

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1943



ENROLLED

HOUSE BILL No. 278

(By Mr. Speaker, Mrs. Amos)



PASSED March 1, 1943

In Effect April 1, 1943 Passage

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(BY MR. SPEAKER, MR. AMOS)

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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
2 the context clearly requires otherwise:
3 “Administration fund” means the unemployment com-
4 pensation administration fund, from which the adminis-
5 trative 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
10 years.

11 "Base period" means the twelve consecutive month
12 period ending on the December thirty-first next preceded-
13 ing an individual's benefit year.

14 "Base period employer" means any employer who in
15 the base period for any benefit year paid wages to an
16 individual who filed claim for unemployment compen-
17 sation within such benefit year.

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

20 "Benefit unit" means the amount of benefit an eligible
21 individual will receive for each one-half shift of no work
22 available in excess of one-half normal shift expect-
23 tancy.

24 "Benefit year" with respect to an individual means
25 the twelve-month period beginning with April first
26 and ending with March thirty-first, which includes the

27 period for which claim for benefit is made by such in-
28 dividual.

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

31 "Board" means board of review.

32 "Calendar quarter" means the period of three consecu-
33 tive calendar months ending on March thirty-one, June
34 thirty, September thirty, or December thirty-one, or the
35 equivalent thereof as the director may by regulation
36 prescribe.

37 "Director" means the unemployment compensation di-
38 rector.

39 "Employing unit" means an individual, or type of or-
40 ganization, including any partnership, association, trust,
41 estate, joint stock company, insurance company, cor-
42 poration (domestic or foreign), or the receiver, trus-
43 tee in bankruptcy, trustee or successor thereof, or the
44 legal representative of a deceased person, which has
45 on January first, one thousand nine hundred thirty-
46 five, or subsequent thereto, had in its employ one or
47 more individuals performing service within this state.

48 "Employer" means an employing unit which for some
49 portion of a day, not necessarily simultaneously, in each
50 of twenty different calendar weeks, which weeks need
51 not be consecutive, within either the current calendar
52 year or the preceding calendar year, has had in em-
53 ployment eight or more individuals irrespective of
54 whether the same individuals were or were not em-
55 ployed on each of such days.

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

58 (1) Service, including service in interstate commerce,
59 performed for wages or under any contract of hire, writ-
60 ten or oral, express or implied.

61 (2) The term "employment" shall include an indi-
62 vidual's entire service, performed within or both within
63 and without this state if: (a) The service is localized in this
64 state; or (b) the service is not localized in any state
65 but some of the service is performed in this state and
66 (one) the base of operations, or, if there is no base of
67 operations, then the place from which such service is
68 directed or controlled, is in this state; or (two) the

69 base of operations or place from which such service is
70 directed or controlled is not in any state in which
71 some part of the service is performed but the indi-
72 vidual's residence is in this state.

73 (3) Service not covered under paragraph (two) of
74 this subsection and performed entirely without this
75 state, with respect to no part of which contributions
76 are required and paid under an unemployment com-
77 pensation law of any other state or of the federal
78 government, shall be deemed to be employment subject
79 to this act if the individual performing such services is
80 a resident of this state and the director approves the
81 election of the employing unit for whom such services
82 are performed that the entire service of such individual
83 shall be deemed to be employment subject to this
84 act.

85 (4) Service shall be deemed to be localized within a
86 state if: (a) The service is performed entirely within
87 such state; or (b) the service is performed both within
88 and without such state, but the service performed
89 without such state is incidental to the individual's serv-

90 ice within the state. For example, is temporary or tran-
91 sitory in nature or consists of isolated transac-
92 tions.

93 (5) Services performed by an individual for wages
94 shall be deemed to be employment subject to this act
95 unless and until it is shown to the satisfaction of the
96 director that: (a) Such individual has been and will
97 continue to be free from control or direction over the
98 performance of such services, both under his con-
99 tract of service and in fact; and (b) such service is
100 either outside the usual course of the business for
101 which such service is performed or that such serv-
102 ice is performed outside of all the places of business
103 of the enterprise for which such service is performed;
104 and (c) such individual is customarily engaged in an
105 independently established trade, occupation, profession,
106 or business.

107 The term "employment" shall not include:

108 (1) Services performed in the employ of this state
109 or any political subdivision thereof, or any instrumen-
110 tality of this state or its subdivisions.

111 (2) Service performed directly in the employ of an-
112 other state, or its political subdivisions.

113 (3) Service performed in the employ of the United
114 States or an instrumentality of the United States ex-
115 empt under the Constitution of the United States from
116 the payments imposed by this law, except that to the
117 extent that the Congress of the United States shall
118 permit states to require any instrumentalities of the
119 United States to make payments into an unemployment
120 fund under a state unemployment compensation law, all
121 of the provisions of this law shall be applicable to such
122 instrumentalities, and to service performed for such in-
123 strumentalities, in the same manner, to the same extent
124 and on the same terms as to all other employers, em-
125 ploying units, individuals, and services; provided, that
126 if this state shall not be certified for any year by the
127 Social Security Board under section one thousand six
128 hundred three (c) of the Federal Internal Revenue
129 Code, the payments required of such instrumentalities
130 with respect to such year shall be refunded by the
131 director from the fund in the same manner and within

132 the same period as is provided in section nineteen of
133 article five of this law with respect to payments erroneously collected.

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

153 (5) Agricultural labor.

154 (6) Domestic service in a private home.

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

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

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

163 (10) Service performed in the employ of an employ-
164 ing unit organized and operated exclusively for re-
165 ligious, charitable, scientific, literary, or educational pur-
166 poses or for prevention of cruelty to children or animals,
167 no part of the net earnings of which inure to the benefit
168 of any private shareholder or individual.

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

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

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

180 "Normal shift" means the customary number of
181 hours constituting a full shift at the operation of the
182 claimant's regular employer.

183 "Payments" means the money required to be paid
184 into the state unemployment compensation fund as pro-
185 vided by article five of this chapter.

186 "State" includes in addition to the states of the
187 United States; Alaska, Hawaii, and the District of Co-
188 lumbia.

189 "Total and partial unemployment":

190 (1) An individual shall be deemed "totally unem-
191 ployed" in any week in which such individual is sepa-
192 rated from employment for an employing unit and dur-
193 ing which he performs no services and with respect to
194 which no wages are payable to him.

195 (2) An individual shall be deemed "partially unem-
196 ployed" in any pay period in which the total number of
197 normal shifts available are less than one-half the nor-
198 mal shift expectancy in such period. Odd job and/or
199 subsidiary work is deemed partial unemployment in any
200 week in which such service is performed and wages are
201 paid or payable for more than eight hours. In cases
202 involving partial unemployment as a result of odd job
203 and/or subsidiary work the pay period, normal shift,
204 normal shift expectancy and period for filing claims
205 will be such as the director may by regulation pre-
206 scribe.

207 (3) An individual's week of unemployment shall be
208 deemed to commence only after his registration at an
209 employment office, except as the director may by regula-
210 tion otherwise prescribe.

211 "Wages" means all remuneration for personal service,
212 including commissions and bonuses and the cash value of
213 all remuneration in any medium other than cash; pro-
214 vided that the term "wages" shall not include:

215 (1) That part of the remuneration which, after re-

216 muneration equal to three thousand dollars has been
217 paid to an individual by an employer with respect to
218 employment during any calendar year beginning with
219 the calendar year one thousand nine hundred forty, is
220 paid to such individual by such employer with re-
221 spect to employment during such calendar year.

222 (2) The amount of any payment made to, or on be-
223 half of, an individual in its employ (without deduction
224 from the remuneration of the individual in its employ)
225 under a plan or system established by an employer
226 which makes provision for individuals in its employ
227 generally or for a class or classes of such individuals
228 (including any amount paid by an employer for in-
229 surance or annuities, or into a fund, to provide for any
230 such payment), on account of (A) retirement, or (B)
231 sickness or accident disability, or (C) medical and hos-
232 pitalization expenses in connection with sickness or
233 accident disability, or (D) death: *Provided*, That the
234 individual in its employ (one) has not the option to
235 receive, instead of provision for such death benefit,
236 any part of such payment or, if such death benefit is

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

258 the course of his employment from persons other than
259 his employing unit shall be treated as wages paid by
260 his employing unit, if accounted for and reported to
261 such employing unit.

262 The reasonable cash value of remuneration in any
263 medium other than cash shall be estimated and de-
264 termined in accordance with rules prescribed by the
265 director.

266 "Week" means a calendar week, ending at midnight
267 Saturday, or the equivalent thereof, as determined in
268 accordance with the regulations prescribed by the di-
269 rector.

270 "Weekly benefit rate" means the maximum amount of
271 benefit an eligible individual will receive for one week
272 of total unemployment.

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

Article 2. The Director of Unemployment Compensation.

Section 6-a. *Reciprocal Agreements.*—The director may
2 enter into reciprocal arrangements with appropriate and

3 duly authorized agencies of other states or the federal
4 government, or both, whereby:

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

20 (2) Potential rights to benefits accumulated under the
21 unemployment compensation laws of one or more states
22 or under one or more such laws of the federal govern-
23 ment, or both, may constitute the basis for the payment

24 of benefits through a single appropriate agency under
25 terms which the director finds will be fair and reasonable
26 as to all affected interests and will not result in any sub-
27 stantial loss to the fund;

28 (3) Wages or services, upon the basis of which an in-
29 dividual may become entitled to benefits under an un-
30 employment compensation law of another state or of the
31 federal government, shall be deemed to be wages for
32 insured work for the purpose of determining his rights
33 to benefits under this chapter, and wages for insured
34 work, on the basis of which an individual may become
35 entitled to benefits under this chapter and shall be
36 deemed to be wages or services on the basis of which
37 unemployment compensation under such law of another
38 state or of the federal government is payable, but no
39 such arrangement shall be entered into unless it contains
40 provisions for reimbursements to the fund for such of
41 the benefits paid under this chapter upon the basis of
42 such wages or services, and provisions for reimburse-
43 ments from the fund for such of the compensation paid
44 under such other law upon the basis of wages for in-

45 sured work, as the director finds will be fair and reason-
46 able as to all affected interests; and

47 (4) Contributions due under this chapter with respect
48 to wages for insured work shall for the purposes of this
49 chapter be deemed to have been paid to the fund as of
50 the date payment was made as contributions therefor
51 under another state or federal unemployment compensa-
52 tion law, but no such arrangement shall be entered into
53 unless it contains provisions for such reimbursement to
54 the fund of such contributions as the director finds will
55 be fair and reasonable as to all affected interests.

56 (b) Reimbursements paid from the fund pursuant to
57 paragraph (three) of subsection (a) of this section shall
58 be deemed to be benefits for the purpose of this chapter.
59 The director is authorized to make to other state or fed-
60 eral agencies and to receive from such other state or fed-
61 eral agencies, reimbursements from or to the fund, in ac-
62 cordance with arrangements entered into pursuant to sub-
63 section (a) of this section.

64 (c) To the extent permissible under the laws and Con-
65 stitution of the United States, the director is authorized to

66 enter into or cooperate in arrangements whereby facili-
67 ties and services provided under this chapter and facilities
68 and services provided under the unemployment compen-
69 sation law of any foreign government, may be utilized for
70 the taking of claims and the payment of benefits under
71 the employment security law of this state or under a
72 similar law of such government.

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

2 distribution:

- 3 (1) The text of this chapter.
- 4 (2) The regulations and general rules of the division.
- 5 (3) Such other material as the director deems relevant
6 and suitable for the more effective administration of the
7 chapter, including, for distribution to employers and or-
8 ganizations and associations representative of employer
9 and employee interests, quarterly statements of the con-
10 dition of the unemployment compensation trust fund and
11 any other information relating to the administration
12 thereof which the director may deem to be pertinent and
13 proper.

Article 5. Employer Coverage and Responsibility.

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

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 service

6 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 (2) Benefits paid to an eligible individual shall be
10 charged against the accounts of his base period employers.
11 The amount of benefits so chargeable against each base
12 period 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
16 individual by all his base period employers.

17 (3) The director shall, for the year one thousand nine
18 hundred forty-one and for each calendar year thereafter,
19 classify employers in accordance with their actual expe-
20 rience in the payment of contributions on their own be-
21 half and with respect to benefits charged against their
22 accounts, with a view of fixing such contribution rates as
23 will reflect such experience. For the purpose of fixing
24 such contribution rates for each calendar year the books
25 of the department shall be closed on January thirty-one
26 of such year and any contributions thereafter paid with

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

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

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

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

Sec. 10. *Experience Ratings; Decreased Rates.*—On and
2 after January one, one thousand nine hundred forty-
3 three, after the requirements of section nine have been
4 complied with, an employer's payment shall remain two
5 and seven-tenths per cent (2.7%), until: (1) There has

6 elapsed three consecutive years throughout which an in-
7 dividual in his employ could have received benefits if
8 unemployed and eligible.

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

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

19 (4) His payments credited to his account for all past
20 years exceed the benefits charged to his account by an
21 amount equal to at least seven and one-half per cent
22 (7.5%) of his average annual pay roll, in which case his
23 rate shall be one and eight-tenths per cent (1.8%).

24 (5) His payments credited to his account for all past
25 years exceed the benefits charged to his account by an
26 amount equal to at least eight and one-half per cent (8.5%)

27 of his average annual pay roll, in which case his rate shall
28 be one and four-tenths per cent (1.4%).

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

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

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

12 (2) As of January first next following the calendar year

13 in which the unemployment compensation fund, including
14 the trust fund, clearing account, and benefit account, and
15 and excluding therefrom the amount required to pay the
16 benefit liability then accrued and unpaid, reaches the sum
17 of thirty million dollars, the director shall supersede such
18 suspension. New rates shall thereupon be computed as
19 provided in this chapter.

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

14 tinue as the rate of the acquiring employing unit until
15 the next computation date.

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

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

14 (2) If the director determines that the collection of any
15 contribution or interest under the provisions of this chap-
16 ter are or may be jeopardized by delay, he may, whether
17 or not the time prescribed by this chapter or any regula-

18 tions issued pursuant thereto for making reports and pay-
19 ing contributions has expired, immediately assess such
20 contribution, together with interest, then due or estimated
21 by him to be due, and shall give written notice of such
22 assessment to the employer: *Provided*, That such assess-
23 ment, unless based on information submitted by the em-
24 ployer, shall be subject to redetermination upon the same
25 condition and in the same manner as provided in sub-
26 section (one) hereof.

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

Article 6. Employee Eligibility; Benefits.

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

4 (1) He has registered for work at and thereafter con-
5 tinues to report at an employment office in accordance
6 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 full time

10 work for which he is fitted by prior training or experi-
11 ence.

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

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

Sec. 4. *Disqualifications 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 week in which he left work voluntarily
5 without good cause involving fault on the part of the
6 employer and the six weeks immediately following such
7 week. Such disqualification shall carry a reduction in
8 the maximum benefit amount equal to six times the in-
9 dividual's weekly benefit rate.

10 (2) For the week in which he was discharged for mis-
11 conduct and the six weeks immediately following such
12 week. Such disqualification shall carry a reduction in the

13 maximum benefit amount equal to six times the indi-
14 vidual's weekly benefit rate.

15 (3) For the week in which he failed, without good
16 cause, to apply for available suitable work, accept suitable
17 work when offered, or return to his customary self-em-
18 ployment when directed to do so by the director, and for
19 the four weeks which immediately follow and for such
20 additional period as any offer of suitable work shall con-
21 tinue open for his acceptance, and his maximum benefit
22 amount shall be reduced by an amount equal to his
23 weekly benefit rate times the number of weeks of dis-
24 qualification.

25 (4) For a week in which his total or partial unemploy-
26 ment is due to a stoppage of work which exists because
27 of a labor dispute at the factory, establishment, or other
28 premises at which he was last employed, unless the di-
29 rector is satisfied that he was not (one) participating,
30 financing, or directly interested in such dispute, and (two)
31 did not belong to a grade or class of workers who were
32 participating, financing, or directly interested in the labor
33 dispute which resulted in the stoppage of work. No dis-

34 qualification under this subsection shall be imposed if the
35 employees are required to accept wages, hours or condi-
36 tions of employment less favorable than those prevailing
37 for similar work in the locality, or if employees are de-
38 nied the right of collective bargaining under generally
39 prevailing conditions, or if an employer shuts down his
40 plant or operation or dismisses his employees in order to
41 force wage reduction, changes in hours or working con-
42 ditions.

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

45 (a) Wages in lieu of notice;

46 (b) Compensation for temporary partial disability un-
47 der the workmen's compensation law of any state or un-
48 der a similar law of the United States;

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

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

54 (6) For the week in which an individual is not em-

55 employed because of pregnancy, or has voluntarily quit em-
56 ployment to marry or to perform any marital, parental,
57 or family duty, or to attend to his or her personal business
58 or affairs, and until the individual returns to covered em-
59 ployment and has been employed in covered employment
60 at least thirty working days.

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

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

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

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

7 (3) His experience and prior earnings.

8 (4) His length of unemployment.

9 (5) His prospects of securing local work in his cus-
10 tomary occupation.

11 (6) The distance of the available work from his resi-
12 dence: *Provided, however,* That the distance from his new
13 residence shall not be considered in determining suitable
14 work if such distance from available work was created
15 as the result of the individual voluntarily changing his
16 residence to a locality other than that locality in which
17 he resided at the time he voluntarily quit his last employ-
18 ment without good cause involving fault on the part of
19 the employer.

Sec. 10. *Benefit Rate; Total Unemployment.*—Each
2 eligible individual who is totally unemployed in any week
3 shall be paid benefits with respect to that week at the
4 weekly rate appearing in column C in table A in this
5 paragraph, on line on which in column A there is indi-
6 cated the employee's wage class, except as otherwise pro-
7 vided under the term "total and partial unemployment"
8 in section three, article one of this chapter. The em-
9 ployee's wage class shall be determined by his base period
10 wages as shown in column B in table A. The right of an

11 employee to receive benefits shall not be prejudiced nor
 12 the amount thereof be diminished by reason of failure by
 13 an employer to pay either the wages earned by the em-
 14 ployee or the contribution 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 Unem- ployment
(Column A)	(Column B)	(Column C)	(Column D)
	Under—\$250.00	(Ineligible)	Amount
1	\$ 250.00— 399.99	\$ 7.00	\$112.00
2	400.00— 499.99	8.50	136.00
3	500.00— 599.99	9.50	152.00
4	600.00— 699.99	11.00	176.00
5	700.00— 749.99	11.50	184.00
6	750.00— 799.99	12.00	192.00
7	800.00— 849.99	12.50	200.00
8	850.00— 899.99	13.00	208.00
9	900.00— 949.99	14.00	224.00
10	950.00— 999.99	14.50	232.00
11	1000.00—1049.99	15.00	240.00
12	1050.00—1099.99	15.50	248.00
13	1100.00—1149.99	16.00	256.00
14	1150.00—1199.99	17.00	272.00
15	1200.00—1249.99	17.50	280.00
16	1250.00 and over	18.00	288.00

Sec. 11. *Rate of Benefit; Partial Unemployment.*—An
2 eligible individual who is partially unemployed in any
3 pay period shall, upon claim therefore filed within such
4 time and in such manner as the director may by regula-
5 tion prescribe, be paid benefits for such partial unemploy-
6 ment in an amount for such pay period in accordance with
7 his wage class and the number of normal shifts or their
8 equivalent, during the pay period, that no work was avail-
9 able as shown in table B in this paragraph hereinafter
10 contained, less any benefits paid or payable and any
11 waiting period credit allowed to such individual for total
12 unemployment in such pay period. Such partial benefits
13 shall be paid without regard to the current employment
14 status of such individual and shall be paid without regard
15 to the provisions of subsections one, three and four of sec-
16 tion 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	\$ 250.....	\$ 300.00	\$1.40	\$1.40	\$2.80	\$4.20	\$5.60	\$7.00	\$8.40	\$9.80	\$11.20	\$12.00	\$14.00	\$15.40	\$16.80
2	400.....	400.00	1.70	1.70	3.40	5.10	6.80	8.50	10.20	11.90	13.60	15.30	17.00	18.70	20.40
3	500.....	500.00	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
4	600.....	600.00	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
5	700.....	740.00	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
6	760.....	790.00	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
7	800.....	840.00	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
8	850.....	890.00	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
9	900.....	940.00	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
10	950.....	990.00	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
11	1000.....	1049.00	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
12	1050.....	1099.00	3.10	3.10	6.20	9.30	12.40	15.50	18.60	21.70	24.80	27.90	31.00	34.10	37.20
13	1100.....	1149.00	3.20	3.20	6.40	9.60	12.80	16.00	19.20	22.40	25.60	28.80	32.00	35.20	38.40
14	1150.....	1199.00	3.40	3.40	6.80	10.20	13.60	17.00	20.40	23.80	27.20	30.60	34.00	37.40	40.80
15	1200.....	1249.00	3.60	3.60	7.00	10.50	14.00	17.50	21.00	24.50	28.00	31.50	35.00	38.50	42.00
16	1260 and over.....		3.60	3.60	7.20	10.80	14.40	18.00	21.60	25.20	28.80	32.40	36.00	39.60	43.20

Sec. 21. *Persons in Military Service.*—Benefits shall be
2 payable, in accordance with general rules to be prescribed
3 by the director, to otherwise eligible individuals who
4 have entered the armed forces of the United States of
5 America since June thirty, one thousand nine hundred
6 forty, on the basis of their insured work prior to such
7 entrance. Such rules with respect to such individuals
8 shall supersede any inconsistent provisions of this chap-
9 ter, but so far as practicable shall secure results reason-
10 ably similar to those provided in the analogous provisions
11 of this chapter: *Provided, however,* (1) That such indi-
12 vidual has been discharged from the armed forces and
13 files a claim for benefits pursuant hereto prior to April
14 first, one thousand nine hundred forty-five; (2) that
15 “military service” as used herein means service in the
16 land, air, and naval forces of the United States, or any
17 other service in the armed forces of the United States
18 under any act of congress; and (3) that benefit rights
19 under this section shall not be payable until after the
20 benefit rights have been utilized under any act of Con-

21 gress providing a national system in regard to payments
22 to unemployed veterans.

Article 7. Claim Procedure.

Section 8. *Appeal from Deputy's Decision.*—A claimant,
2 last employer or any base period employer of a claimant,
3 or other interested party, may file an appeal from the
4 decision of the deputy within fifteen calendar days after
5 notice of the decision has been delivered or mailed by
6 registered mail to the claimant and last employer as pro-
7 vided in section four of this article. The period within
8 which an appeal from the decision of the deputy may be
9 filed shall be stated in such notice. The decision of the
10 deputy shall be final and benefits shall be paid or denied
11 in accordance therewith unless an appeal is filed within
12 such time.

13 Upon appeal from the determination of a deputy, an
14 individual shall be entitled to a fair hearing and reason-
15 able opportunity to be heard before an appeal tribunal
16 as provided in section seven of this article.

17 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-

6 fits shall be paid whether such decision reverses or affirms
7 the decision of the appeal tribunal and regardless of any
8 further appeal; but if the decision of the board is reversed
9 on appeal an employer's account shall not be charged with
10 the benefits so paid.

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

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

Sec. 22. *Judicial Review.*—Within twenty days after a
2 decision of the board has become final, any party ag-
3 grieved may secure judicial review of the decision by
4 commencing an action against the board in the circuit
5 court of Kanawha County. Parties to the proceedings be-

6 fore the board shall be made defendants. The director
7 shall be a necessary party to such judicial review.

Sec. 25. *Service upon Board.*—Service in such action
2 shall be upon the chairman of the board or such person
3 as he may designate, and service upon him shall be treated
4 as completed service upon all parties to the original dispute. With such service upon the board there shall be
5 included a copy of the petition for review and as many
6 additional copies as there are defendants, including the
7 director. The chairman of the board or such person as
8 he may designate shall immediately upon receipt of service forward a copy of such service, including a copy of
9 the petition for review, by registered mail to each defendant, including the director.

Article 10. General Provisions.

Section 4. *Records and Reports; Miscellaneous.*—(1)
2 An employing unit shall keep true and accurate work
3 records containing such information as the director may
4 prescribe. The record shall be open to inspection and
5 be subject to being copied by the director or his authorized representatives at any reasonable time.

- 7 (2) The director may cause to be made such summaries,
8 compilations, photographs, duplication, or reproduction
9 of any records, reports, or transcripts thereof as he may
10 deem advisable for the effective and economical preser-
11 vation of information contained therein, and such sum-
12 maries, compilations, photographs, duplication, or repro-
13 ductions duly authenticated, shall be admissible in any
14 proceeding under this chapter if the original record or rec-
15 ords would have been admissible therein and are un-
16 available.
- 17 (3) The director, with the concurrence of the majority
18 of the Advisory Council, may provide regulations for the
19 destruction or disposition, after reasonable periods, of any
20 records, reports, transcripts, or reproductions thereof, or
21 other papers in his custody, the preservation of which is
22 considered no longer necessary for the establishment of
23 contribution liability or benefit rights, or for any purpose
24 necessary to the proper administration of this chapter,
25 including any audit required.

Sec. 11. *Information.*—The director may require an em-

2 plying unit to provide sworn or unsworn reports con-
3 cerning:

- 4 (1) The number of individuals in its employ.
- 5 (2) Individually their hours of labor.
- 6 (3) Individually the rate and amount of wages.
- 7 (4) Such other information as is reasonably connected
8 with the administration of this chapter.

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

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

19 No action for slander or libel, either criminal or civil,
20 shall be predicated upon information furnished by any
21 employer or any employee to the director in connection
22 with the administration of any of the provisions of this
23 chapter.

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

Roy F. J. J. J.
Chairman Senate Committee

And H. P. P.
Chairman House Committee

Originated in the House of Delegates

Takes effect April 1, 1943 passage.

A. J. W. W.
Clerk of the Senate

P. P.
Clerk of the House of Delegates

James P. P.
President of the Senate

John E. C.
Speaker House of Delegates

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

Matthew A. Neely
Governor.

1

Filed in the office of the Secretary of State
of West Virginia MAR 9 1943

Wm. S. O'BRIEN,
Secretary of State