ENROLLED

HOUSE BILL No. 278

(By Mr. Speaker, Mr. Amos)

PASSED March 1, 1943

In Effect April 1, 1943
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(By Mr. Speaker, Mr. Amos)

[Passed March 1, 1943; in effect April 1, 1943]

AN ACT to amend and reenact section three, article one; sections six-a and twenty-three, article two; sections two, seven, nine and ten, article five; sections one, four, five, ten and eleven, article six; sections eight, nine, eleven, seventeen, twenty-one, twenty-two and twenty-five, article seven; sections four and eleven, article ten; to add section ten-a, section ten-b and section seventeen-a to article five; to add section twenty-one to article six; and to repeal section twelve, article five, 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 of West Virginia, second extraordinary session, one thousand nine hundred thirty-six, as amended, relating to unemployment compensation.
Be it enacted by the Legislature of West Virginia:

That section three, article one; sections six-a and twenty-three, article two; sections two, seven, nine and ten, article five; sections one, four, five, ten and eleven, article six; sections eight, nine, eleven, seventeen, twenty-one, twenty-two and twenty-five, article seven; sections four and eleven, article ten; to add section ten-a, section ten-b and section seventeen-a to article five; to add section twenty-one to article six; and to repeal section twelve, article five, 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, as amended, be amended and reenacted to read as follows:

Article 1. Department of Unemployment Compensation.

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

2 "Administration fund" means the unemployment compensation administration fund, from which the administrative expenses under this chapter shall be paid.

3 "Annual payroll" means the total amount of wages
for employment paid by an employer during one year.

"Average annual payroll" means the average of the
annual payrolls of an employer for the last three
years.

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

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

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

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

"Benefit year" with respect to an 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 indi-

29 vidual.

“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 consecu-
tive calendar months ending on March thirty-one, June

thirty, September thirty, or December thirty-one, or the

equivalent thereof as the director may by regulation

 prescribe.

“Director” means the unemployment compensation di-

rector.

“Employing unit” means an individual, or type of or-
ganization, including any partnership, association, trust,
estate, joint stock company, insurance company, cor-

poration (domestic or foreign), or the receiver, trus-
tee in bankruptcy, trustee or successor thereof, or the

legal representative of a deceased person, which has

on January first, one thousand nine hundred thirty-
five, or subsequent thereto, had in its employ one or

more individuals performing service within this state.
5. "Employer" means an employing unit which for some portion of a day, not necessarily simultaneously, in each of twenty different calendar weeks, which weeks need not be consecutive, within either the current calendar year or the preceding calendar 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.

6. "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 (one) 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 (two) the
69 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 indi-
62 vidual's residence is in this state.
(3) Service not covered under paragraph (two) of
this subsection and performed entirely without this
state, with respect to no part of which contributions
are required and paid under an unemployment com-
pensation law of any other state or of the federal
government, shall be deemed to be employment subject
to this act if the individual performing such services is
a resident of this state and the director approves the
election of the employing unit for whom such services
are performed that the entire service of such individual
shall be deemed to be employment subject to this
act.
(4) Service shall be deemed to be localized within a
state if: (a) The service is performed entirely within
such state; or (b) the service is performed both within
and without such state, but the service performed
without such state is incidental to the individual's serv-
ice within the state. For example, is temporary or tran-
sitory in nature or consists of isolated transac-
tions.

(5) Services performed by an individual for wages
shall be deemed to be employment subject to this act
unless and until it is shown to the satisfaction of the
director that: (a) Such individual has been and will
continue to be free from control or direction over the
performance of such services, both under his con-
tract of service and in fact; and (b) such service is
either outside the usual course of the business for
which such service is performed or that such serv-
ice 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,
individually 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 instrumen-
tality 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 exempt under the Constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this state shall not be certified for any year by the Social Security Board under section one thousand six hundred three (c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the director from the fund in the same manner and within
(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 Congress. The director may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to 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 purposes or for prevention of cruelty to children or animals, no part of the net earnings of which inure to the benefit of any private shareholder 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.

"Normal shift expectancy" means the customary number of shifts or their equivalent that constitute full time operation of the business in which the claimant is regularly employed.

"Normal shift" means the customary number of hours constituting a full shift at the operation of the claimant’s regular employer.

"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 an 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 unemployed” in any pay period in which the total number of normal shifts available are less than one-half the normal shift expectancy in such period. Odd job and/or subsidiary work is deemed partial unemployment in any week in which such service is performed and wages are paid or payable for more than eight hours. In cases involving partial unemployment as a result of odd job and/or subsidiary work the pay period, normal shift, normal shift expectancy and period for filing claims will be such as the director may by regulation prescribe.

(3) An individual’s week of unemployment shall be deemed to commence only after his registration at an employment office, except as the director may by regulation otherwise prescribe.

“Wages” means all remuneration for personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash; provided that the term “wages” shall not include:

(1) That part of the remuneration which, after re-
muneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year beginning with the calendar year one thousand nine hundred forty, is paid to such individual by such employer with respect to employment during such calendar year.

(2) The amount of any payment made to, or on behalf of, an individual in its employ (without deduction from the remuneration of the individual in its employ) under a plan or system established by an employer which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death: Provided, That the individual in its employ (one) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is
Enr. H. B. No. 278] 14

237 insured, any part of the premiums (or contributions
238 to premiums) paid by his employer, and (two) has
239 not the right, under the provisions of the plan or sys-
240 tem or policy of insurance providing for such death
241 benefit, to assign such benefit, or to receive such con-
242 sideration in lieu of such benefit either upon his with-
243 drawal from the plan or system providing for such
244 benefit or upon termination of such plan or system or
245 policy or of insurance of his services with such em-
246 ployer.

247 (3) The payment by an employer (without deduc-
248 tion from the remuneration of the individual in its
249 employ) of the tax imposed upon an individual in its
250 employ under section one thousand four hundred of the
251 Federal Internal Revenue Code; or

252 (4) Payments, not required under any contract of
253 hire, made to an individual with respect to his period
254 of training or service in the armed forces of the United
255 States by any employer by which such individual was
256 formerly employed.

257 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 in any
medium other than cash shall be estimated and de-
termined 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 di-
rector.

“Weekly benefit rate” means the maximum amount of
benefit an eligible individual will 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 6-a. Reciprocal Agreements.—The director may
enter into reciprocal arrangements with appropriate and
duly authorized agencies of other states or the federal
government, or both, whereby:

(1) Services performed by an individual for a single
employing unit for which services are customarily per-
formed by such individual in more than one state shall
be deemed to be services performed entirely within any
one of the states, first, in which any part of such indi--
vidual's service is performed or, second, in which such in-
dividual has his residence or, third, in which the employ-
ing unit maintains a place of business, provided there is
in effect, as to such services, an election by an employing
unit, with the acquiescence of such individual, and ap-
proved by the agency charged with the administration
of such state's unemployment compensation law, pursu-
ant to which services performed by such individual for
such employing unit are deemed to be performed entirely
within such state;

(2) Potential rights to benefits accumulated under the
unemployment compensation laws of one or more states
or under one or more such laws of the federal govern-
ment, or both, may constitute the basis for the payment
of benefits through a single appropriate agency under
terms which the director finds will be fair and reasonable
as to all affected interests and will not result in any sub-
stantial loss to the fund;

(3) Wages or services, upon the basis of which an indi-
dvidual may become entitled to benefits under an un-
employment compensation law of another state or of the
federal government, shall be deemed to be wages for
insured work for the purpose of determining his rights
to benefits under this chapter, and wages for insured
work, on the basis of which an individual may become
entitled to benefits under this chapter and shall be
deemed to be wages or services on the basis of which
unemployment compensation under such law of another
state or of the federal government is payable, but no
such arrangement shall be entered into unless it contains
provisions for reimbursements to the fund for such of
the benefits paid under this chapter upon the basis of
such wages or services, and provisions for reimburse-
ments from the fund for such of the compensation paid
under such other law upon the basis of wages for in-
(4) Contributions due under this chapter with respect to wages for insured work shall for the purposes of this chapter be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the director finds will be fair and reasonable as to all affected interests.

(b) Reimbursements paid from the fund pursuant to paragraph (three) of subsection (a) of this section shall be deemed to be benefits for the purpose of this chapter.

The director is authorized to make to other state or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subsection (a) of this section.

(c) To the extent permissible under the laws and Constitution of the United States, the director is authorized to
enter into or cooperate in arrangements whereby facili-
ties and services provided under this chapter and facilities
and services provided under the unemployment compen-
sation law of any foreign government, may be utilized for
the taking of claims and the payment of benefits under
the employment security law of this state or under a
similar law of such government.

Sec. 23. Publication.—The director shall print for public
distribution:

(1) The text of this chapter.

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

(3) Such other material as the director deems relevant
and suitable for the more effective administration of the
chapter, including, for distribution to employers and or-
ganizations and associations representative of employer
and employee interests, quarterly statements of the con-
dition of the unemployment compensation trust fund and
any other information relating to the administration
thereof which the director may deem to be pertinent and
proper.
Article 5. Employer Coverage and Responsibility.

Section 2. Duration.—Except as otherwise provided in section three of this article, an employing unit shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the director not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the director finds that there were no twenty different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit had eight or more individuals in employment subject to this chapter: Provided, however, That the director may for good cause extend the time for filing application for termination of coverage, effective as of the first day of the next succeeding quarter after the application is approved.

Sec. 7. Separate Accounts.—(1) The director shall maintain a separate account for each employer, and shall credit his account with all contributions heretofore and hereafter paid by him. Nothing in this act shall be construed to grant any employer or individual 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.

(2) Benefits paid to an eligible individual shall be
charged against the accounts of his base period employers.
The amount of benefits so chargeable against each base
period employer's account shall bear the same ratio to the
total benefits paid to an individual as the base period
wages paid to such individual by such employer bear to
the total amount of base period wages paid to such
individual by all his base period employers.

(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 expe-
rience in the payment of contributions on their own be-
half and with respect to benefits charged against their
accounts, with a view of fixing such contribution rates as
will reflect such experience. For the purpose of fixing
such contribution rates for each calendar year the books
of the department shall be closed on January thirty-one
of such year and any contributions thereafter paid with
respect to wages paid for employment during preceding

calendar years, as well as benefits thereafter paid with re-
spect to compensable weeks ending on or before Decem-
ber thirty-one of the preceding year, shall not be taken
into account until the time for fixing contribution rates
for the succeeding calendar year.

Sec. 9. Experience Ratings; Fund Stabilization.—An
employer's payment-rate shall be reduced only as of Janu-
ary one of a calendar year and shall not be reduced below
two and seven-tenths per cent:

(1) Prior to January one, one thousand nine hundred
fifty-one.

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

Sec. 10. Experience Ratings; Decreased Rates.—On and
after January one, one thousand nine hundred forty-
three, after the requirements of section nine have been
complied with, an employer's payment shall remain two
and seven-tenths per cent (2.7%), until: (1) There has
elapsed three consecutive years throughout which an individual in his employ could have received benefits if unemployed and eligible.

(2) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least five and one-half per cent (5.5%) of his average annual pay roll, in which case his rate shall be two and four-tenths per cent (2.4%).

(3) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least six and one-half per cent (6.5%) of his average annual pay roll, in which case his rate shall be two and one-tenth per cent (2.1%).

(4) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least seven and one-half per cent (7.5%) of his average annual pay roll, in which case his rate shall be one and eight-tenths per cent (1.8%).

(5) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least eight and one-half per cent (8.5%)
of his average annual pay roll, in which case his rate shall be one and four-tenths per cent (1.4%).

(6) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least ten per cent (10%) of his average annual pay roll, in which case his rate shall be nine-tenths of one per cent (0.9%).

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

Sec. 10-a. Suspension of Decreased Rates.—(1) If at any time or times the unemployment compensation fund, including the trust fund, clearing account, and benefit account, and excluding therefrom the amount required to pay the benefit liability then accrued and unpaid, shall fall below the sum of twenty-five million dollars, the director shall suspend the decreased rates as provided in the chapter, and all contributions of employers which are due and payable upon the next due date following such suspension shall be paid at the rate of two and seven-tenths per cent.

(2) As of January first next following the calendar year
in which the unemployment compensation fund, including
the trust fund, clearing account, and benefit account, and
and excluding therefrom the amount required to pay the
benefit liability then accrued and unpaid, reaches the sum
of thirty million dollars, the director shall supersede such
suspension. New rates shall thereupon be computed as
provided in this chapter.

Sec. 10-b. Transfer of Business.—If a subject employer
shall transfer his entire organization, trade or business,
or substantially all the assets thereof, to another em-
ployer, the director shall combine the contribution records
and the benefit experience records of the transferring and
acquiring employers. The acquiring employer's contribu-
tion rate for the remainder of the calendar year shall not
be affected by the transfer but such rate shall apply to
the whole of his business, including the portion acquired
by the transfer, through the following December thirty-
first. If a subject employer shall make such transfer to
an employing unit which is not an employer on the date
of the transfer, such subject employer's rate shall con-
tinue as the rate of the acquiring employing unit until
the next computation date.

Sec. 12. Auxiliary Rates.—This section is hereby re-
pealed.

Sec. 17-a. Summary Assessments.—(1) If an employer
fails to file reports for the purpose of determining the
amount of contribution in accordance with the regulations
of the director, or files manifestly incorrect or insufficient
reports, the director may assess the contribution and any
interest due on the basis of the information submitted by
the employer or on the basis of an estimate as to the
amount due and shall give written notice of such assess-
ment to such employer: Provided, That such assessment
shall be subject to redetermination by the director upon
the filing by the employer of correct and sufficient reports
within thirty days after notice of such assessment shall
be given to him.

(2) If the director determines that the collection of any
contribution or interest under the provisions of this chap-
ter are or may be jeopardized by delay, he may, whether
or not the time prescribed by this chapter or any regula-
tions issued pursuant thereto for making reports and pay-
ing contributions has expired, immediately assess such
ctribution, together with interest, then due or estimated
by him to be due, and shall give written notice of such
assessment to the employer: Provided, That such assess-
ment, unless based on information submitted by the em-
ployer, shall be subject to redetermination upon the same
condition and in the same manner as provided in sub-
section (one) hereof.

(3) Any such assessment may be enforced in the man-
ner provided in section sixteen hereof.

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 con-
tinues 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 full time
work for which he is fitted by prior training or experience.

(4) He has been totally unemployed during his benefit year for a waiting period of one week prior to the week for which he claims benefits for total unemployment.

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

Sec. 4. Disqualifications 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 involving fault on the part of the employer and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate.

(2) For the week in which he was discharged for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the
maximum benefit amount equal to six times the individual's weekly benefit rate.

(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 the four weeks which immediately follow and for such additional period as any offer of suitable work shall continue open for his acceptance, and his maximum benefit amount shall be reduced by an amount equal to his weekly benefit rate times the number of weeks of disqualification.

(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. No dis-
qualification under this subsection shall be imposed if the employees are required to accept wages, hours or conditions of employment less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his plant or operation or dismisses his employees in order to force wage reduction, changes in hours or working conditions.

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

(a) Wages in lieu of notice;

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

(c) Remuneration in the form of a primary insurance benefit under title two of the social security act, as amended, or similar payments under any act of Congress;

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

(6) For the week in which an individual is not em-
ployed because of pregnancy, or has voluntarily quit em-
ployment to marry or to perform any marital, parental,
or family duty, or to attend to his or her personal business
or affairs, and until the individual returns to covered em-
ployment and has been employed in covered employment
at least thirty working days.

(7) For each week in which an individual is unem-
ployed because, having voluntarily left employment to
attend a school, college, university, or other educational
institution, he is attending such school, college, university
or other educational institution, or is awaiting entrance
there to or is awaiting the starting of a new term or ses-
sion thereof.

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

(1) The degree of risk involved to the individual's
health, safety, and morals.

(2) The individual's physical fitness and prior train-
ing.

(3) His experience and prior earnings.

(4) His length of unemployment.
His prospects of securing local work in his customary occupation.

The distance of the available work from his residence: Provided, however, That the distance from his new residence shall not be considered in determining suitable work if such distance from available work was created as the result of the individual voluntarily changing his residence to a locality other than that locality in which he resided at the time he voluntarily quit his last employment without good cause involving fault on the part of the employer.

Sec. 10. Benefit Rate; Total Unemployment.—Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in column C in table A in this paragraph, on line on which in column A there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in column B in table A. The right of an
employee to receive benefits shall not be prejudiced nor
the amount thereof be diminished by reason of failure by
an employer to pay either the wages earned by the em-
ployee or the contribution due on such wages.

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period (Column A)</th>
<th>Weekly Benefit Rate (Column C)</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unemployment (Column D)</th>
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<td>Under—$250.00</td>
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<td>17</td>
<td>1250.00 and over</td>
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Sec. 11. *Rate of Benefit; Partial Unemployment.—* An eligible individual who is partially unemployed in any pay period shall, upon claim therefore filed within such time and in such manner as the director may by regulation prescribe, be paid benefits for such partial unemployment in an amount for such pay period in accordance with his wage class and the number of normal shifts or their equivalent, during the pay period, that no work was available as shown in table B in this paragraph hereinafter contained, less any benefits paid or payable and any waiting period credit allowed to such individual for total unemployment in such pay period. Such partial benefits shall be paid without regard to the current employment status of such individual and shall be paid without regard to the provisions of subsections one, three and four of section one of this article.
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.

<table>
<thead>
<tr>
<th>WAGE CLASS</th>
<th>WAGES IN BASE PERIOD</th>
<th>BENEFIT UNIT</th>
<th>AMOUNT OF BENEFITS PAYABLE</th>
</tr>
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<tr>
<td>COLUMN A</td>
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<td>COLUMN C</td>
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<tr>
<td>16</td>
<td>1250 and over</td>
<td>3.40</td>
<td>3.40</td>
</tr>
</tbody>
</table>
Sec. 21. **Persons in Military Service.**—Benefits shall be payable, in accordance with general rules to be prescribed by the director, to otherwise eligible individuals who have entered the armed forces of the United States of America since June thirty, one thousand nine hundred forty, on the basis of their insured work prior to such entrance. Such rules with respect to such individuals shall supersede any inconsistent provisions of this chapter, but so far as practicable shall secure results reasonably similar to those provided in the analogous provisions of this chapter: Provided, however, (1) That such individual has been discharged from the armed forces and files a claim for benefits pursuant hereto prior to April first, one thousand nine hundred forty-five; (2) that “military service” as used herein means service in the land, air, and naval forces of the United States, or any other service in the armed forces of the United States under any act of congress; and (3) that benefit rights under this section shall not be payable until after the benefit rights have been utilized under any act of Con-
Article 7. Claim Procedure.

Section 8. Appeal from Deputy's Decision.—A claimant, last employer or any base period employer of a claimant, or other interested party, may file an appeal from the decision of the deputy within fifteen calendar days after notice of the decision has been delivered or mailed by registered mail to the claimant and last employer as provided in section four of this article. The period within which an appeal from the decision of the deputy may be filed shall be stated in such notice. 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 provided in section seven of this article.

Within ten days after receipt by the board of notice of
18 appeal from the decision of a deputy, the board shall fix
19 the time and place for hearing such appeal.
20 Upon consideration of all evidence the appeal tribunal
21 shall make a decision, and shall notify the claimant and
22 last employer of its findings and decision.

Sec. 9. Finality of Examiner's Decision.—A claimant,
2 last employer or any base period employer of a claimant,
3 or other interested party may file an appeal to the board
4 from the decision of an appeal tribunal within fifteen cal-
5 endar days after notice of the decision has been delivered
6 or mailed to the claimant and last employer as provided
7 in section eight of this article. The director shall of neces-
8 sity be deemed an interested party. The decision of the
9 appeal tribunal shall be final and benefits shall be paid
10 or denied in accordance therewith unless an appeal is
11 filed within such time.

Sec. 11. Benefits Pending Appeal.—If an appeal is
2 filed, benefits for the period prior to final determination of
3 the board shall be paid only after such determination.
4 If benefits are allowed by the decision of the board on
5 appeal from the decision of the appeal tribunal the bene-
fits shall be paid whether such decision reverses or affirms
the decision of the appeal tribunal and regardless of any
further appeal; but if the decision of the board is reversed
on appeal an employer's account shall not be charged with
the benefits so paid.

Sec. 17. Finality of Board's Decision.—The decision of
the board shall be final and benefits shall be paid or de-
nied in accordance therewith, unless a claimant, last em-
ployer or any base period employer of a claimant, or
other interested party appeals to a court within twenty
days after mailing of notification of the board's decision.

Sec. 21. Findings of Fact.—In a judicial proceeding to
review a decision of the board, the findings of fact of the
board shall have like weight to that accorded to the find-
ings of fact of a trial chancellor or judge in equity pro-
cedure.

Sec. 22. Judicial Review.—Within twenty days after a
decision of the board has become final, any party ag-
grieved 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 be-
fore the board shall be made defendants. The director shall be a necessary party to such judicial review.

Sec. 25. Service upon Board.—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. With such service upon the board there shall be included a copy of the petition for review and as many additional copies as there are defendants, including the director. The chairman of the board or such person as he may designate shall immediately upon receipt of service forward a copy of such service, including a copy of the petition for review, by registered mail to each defendant, including the director.


Section 4. Records and Reports; Miscellaneous.—(1) An employing unit shall keep true and accurate work records containing such information as the director may prescribe. The record shall be open to inspection and be subject to being copied by the director or his authorized representatives at any reasonable time.
(2) The director may cause to be made such summaries, compilations, photographs, duplication, or reproduction of any records, reports, or transcrips thereof as he may deem advisable for the effective and economical preservation of information contained therein, and such summaries, compilations, photographs, duplication, or reproductions duly authenticated, shall be admissible in any proceeding under this chapter if the original record or records would have been admissible therein and are unavailable.

(3) The director, with the concurrence of the majority of the Advisory Council, may provide regulations for the destruction or disposition, after reasonable periods, of any records, reports, transcripts, or reproductions thereof, or other papers in his custody, the preservation of which is considered no longer necessary for the establishment of contribution liability or benefit rights, or for any purpose necessary to the proper administration of this chapter, including any audit required.

Sec. 11. Information.—The director may require an em-
ploying unit to provide sworn or unsworn reports concerning:

(1) The number of individuals in its employ.

(2) Individually their hours of labor.

(3) Individually the rate and amount of wages.

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

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

A person who violates the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned not longer than ninety days, or both.

No action for slander or libel, either criminal or civil, shall be predicated upon information furnished by any employer or any employee to the director in connection with the administration of any of the provisions of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Roy F. McNeill
Chairman Senate Committee

A. H. Petrows
Chairman House Committee

Originated in the House of Delegates

Takes effect April 1, 1943

A. J. Wallis
Clerk of the Senate

A. H. Petrows
Clerk of the House of Delegates

The within approved this the 8th day of March, 1943.

Matthew B. Neely
Governor.

Filed in the office of the Secretary of State of West Virginia

Win. S. O'Brien,
Secretary of State