

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1941

ENROLLED

SENATE BILL No. 101

(By Mr. Randolph, W.V. President)

PASSED March 8 1941

In Effect April 1, 1941 Passage



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Senate Bill No. 101

(BY MR. RANDOLPH, MR. PRESIDENT)

[Passed March 8, 1941; in effect April 1, 1941.]

AN ACT to amend and reenact section three, article one; section six, article two; sections nine and ten, article four; sections two, three, four, five, seven, ten and nineteen, article five; sections one, two, four, ten, eleven and thirteen, article six; section one, article nine; and section thirteen, article ten; to add section eight to article nine; to repeal section eleven, article five; all of chapter twenty-one-A of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That section three, article one; section six, article two; sections nine and ten, article four; sections two, three, four, five, seven, ten and nineteen, article five; sections one, two, four, ten, eleven and thirteen, article six; section one, article nine; and section thirteen, article ten be amended and reenacted; that section eight be added to article nine; and that section eleven, article five be repealed; all in chapter twenty-one-A of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to read as follows:

Article 1. Department of Unemployment Compensation.

Section 3. *Definitions.* As used in this chapter, unless

2 the context clearly requires otherwise:

3 “Administration fund” means the Unemployment Com-
4 pensation Administration Fund, from which the admini-
5 strative expenses under this chapter shall be paid.

6 “Annual payroll” means the total amount of wages
7 for employment paid by an employer during one year.

8 “Average annual payroll” means the average of the
9 annual payrolls of an employer for the last three years.

10 “Base period” means the twelve consecutive month

11 period ending on the December thirty-first next pre-
12 ceding an individual's benefit year.

13 "Benefit unit" means the amount of benefit an eligible
14 individual will receive for each shift of no work avail-
15 able in excess of one-half normal shift expectancy.

16 "Benefit year" with respect to an individual means the
17 twelve-month period beginning with April first and end-
18 ing with March thirty-first, which includes the period for
19 which claim for benefit is made by such individual.

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

22 "Board" means Board of Review.

23 "Calendar quarter" means the period of three con-
24 secutive calendar months ending on March thirty-one,
25 June thirty, September thirty, or December thirty-one,
26 or the equivalent thereof as the director may by regula-
27 tion prescribe.

28 "Director" means the Unemployment Compensation Di-
29 rector.

30 "Employing unit" means an individual, or type of or-
31 ganization, including any partnership, association, trust,

32 estate, joint stock company, insurance company, corpora-
33 tion (domestic or foreign), or the receiver, trustee in
34 bankruptcy, trustee or successor thereof, or the legal rep-
35 resentative of a deceased person which has on January
36 first, one thousand nine hundred thirty-five, or subsequent
37 thereto, had in its employ one or more individuals per-
38 forming service within this state.

39 "Employer" means an employing unit which for some
40 portion of a day, not necessarily simultaneously, in each
41 of twenty different weeks, which weeks need not be con-
42 secutive within either the current year or the preceding
43 year, has had in employment eight or more individuals
43a irrespective of whether the same individuals were or
44 were not employed on each of such days.)

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

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

50 (2) The term "employment" shall include an indivi-
51 dual's entire service, performed within or both within and

52 without this state if: (a) The service is localized in this
53 state; or (b) The service is not localized in any state but
54 some of the service is performed in this state and (i) the
55 base of operations, or, if there is no base of operations,
56 then the place from which such service is directed or con-
57 trolled, is in this state; or (ii) the base of operations or
58 place from which such service is directed or controlled
59 is not in any state in which some part of the service is
60 performed but the individual's residence is in this state.

61 (3) Service not covered under paragraph (2) of this
62 subsection and performed entirely without this state, with
63 respect to no part of which contributions are required and
64 paid under an unemployment compensation law of any
65 other state or of the federal government, shall be deemed
66 to be employment subject to this act if the individual per-
67 forming such services is a resident of this state and the
68 director approves the election of the employing unit for
69 whom such services are performed that the entire service
70 of such individual shall be deemed to be employment
71 subject to this act.

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

80 (5) Services performed by an individual for wages
81 shall be deemed to be employment subject to this act
82 unless and until it is shown to the satisfaction of the di-
83 rector that: (a) Such individual has been and will con-
84 tinue to be free from control or direction over the per-
85 formance of such services, both under his contract of
86 service and in fact; and (b) such service is either outside
87 the usual course of the business for which such service
88 is performed or that such service is performed outside of
89 all the places of business of the enterprise for which such
90 service is performed; and (c) such individual is custo-
91 marily engaged in an independently established trade,
92 occupation, profession, or business.

93 The term "employment" shall not include:

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

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

99 (3) Service performed in the employ of the United
100 States or an instrumentality of the United States exempt
101 under the Constitution of the United States from the pay-
102 ments imposed by this law, except that to the extent that
103 the Congress of the United States shall permit states to
104 require any instrumentalities of the United States to
105 make payments into an unemployment fund under a state
106 unemployment compensation law, all of the provisions of
107 this law shall be applicable to such instrumentalities, and
108 to service performed for such instrumentalities, in the
109 same manner, to the same extent and on the same terms
110 as to all other employers, employing units, individuals and
111 services; provided that if this state shall not be certified
112 for any year by the Social Security Board under section
113 1603 (c) of the Federal Internal Revenue Code, the pay-

114 ments required of such instrumentalities with respect to
115 such year shall be refunded by the director from the fund
116 in the same manner and within the same period as is pro-
117 vided in section nineteen of article five of this law with
118 respect to payments erroneously collected.

119 (4) Service performed after June thirty, one thousand
120 nine hundred thirty-nine, with respect to which unem-
121 ployment compensation is payable under the Railroad
122 Unemployment Insurance Act (fifty-two Stat. one thou-
123 sand ninety-four), and service with respect to which un-
124 employment benefits are payable under an unemployment
125 compensation system for maritime employees established
126 by an Act of Congress. The director may enter into
127 agreements with the proper agency established under
128 such act of congress to provide reciprocal treatment to
129 individuals who, after acquiring potential rights to un-
130 employment compensation under an act of congress, or
131 who have, after acquiring potential rights to unemploy-
132 ment compensation under an act of congress, acquired
133 rights to benefits under this chapter. Such agreements

134 shall become effective ten days after such publication as
135 complies with the general rules of the department.

136 (5) Agricultural labor.

137 (6) Domestic service in a private home.

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

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

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

145 (10) Service performed in the employ of an employing
146 unit organized and operated exclusively for religious,
147 charitable, scientific, literary, or education purposes or
148 for prevention of cruelty to children or animals, no part
149 of the net earnings of which inure to the benefit of any
150 private shareholder or individual.

151 "Employment office" means a free employment office or
152 branch thereof, operated by this state, or any free public
153 employment office maintained as a part of a state-

154 controlled system of public employment offices in any
155 other state.

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

158 "Normal shift expectancy" means the customary num-
159 ber of shifts or their equivalent that constitute full time
160 operation of the business in which the claimant is
161 regularly employed.

162 "Normal shift" means the customary number of hours
163 constituting a full shift at the operation of the claimant's
164 regular employer.

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

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

170 "Total and partial unemployment":

171 (1) An individual shall be deemed "totally unem-
172 ployed" in any week in which such individual is separated
173 from employment for an employing unit and during which

174 he performs no services and with respect to which no
175 wages are payable to him.

176 (2) An individual shall be deemed "partially unem-
177 ployed" in any pay period in which the total number of
178 normal shifts available are less than one-half the normal
179 shift expectancy in such period. Odd job and/or sub-
180 subsidiary work is deemed partial unemployment in any
181 week in which such service is performed and wages are
182 paid or payable for more than eight hours. In cases in-
183 volving partial unemployment as a result of odd job
184 and/or subsidiary work the pay period, normal shift,
185 normal shift expectancy and period for filing claim will
186 be such as the Director may by regulation prescribe.

187 (3) An individual's week of unemployment shall be
188 deemed to commence only after his registration at an em-
189 ployment office, except as the director may by regulation
190 otherwise prescribe.

191 "Wages" means all remuneration for personal serv-
192 ices, including commissions and bonuses and the cash
193 value of all remuneration in any medium other than
194 cash; provided that the term "wages" shall not include:

195 (1) That part of the remuneration which, after re-
196 muneration equal to three thousand dollars has been paid
197 to an individual by an employer with respect to employ-
198 ment during any calendar year beginning with the
199 calendar year one thousand nine hundred forty, is paid
200 to such individual by such employer with respect to em-
201 ployment during such calendar year.

202 (2) The amount of any payment made to, or on behalf
203 of, an individual in its employ (without deduction from
204 the remuneration of the individual in its employ) under
205 a plan or system established by an employer which makes
206 provision for individuals in its employ generally or for a
207 class or classes of such individuals (including any amount
208 paid by an employer for insurance or annuities, or into a
209 fund, to provide for any such payment), on account of
210 (A) retirement, or (B) sickness or accident disability, or
211 (C) medical and hospitalization expenses in connection
212 with sickness or accident disability, or (D) death, pro-
213 vided the individual in its employ (i) has not the option
214 to receive, instead of provision for such death benefit,
215 any part of such payment or, if such death benefit is

216 insured, any part of the premiums (or contributions to
217 premiums) paid by his employer, and (ii) has not the
218 right, under the provisions of the plan or system or policy
219 of insurance providing for such death benefit, to assign
220 such benefit, or to receive such consideration in lieu of
221 such benefit either upon his withdrawal from the plan or
222 system providing for such benefit or upon termination of
223 such plan or system or policy or of insurance of his serv-
224 ices with such employer.

225 (3) The payment by an employer (without deduction
226 from the remuneration of the individual in its employ) of
227 the tax imposed upon an individual in its employ under
228 section one thousand four hundred of the Federal Internal
229 Revenue Code; or

230 (4) Payments, not required under any contract of hire,
231 made to an individual with respect to his period of
232 training or service in the armed forces of the United
233 States by any employer by which such individual was
234 formerly employed.

235 Gratuities customarily received by an individual in the
236 course of his employment from persons other than his em-

237 plying unit shall be treated as wages paid by his em-
238 plying unit, if accounted for and reported to such em-
239 plying unit.

240 The reasonable cash value of remuneration in any
241 medium other than cash shall be estimated and de-
242 termined in accordance with rules prescribed by the di-
243 rector.

244 "Week" means a calendar week, ending at midnight
245 Saturday, or the equivalent thereof, as determined in
246 accordance with the regulations prescribed by the di-
247 rector.

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

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

Article 2. The Director of Unemployment Compensation.

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

- 4 (1) Exercise general supervision of and make regu-
5 lations for the government of the department.
- 6 (2) Prescribe uniform rules pertaining to investi-
7 gations, departmental hearings, and promulgate rules and
8 regulations.
- 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, subject to the provisions of section ten, article
14 four, of this chapter, relating to the board of review.
- 15 (5) Organize and administer the department so as to
16 comply with the requirements of this chapter and to
17 satisfy any conditions established in applicable federal
18 legislation.
- 19 (6) Make reports in such form and containing such
20 information as the federal social security board may
21 from time to time require, and comply with such pro-
22 visions as the federal social security board may from time
23 to time find necessary to assure the correctness and veri-
24 fication of such reports.

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

32 (8) Keep an accurate and complete record of all de-
33 partmental proceedings; record and file all bonds and
34 contracts and assume responsibility for the custody and
35 preservation of all papers and documents of the depart-
36 ment.

37 (9) Sign and execute in the name of the state, by
38 "The State department of unemployment compensation,"
39 any contract or agreement with the federal government,
40 its agencies, other states, their subdivisions, or private
41 persons.

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

44 (11) Make the original determination of right in
45 claims for benefits.

46 (12) Make recommendations, and an annual report
47 to the governor concerning the condition, operation, and
48 functioning of the department.

49 (13) Invoke any legal, equitable or special remedy for
50 the enforcement of orders or the provisions of this chap-
51 ter.

52 (14) Exercise any other power necessary to standard-
53 ize administration, expedite departmental business, as-
54 sure the establishment of fair rules and regulations and
55 promote the efficiency of the service.

Article 4. Board of Review.

Section 9. *Powers and Duties.* The board shall have

2 the following powers and duties, to:

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

5 (2) Organize from salaried examiners such appeal tri-
6 bunals as are necessary for the expedition of disputed
7 claim procedure.

8 (3) Establish procedure for the hearing of disputed
9 claims.

10 (4) Take oaths, examine witnesses, and issue sub-
11 poenas.

12 (5) Establish the amount of witness fees.

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

15 (7) Exercise such additional powers as may be neces-
16 sary for the proper conduct of a system of administrative
17 review of disputed claims.

Sec. 10. Appointment and Supervision of Personnel.

2 By and with the consent and approval of the director,
3 the board shall appoint such examiners as are necessary
4 to hear appeals from determinations of deputies, and such
5 other personnel as is necessary for the proper conduct of
6 a system of administrative review of disputed claims.
7 Subject to the provisions of the merit system and with
8 the consent and approval of the director, the board
9 shall prescribe the qualifications of, fix the compensation
10 of, and remove the employees of the board. No person
11 who is identified with the interests of either employers
12 or employees shall be appointed examiner.

13 The administrative expense of the board of review shall

14 be paid from the administration fund. The board, with
15 the assistance of the fiscal officer of the department, shall
16 prepare and submit to the director the budget of the
17 board of review.

18 The chairman of the board shall fix the time and place
19 for hearing appeals and shall assign such hearings to
20 members of the board, appeal tribunals, or the full board,
21 as the case may require, subject, however, to the pro-
22 visions of article seven of this chapter.

Article 5. Employer Coverage and Responsibility.

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

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

13 (2) Any employing unit for which services that do
14 not constitute employment as defined in this act are
15 performed, may file with the director a written election
16 that all such services performed by individuals in its
17 employ in one or more distinct establishments or places
18 of business shall be deemed to constitute employment for
19 all the purposes of this act for not less than two calendar
20 years. Upon the written approval of such election by the
21 director, such services shall be deemed to constitute em-

22 ployment subject to this act from and after the date
23 stated in such approval. Such services shall cease to be
24 deemed employment subject hereto as of January first
25 of any calendar year subsequent to such two calendar
26 years, only if during January of such year such employ-
27 ing unit has filed with the director a written notice to
28 that effect.

29 (3) An employing unit which is or becomes an em-
30 ployer subject to this act within any calendar year shall
31 be subject to this act during the whole of such calendar
32 year.

Sec. 4. *Payments.* On and after January first, one
2 thousand nine hundred forty-one, an employer shall be
3 liable for payments in respect to wages paid for employ-
4 ment occurring during each year in which he is subject
5 to this act.

Sec. 5. *Rate of Contribution.* On and after January
2 first, one thousand nine hundred forty-one, an employer
3 shall make payments to the unemployment compensation
4 fund equal to two and seven-tenths per cent of wages
5 paid by him with respect to employment during each

6 calendar year beginning with the calendar year one
7 thousand nine hundred forty-one, subject however to the
8 provisions of sections nine to thirteen of this article.

Sec. 7. *Separate Accounts.* (1) The director shall
2 maintain a separate account for each employer, and shall
3 credit his account with all contributions heretofore and
4 hereafter paid by him. Nothing in this act shall be con-
5 strued to grant any employer or individual in his serv-
6 ice prior claims or rights to the amounts paid by him into
7 the fund, either on his own behalf or on behalf of such
8 individuals.

9 Benefits paid to an eligible individual shall be charged
10 against the accounts of his base period employers. The
11 amount of benefits so chargeable against each base period
12 employer's account shall bear the same ratio to the
13 total benefits paid to an individual as the base period
14 wages paid to such individual by such employer bear to
15 the total amount of base period wages paid to such indi-
16 vidual by all his base period employers.

17 (2) The director may prescribe regulations for the
18 establishment, maintenance, and dissolution of joint ac-

19 counts by two or more employers, and shall, in accordance
20 with such regulations and upon application by two or
21 more employers to establish such an account, or to
22 merge their several individual accounts in a joint account,
23 maintain such joint account as if it constituted a single
24 employer's account.

25 (3) The director shall, for the year one thousand nine
26 hundred forty-one and for each calendar year thereafter,
27 classify employers in accordance with their actual ex-
28 perience in the payment of contributions on their own
29 behalf and with respect to benefits charged against their
30 accounts, with a view to fixing such contribution rates
31 as will reflect such experience. For the purpose of
32 fixing such contribution rates for each calendar year the
33 books of the department shall be closed on January thirty-
34 one of such year and any contributions thereafter paid
35 with respect to wages paid for employment during pre-
36 ceding calendar years, as well as benefits thereafter paid
37 with respect to compensable weeks ending on or before
38 December thirty-one of the preceding year, shall not be
39 taken into account until the time for fixing contribution
40 rates for the succeeding calendar year.

Sec. 10. *Merit Rating: Decreased Rates.* After the re-
2 quirements of section nine have been complied with, an
3 employer's payment shall remain two and seven-tenths
4 per cent, until: (1) There has elapsed three consecutive
5 years throughout which an individual in his employ
6 could have received benefits if unemployed and eligible.
7 (2) His payments credited to his account for all past
8 years exceed the benefits charged to his account by an
9 amount equal to at least seven and one-half per cent of
10 his average annual pay roll, in which case his rate shall
11 be one and eight-tenths per cent.
12 (3) His payments credited to his account for all past
13 years exceed the benefits charged to his account by an
14 amount equal to at least ten per cent of his average
15 annual pay roll, in which case his rate shall be nine-
16 tenths of one per cent.
17 The director shall determine an employer's compliance
18 with these requirements.

Sec. 11. This section is hereby repealed.

Sec. 19. *Refunds.* Within two years after the date
2 on which payment of contribution, or interest thereon,

3 is made, an employer, who has paid such payment or
4 interest, may make application for:

5 (1) An adjustment thereof in connection with sub-
6 sequent payments.

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

8 If the director determines that payments and interest
9 were erroneously collected, he shall make the adjust-
10 ment without interest, in connection with subsequent
11 payments of the employer, or if such adjustment can-
12 not be made, refund the amount without interest from
13 the clearing account of the unemployment compensation
14 fund.

15 For like cause and within the same period the director,
16 on his own initiative, may make an adjustment or refund:
17 *Provided*, That nothing in this chapter shall be construed
18 as permitting a cash refund of any contribution required
19 under the law in effect when such contribution became
20 due.

Article 6. Employee Eligibility; Benefits.

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

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

7 (2) He has made a claim for benefits in accordance
8 with 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 one week prior to the week
12 for which he claims benefits for total unemployment.

13 (5) He has within his base period earned wages for
14 employment equal to not less than one hundred fifty
15 dollars, of which amount he had earned as much as
16 seventy-five dollars in each of two quarters or fifty dol-
17 lars in each of three quarters.

Sec. 2. *Waiting Period Construed.* If the benefit year
2 ends during a period of total unemployment for any
3 individual, such individual shall serve a new wait-
4 ing period of one week before benefits accruing in the new
5 benefit year shall be payable.

6 During the waiting period, the individual must be
7 eligible in all respects, except for the requirements of

8 subsection (2) of section one of this article. No week
9 shall be counted as the waiting period week if benefits
10 have been paid with respect to such week.

Sec. 4. *Disqualification for Benefits.* Upon the deter-
2 mination of the facts by the director an individual shall
3 be disqualified for benefits:

4 (1) For the six weeks immediately following the date
5 on which he left work voluntarily without good cause.
6 Such disqualification shall carry a reduction in the
7 maximum benefit amount equal to six times the indi-
8 vidual's weekly benefit rate. If he returns to work prior
9 to the expiration of the disqualification period, he will
10 be credited with such part of the unexpired portion as
11 his employment continues and an equivalent portion of
12 his maximum benefit reduction will be reinstated.

13 (2) For the three weeks immediately following the
14 date on which he was discharged for proved misconduct.
15 Such disqualification shall carry a reduction in the maxi-
16 mum benefit amount equal to three times the individual's
17 weekly benefit rate. If he returns to work prior to the
18 expiration of the disqualification period, he will be

19 credited with such part of the unexpired portion as his
20 employment continues and an equivalent portion of his
21 maximum benefit reduction will be reinstated.

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

27 (4) For a week in which his total or partial unem-
28 ployment is due to a stoppage of work which exists be-
29 cause of a labor dispute at the factory, establishment, or
30 other premises at which he was last employed, unless the
31 director is satisfied that he was not (one) participating,
32 financing, or directly interested in such dispute, and
33 (two) did not belong to a grade or class of workers who
34 were participating, financing, or directly interested in
35 the labor dispute which resulted in the stoppage of
36 work. No disqualification under this subsection shall
37 be imposed if the employees are required to accept
38 wages, hours or conditions of employment, less favor-
39 able than those prevailing for similar work in the

40 locality, or if employees are denied the right of collective
41 bargaining under generally prevailing conditions, or if an
42 employer shuts down his plant or operation or dismisses
43 his employees in order to force wage reduction, changes
44 in hours or working conditions.

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

47 (a) Wages in lieu of notice;

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

51 (c) Old age benefits under title II of the social security
52 act or similar payments under any act of congress.

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

Sec. 10. *Benefit Rate; Total Unemployment.* Each eli-
2 gible individual who is totally unemployed in any week
3 shall be paid benefits with respect to that week at the
4 weekly rate appearing in column (C) in table A
5 in this paragraph, on line on which in column (A) there
6 is indicated the employee's wage class, except as other-

7 wise provided under the term "total and partial unem-
8 ployment" in section three, article one of this chapter.
9 The employee's wage class shall be determined by the
10 total amount of wages earned by him in covered em-
11 ployment in his base period as shown in column (B)
12 in table A. The right of an employee to receive
13 benefits shall not be prejudiced nor the amount thereof
14 be diminished by reason of failure by an employer to pay
15 either the wages earned by the employee or the contri-
16 bution due on such wages.

TABLE A

Wage Class	Wages in Base Period	Weekly Benefit Rate	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment Amount
(Column A)	(Column B)	(Column C)	(Column D)
	Under \$ 150.00	(Ineligible)	
1	\$ 150.00- 399.99	\$ 6.00	\$ 96.00
2	400.00- 499.99	7.00	112.00
3	500.00- 599.99	8.00	128.00
4	600.00- 699.99	9.00	144.00
5	700.00- 749.99	9.50	152.00
6	750.00- 799.99	10.00	160.00
7	800.00- 849.99	10.50	168.00
8	850.00- 899.99	11.00	176.00
9	900.00- 949.99	11.50	184.00
10	950.00- 999.99	12.00	192.00
11	1000.00- 1049.99	12.50	200.00
12	1050.00- 1099.99	13.00	208.00
13	1100.00- 1149.99	13.50	216.00
14	1150.00- 1199.99	14.00	224.00
15	1200.00- 1249.99	14.50	232.00
16	1250.00 and over	15.00	240.00

Sec. 11. *Rate of Benefit; Partial Unemployment.* An
2 eligible individual who is partially unemployed in any
3 pay period shall, upon claim therefor filed within
4 such time and in such manner as the director may
5 by regulation prescribe, be paid benefits for such
6 partial unemployment in an amount for such pay
7 period in accordance with his wage class and the number
8 of normal shifts or their equivalent, during the pay period,
9 that no work was available as shown in Table B in this
10 paragraph hereinafter contained, less any benefits paid or
11 payable and any waiting period credit allowed to such in-
12 dividual for total unemployment in such pay period.
13 Such partial benefits shall be paid without regard to the
14 current employment status of such individual and shall
15 be paid without regard to the provisions of sub-sections
16 one, three and four of section one of this article.

TABLE B

If the total work available during a pay period is less than one-half of the normal shift expectancy during such pay period, the claimant is entitled to receive as partial benefit for the pay period the amount appearing opposite his wage class in the column headed by the number representing the difference between normal shift expectancy and double the number of full shifts and fractions thereof that work was available for the claimant during such pay period. If the number representing such difference is greater than twelve, the amount of benefit payable will be the amount obtained by multiplying such number by the benefit unit appearing on the line opposite the claimant's wage class.

Wage Class	Wages in Base Period	Benefit Unit	AMOUNT OF BENEFITS PAYABLE												
Column A	Column B	Column C	1	2	3	4	5	6	7	8	9	10	11	12	
1	\$ 150	399.99	1.20	1.20	2.40	3.60	4.80	6.00	7.20	8.40	9.60	10.80	12.00	13.20	14.40
2	400	499.99	1.40	1.40	2.80	4.20	5.60	7.00	8.40	9.80	11.20	12.60	14.00	15.40	16.80
3	500	599.99	1.60	1.60	3.20	4.80	6.40	8.00	9.60	11.20	12.80	14.40	16.00	17.60	19.20
4	600	699.99	1.80	1.80	3.60	5.40	7.20	9.00	10.80	12.60	14.40	16.20	18.00	19.80	21.60
5	700	749.99	1.90	1.90	3.80	5.70	7.60	9.50	11.40	13.30	15.20	17.10	19.00	20.90	22.80
6	750	799.99	2.00	2.00	4.00	6.00	8.00	10.00	12.00	14.00	16.00	18.00	20.00	22.00	24.00
7	800	849.99	2.10	2.10	4.20	6.30	8.40	10.50	12.60	14.70	16.80	18.90	21.00	23.10	25.20
8	850	899.99	2.20	2.20	4.40	6.60	8.80	11.00	13.20	15.40	17.60	19.80	22.00	24.20	26.40
9	900	949.99	2.30	2.30	4.60	6.90	9.20	11.50	13.80	16.10	18.40	20.70	23.00	25.30	27.60
10	950	999.99	2.40	2.40	4.80	7.20	9.60	12.00	14.40	16.80	19.20	21.60	24.00	26.40	28.80
11	1000	1049.99	2.50	2.50	5.00	7.50	10.00	12.50	15.00	17.50	20.00	22.50	25.00	27.50	30.00
12	1050	1099.99	2.60	2.60	5.20	7.80	10.40	13.00	15.60	18.20	20.80	23.40	26.00	28.60	31.20
13	1100	1149.99	2.70	2.70	5.40	8.10	10.80	13.50	16.20	18.90	21.60	24.30	27.00	29.70	32.40
14	1150	1199.99	2.80	2.80	5.60	8.40	11.20	14.00	16.80	19.60	22.40	25.20	28.00	30.80	33.60
15	1200	1249.99	2.90	2.90	5.80	8.70	11.60	14.50	17.40	20.30	23.20	26.10	29.00	31.90	34.80
16	1250 and over		3.00	3.00	6.00	9.00	12.00	15.00	18.00	21.00	24.00	27.00	30.00	33.00	36.00

Sec. 13. *Computation of Wage Credits; Determination of Maximum 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 benefits payable to any eligible individual during any benefit year shall not exceed the amount appearing in column (D) on line indicating individual's wage class, of Table A, in this article hereinabove contained.

Article 9. Unemployment Compensation Administration Fund.

Section 1. *Administration Fund.* There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in section seven of this article shall be expended solely for the purposes and in the amounts found necessary by the social security board for the proper and efficient administration of this chapter.

Sec. 8. *Reimbursement of Fund.* If any moneys
2 received after June thirty, one thousand nine hundred
3 forty-one, from the Social Security Board under title
4 three of the Social Security Act, or any unencumbered
5 balances in the unemployment compensation administra-
6 tion fund as of that date, or any moneys granted after
7 that date to this state pursuant to the provisions of the
8 Wagner-Peyser Act, or any moneys made available by
9 this state or its political subdivisions and matched by
10 such moneys granted to this state pursuant to the pro-
11 visions of the Wagner-Peyser Act, are found by the
12 Social Security Board, because of any action or con-
13 tingency, to have been lost or been expended for purposes
14 other than, or in amounts in excess of, those found
15 necessary by the Social Security Board for the proper
16 administration of this law, it is the policy of this state
17 that such moneys shall be replaced by moneys appropri-
18 ated for such purpose from the general funds of this
19 state to the unemployment compensation administration
20 fund for expenditure as provided by the unemployment
21 compensation law. Upon receipt of notice of such a

22 finding by the Social Security Board, the director shall
23 promptly report the amount required for such replace-
24 ment to the Governor and the Governor shall at the
25 earliest opportunity, submit to the Legislature a request
26 for the appropriation of such amount. This article shall
27 not be construed to relieve this state of its obligation with
28 respect to funds received prior to July one, one thousand
29 nine hundred forty-one, pursuant to the provisions of
30 title three of the Social Security Act.

Article 10. General Provisions.

Section 13. *Criminal Actions.* Criminal actions to en-
2 force the provisions of this chapter, or rules and regula-
3 tions issued thereunder, shall be prosecuted by the attor-
4 ney general, or at his request by the prosecuting attorney
5 of any county in which the defendant resides, or by an
6 attorney of the department.

7 The director may cause complaints to be made and pro-
8 ceedings to be instituted and prosecuted against any
9 person violating any provisions of this chapter and in all
10 such cases no security for costs shall be required of the
11 director.

12 Justices of the peace shall have concurrent jurisdiction
13 with the circuit or other criminal courts of all mis-
14 demeanors arising under this chapter.

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

E. H. McKeown
Chairman Senate Committee

Leon Rice
Chairman House Committee

Originated in the Senate

Takes effect April 1, 1941 passage

A. Jace Walkers
Clerk of the Senate

J. Shiff
Clerk of the House of Delegates

Byron B. Randolph
President of the Senate

Malcolm R. Arnold
Speaker House of Delegates

The within approved this the 14
day of March, 1941.

Matthew M. Peely
Governor.

Filed in the office of the Secretary of State
of West Virginia MAR 17 1941
Wm. S. O'BRIEN,
Secretary of State