and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an Act of
The director may enter into agreements with the proper agency established under such act of congress to provide reciprocal treatment to individuals who, after acquiring potential rights to benefits under this chapter, have acquired rights to unemployment compensation under an act of congress, or who have, after acquiring potential rights to unemployment compensation under an act of congress, acquired rights to benefits under this chapter. Such agreements shall become effective ten days after such publication as complies with the general rules of the department.

(5) Agricultural labor.

(6) Domestic service in a private home.

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

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

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

(10) Service performed in the employ of an employing unit organized and operated exclusively for religious, charitable, scientific, literary, or educational purpose or for pr
vention of cruelty to children or animals, no part of the net earnings of which inure to the benefit of any private share-
holder or individual.

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

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

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

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

"Total and partial unemployment":

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

(2) An individual shall be deemed "partially unem-
150 employed" 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
Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid by his employing unit, if accounted for and reported to such employing unit.

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

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

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

"Year" means a calendar year, or the equivalent thereof 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 appoint upon a non-partisan merit basis the head of the
division of the employment service and shall fix his salary
and prescribe his duties.

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

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

Article 5. Employer Coverage and Responsibility.

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

Sec. 7. Separate Accounts. (1) The director shall maintain a separate account for each employer, and shall credit his account with all the contributions paid on his own behalf in excess of one per centum of his annual pay roll for each calendar year. But nothing in this act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amount hereinafter provided, against the account of his most recent employer, except that if such individual had not earned within the completed calendar quarter and the expired portion of the uncompleted calendar quarter immediately preceding the first week of any continuous period
of unemployment, wages for employment by such most recent
employer equal to more than fourteen times his weekly benefit
amount, such benefits may also be charged against the account
of his next most recent employer, in the inverse chronological
order in which the employment of such individual occurred.
The maximum amount so charged against the account of any
employer shall not exceed one-sixth of the wages payable
to such individual by each such employer for employment
which occurs on and after the first day of such individual’s
base period, and shall not exceed sixty-five dollars per com-
pleted calendar quarter or portion thereof, which occurs on
and after the first day of such individual’s base period. The
director shall by general rules prescribe the manner in which
benefits shall be charged against the accounts of several em-
ployers for whom an individual performed employment at
the same time.

(2) The director may prescribe regulations for the estab-
lishment, maintenance, and dissolution of joint accounts by
two or more employers, and shall, in accordance with such
regulations and upon application by two or more employers
to establish such an account, or to merge their several in-
individual accounts in a joint account, maintain such joint account as if it constituted a single employer’s account.

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

Article 6. Employee Eligibility; Benefits.

Section 1. Eligibility Qualifications. An unemployed individual shall be eligible to receive benefits, only if the director finds that:

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

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

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

(4) He has been totally unemployed during his benefit year for a waiting period of three weeks prior to the week
for which he claims benefits for total unemployment: Provided, however, That if the claim for benefits is first filed in the month of February, the waiting period shall be two weeks, and if first filed in the month of March, the waiting period shall be one week.

(5) He has within his base period earned wages for employment equal to not less than one hundred fifty dollars.

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

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

Sec. 3. This section is hereby repealed.

Sec. 4. Disqualification for Benefits. Upon the determination of the facts by the director an individual shall be disqualified for benefits:
(1) For the week in which he left work voluntarily without good cause and for three weeks which immediately follow.

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

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

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

(5) For a week with respect to which he is receiving or has received:
Enrolled H. B. No. 275]

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>
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<tr>
<th>Wage Class</th>
<th>Wages in Base Period (Column A)</th>
<th>Weekly Benefit Amount (Column C)</th>
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Sec. 11. Rate of Benefit; Partial Unemployment. An eligible
2 individual who is partially unemployed in any calendar quar-
3 ter shall, upon claim therefor filed within sixty days after the
4 close of such calendar quarter, be paid benefits for such par-
5 tial unemployment in an amount for the calendar quarter in
6 accordance with his wage class and the actual amount of his
7 wages in such calendar quarter as shown in Table B in this
8 paragraph hereinafter contained, less any benefits paid or
9 payable to such individual for total unemployment in such
Enrolled H. B. No. 275] 20

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.
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.

<table>
<thead>
<tr>
<th>COLUMN A</th>
<th>COLUMN B</th>
<th>COLUMN C</th>
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<td>WAGES IN BASE PERIOD</td>
<td>WEEKLY BENEFIT AMOUNT</td>
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</table>
Sec. 12. This section is hereby repealed.

Sec. 12-A. Suspension of Partial Benefit Rights. If at any time the unemployment compensation fund, including the trust fund, clearing account and benefit account, and excluding therefrom an amount, estimated by the director, equal to the sum of the benefit liabilities then accrued and unpaid, shall fall below the sum of $5,000,000.00, the director, with the concurrence of a majority of the Advisory Council, and with the consent and approval of the Governor, may suspend the right to receive benefit for periods of partial unemployment not then completed, and no right to benefit for periods of partial unemployment completed or occurring during the period of such suspension shall then or thereafter accrue. At any time subsequent to such suspension the director, with the concurrence of a majority of the Advisory Council, and with the consent and approval of the Governor, may rescind, and whenever the unemployment compensation fund, including the trust fund, clearing account and benefit account, and excluding therefrom an amount, estimated by the director, equal to the sum of the benefit liabilities then accrued and unpaid, reaches the sum of $10,000,000.00, the director shall
Sec. 13. Method of Charging Benefits. The director shall
compute wage credits for each individual by crediting him
with the wages earned by him for employment by employers
during his base period. The maximum total amount of bene-
fits payable to any eligible individual during any benefit year
shall not exceed the amount appearing in Column (E) on line
indicating individual's wage class, of Table A, in this article
hereinabove contained.

Article 7. Claim Procedure.

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

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

(2) The amount of benefit.

(3) The maximum duration of benefits.

After determination, the deputy shall promptly notify the
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 manner of hearing appeals from the decision of a deputy and may direct in particular cases or in particular areas that the appeal be heard by an appeal tribunal composed of:

1. A single examiner.
2. A tribunal of three examiners assigned by the board.
3. A member of the board.
4. The board.

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

Upon appeal from the determination of a deputy, an individual shall be entitled to a fair hearing and reasonable opportunity to be heard before an appeal tribunal as pro-
Within ten days after receipt by the board of notice of appeal from the decision of a deputy, the board shall fix the time and place for hearing such appeal. Upon consideration of all the evidence the appeal tribunal shall make a decision, and shall notify the claimant and last employer of its findings and decision.

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

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

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

(2) Direct the taking of additional evidence in a disputed 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
Sec. 15. Report of Decision. The board shall notify the claimant and last employer of its findings and decision on an appeal.

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 twenty days after mailing or notification of the board's decision.

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

Sec. 23. Trial. Except as limited by section twenty-one of this article, a decision of the board taken to the circuit court of Kanawha county for judicial review shall be tried as any other civil action, provided, however, that such actions shall have preference on the calendar of the court over all other civil actions, except cases arising under the workmen's com-
Sec. 25. *Service in Action.* Service in such action shall be upon the chairman of the board or such person as he may designate, and service upon him shall be treated as completed service upon all parties to the original dispute. The chairman of the board or such person as he may designate shall immediately upon receipt of service forward a copy of such service by registered mail to each defendant.

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

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

**Article 10. General Provisions.**

Section 13. *Criminal Actions.* Criminal actions to enforce the provisions of this chapter, or rules or regulations issued thereunder, shall be prosecuted by the attorney general, or at his request by the prosecuting attorney of any county in which the defendant resides, or by an attorney of the department.
Sec. 15. *Constitutionality.* The provisions of this act shall be construed as severable, and should any provision be held unconstitutional, or for any other reason invalid, the remaining provisions shall not be affected thereby.

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

Sec. 17. *Savings Clause.* The Legislature reserves the right to amend or repeal all or any part of this chapter and no private rights shall vest against any legislative amendment or change or repeal. All rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this chapter at any time.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. O. Wise
Chairman Senate Committee

B. B. Bults
Chairman House Committee

Originated in the House of Delegates

Takes effect April 1, 1933

Clayton Smith
Clerk of the Senate

Noel W. Wace
Clerk of the House of Delegates

President of the Senate

James E. Humes
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.

This the 7th day of March, 1933

Governor.

Secretary of State