

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1945

ENROLLED

SENATE BILL No. 182

(By Mr. Vickers, Mr. President)

PASSED March 8 1945

In Effect April 1, 1945 Passage

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(BY MR. VICKERS, MR. PRESIDENT)

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[Passed March 8, 1945; in effect April 1, 1945.]

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AN ACT to amend and reenact section three, article one; section seventeen, article two; sections seven, ten, ten-a, ten-b, sixteen, seventeen, eighteen, and nineteen, article five; sections one, four, ten, eleven, and twenty-one, article six; section eleven, article seven; sections one, five, and seven, article eight; section eleven, article ten; to add section one-a to article six; to add section five-a to article nine, 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, relating to unemployment compensation.

*Be it enacted by the Legislature of West Virginia:*

That section three, article one; section seventeen, article two; sections seven, ten, ten-a, ten-b, sixteen, seventeen, eighteen, and nineteen, article five; sections one, four, ten, eleven, and twenty-one, article six; section eleven, article seven; sections one, five, and seven, article eight; section eleven, article ten; to add section one-a to article six; to add section five-a to article nine, 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 for  
7 employment paid by an employer during one year.

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

10 The "base period" for an individual who files an initial  
11 claim for benefits between April first and September  
12 thirtieth (both dates inclusive) of any year shall be the  
13 preceding calendar year; the base period for an individual  
14 who files an initial claim for benefits between October  
15 first and the next following March thirty-first (both dates  
16 inclusive) shall be the twelve consecutive month period  
17 ending on the preceding June thirtieth:

18 "Base period employer" means any employer who in the  
19 base period for any benefit year paid wages to an indi-  
20 vidual who filed claim for unemployment compensation  
21 within such benefit year.

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

24 "Benefit year" with respect to an individual means the  
25 fifty-two consecutive weeks period beginning with the  
26 day on which he filed a valid claim for benefits, and there-  
27 after the fifty-two consecutive weeks period beginning  
28 with the day on which such individual next files a valid

29 claim for benefits after the termination of his last pre-  
30 ceding benefit year. An initial claim for benefits filed in  
31 accordance with the provisions of this chapter shall be  
32 deemed to be a valid claim within the purposes of this  
33 definition if the individual has been paid wages in his  
34 base period sufficient to make him eligible for benefits  
35 under the provisions of this chapter.

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

38 "Board" means board of review.

39 "Calendar quarter" means the period of three consecu-  
40 tive calendar months ending on March thirty-one, June  
41 thirty, September thirty, or December thirty-one, or the  
42 equivalent thereof as the director may by regulation  
43 prescribe.

44 "Director" means the unemployment compensation  
45 director.

46 "Employing unit" means an individual, or type of or-  
47 ganization, including any partnership, association, trust,  
48 estate, joint stock company, insurance company, corpora-  
49 tion (domestic or foreign), or the receiver, trustee in

50 bankruptcy, trustee or successor thereof, or the legal  
51 representative of a deceased person, which has on Janu-  
52 ary first, one thousand nine hundred thirty-five, or subse-  
53 quent thereto, had in its employ one or more individuals  
54 performing service within this state.

55 "Employer" means an employing unit which for some  
56 portion of a day, not necessarily simultaneously, in each  
57 of twenty different calendar weeks, which weeks need  
57-a not be consecutive, within either the current calendar  
58 year, or the preceding calendar year, has had in employ-  
59 ment eight or more individuals irrespective of whether the  
60 same individuals were or were not employed on each of  
61 such days, or who or which is or becomes a liable employer  
62 under any federal unemployment tax act.

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

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

68 (2) The term "employment" shall include an indi-  
69 vidual's entire service, performed within or both within

70 and without this state if: (a) The service is localized in  
71 this state; or (b) the service is not localized in any state  
72 but some of the service is performed in this state and (i)  
73 the base of operations, or, if there is no base of operations,  
74 then the place from which such service is directed or  
75 controlled, is in this state; or (ii) the base of operations  
76 or place from which such service is directed or controlled  
77 is not in any state in which some part of the service is  
78 performed but the individual's residence is in this state.

79 (3) Service not covered under paragraph (2) of this  
80 subsection and performed entirely without this state,  
81 with respect to no part of which contributions are required  
82 and paid under an unemployment compensation law of  
83 any other state or of the federal government, shall be  
84 deemed to be employment subject to this act if the indi-  
85 vidual performing such services is a resident of this state  
86 and the director approves the election of the employing  
87 unit for whom such services are performed that the  
88 entire service of such individual shall be deemed to be  
89 employment subject to this act.

90 (4) Service shall be deemed to be localized within a

91 state, if: (a) The service is performed entirely within  
92 such state; or, (b) the service is performed both within  
93 and without such state, but the service performed without  
94 such state is incidental to the individual's service within  
95 this state. For example, is temporary or transitory in  
96 nature or consists of isolated transactions.

97 (5) Services performed by an individual for wages shall  
98 be deemed to be employment subject to this act unless and  
99 until it is shown to the satisfaction of the director that:

100 (a) Such individual has been and will continue to be  
101 free from control or direction over the performance of  
102 such services, both under his contract of service and in  
103 fact; and (b) such service is either outside the usual  
104 course of the business for which such service is per-  
105 formed or that such service is performed outside of all  
106 the places of business of the enterprise for which such  
107 service is performed; and (c) such individual is custom-  
108 arily engaged in an independently established trade,  
109 occupation, profession, or business.

110 The term "employment" shall not include:

111 (1) Services performed in the employ of this state or

112 any political subdivision thereof, or any instrumentality  
113 of this state or its subdivisions.

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

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

132 funded by the director from the fund in the same manner  
133 and within the same period as is provided in section nine-  
134 teen of article five of this law with respect to payments  
135 erroneously collected.

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

153 (5) Agricultural labor.

154 (6) Domestic service in a private home.

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

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

159 (9) Service performed in the employ of an employing  
160 unit organized and operated exclusively for religious,  
161 charitable, scientific, literary, or educational purposes or  
162 for prevention of cruelty to children or animals, no part  
163 of the net earnings of which inure to the benefit of any  
164 private shareholder or individual.

165 Notwithstanding the foregoing exclusions from the defi-  
166 nition of "employment," services shall be deemed to be  
167 in employment if with respect to such services a tax is  
168 required to be paid under any federal law imposing a tax  
169 against which credit may be taken for contributions  
170 required to be paid into a state unemployment compen-  
171 sation fund.

172 "Employment office" means a free employment office  
173 or branch thereof, operated by this state, or any free

174 public employment office maintained as a part of a state-  
175 controlled system of public employment offices in any  
176 other state.

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

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

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

184 "Total and partial unemployment":

185 (1) An individual shall be deemed to be totally unem-  
186 ployed in any week during which he performs no services  
187 and with respect to which no wages are payable to him.

188 (2) An individual shall be deemed to be partially  
189 unemployed in any week of less than full time work if  
190 wages payable to him with respect to such week are less  
191 than his weekly benefit amount.

192 "Wages" means all remuneration for personal service,  
193 including commissions and bonuses and the cash value

194 of all remuneration in any medium other than cash;  
195 provided that the term "wages" shall not include:

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

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

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

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

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

235 Gratuities customarily received by an individual in  
236 the course of his employment from persons other than his  
237 employing unit shall be treated as wages paid by his  
238 employing unit, if accounted for and reported to such  
239 employing unit.

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

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

246 "Weekly benefit rates" means the maximum amount of  
247 benefit an eligible individual will receive for one week  
248 of total unemployment.

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

## **Article 2. The Director of Unemployment Compensation.**

Section 17. *Federal-State Cooperation.*—The director  
2 shall have all powers and duties necessary to secure to  
3 the state the benefits of congressional action for the pro-

4 motion and maintenance of a system of public employ-  
5 ment offices. To this end the provisions of the act re-  
6 ferred to in the preceding section and such additional  
7 congressional action consistent with the above act are  
8 accepted by the state and the state pledges its observance  
9 and compliance therewith.

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

17 The director is also authorized, with the approval of  
18 the advisory council, to apply for an advance to the un-  
19 employment compensation fund in accordance with the  
20 conditions specified in title twelve of the social security  
21 act, as amended, in order to secure to this state and its  
22 citizens the advantages available under the provisions  
23 of that title.

**Article 5. Employer Coverage and Responsibility.**

Section 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 the  
7 fund, either on his own behalf or on behalf of such individ-  
8 uals. The account of any employer which has been in-  
9 active for a period of four consecutive calendar years  
10 shall be terminated for all purposes.

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

19 (3) The director shall, for the year one thousand nine  
20 hundred forty-one and for each calendar year there-

21 after, classify employers in accordance with their actual  
22 experience in the payment of contributions on their own  
23 behalf and with respect to benefits charged against their  
24 account, with a view of fixing such contribution rates  
25 as will reflect such experience. For the purpose of fixing  
26 such contribution rates for each calendar year the books  
27 of the department shall be closed on January thirty-one  
28 of such year, and any contributions thereafter paid with  
29 respect to wages paid for employment during preceding  
30 calendar years, as well as benefits thereafter paid with  
31 respect to compensable weeks ending on or before Decem-  
32 ber thirty-one of the preceding year, shall not be taken  
33 into account until the time for fixing contribution rates  
34 for the succeeding calendar year: *Provided, however,*  
35 That any payment made on or before the termination  
36 of an extension of time for such payment granted pur-  
37 suant to a regulation of the director authorizing such  
38 extension, shall be taken ~~in to~~ <sup>into</sup> account for the purpose of  
39 fixing contribution rates: *Provided further,* That when-  
40 ever through mistake or inadvertence erroneous credits  
41 or charges are found to have been made to or against

42 the reserve account of any employer, the rate shall be  
43 adjusted as of January one of the calendar year in which  
44 such mistake or inadvertence is discovered; but pay-  
45 ments made under any rate assigned prior to January  
46 one of such year shall not be deemed to be erroneously  
47 collected.

Sec. 10. *Experience Ratings; Decreased Rates.*—On and  
2 after January one, one thousand nine hundred forty-five,  
3 after the requirements of section nine have been complied  
4 with, an employer's payment shall remain two and seven-  
5 tenths per cent (2.7%), until: (1) There have elapsed  
6 three consecutive years immediately preceding the com-  
7 putation date throughout which an employer's account  
8 was chargeable with benefits.

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  
13 shall 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  
18 shall 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  
28 shall 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 nine per cent (9%) of his average  
32 annual pay roll, in which case his rate shall be one and  
33 two-tenths per cent (1.2%).

34 (7) His payments credited to his account for all past  
35 years exceed the benefits charged to his account by an

36 amount equal to at least ten per cent (10%) of his average  
37 annual pay roll, in which case his rate shall be nine-tenths  
38 of one per cent (0.9%).

39 (8) His payments credited to his account for all past  
40 years exceed the benefits charged to his account by an  
41 amount equal to at least eleven per cent (11%) of his  
42 average annual pay roll, in which case his rate shall be  
43 seven-tenths of one per cent (0.7%).

44 (9) His payments credited to his account for all past  
45 years exceed the benefits charged to his account by an  
46 amount equal to at least twelve per cent (12%) of his  
47 average annual pay roll, in which case his rate shall be  
48 five-tenths of one per cent (0.5%).

49 The director shall determine an employer's compliance  
50 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 maximum benefit amount as determined on all  
6 claims allowed, shall fall below the sum of thirty-five

7 million dollars, the director shall suspend the decreased  
8 rates as provided in this chapter, and all contributions  
9 of employers which are due and payable upon the next  
10 due date following such suspension shall be paid at the  
11 rate of two and seven-tenths per cent.

12 (2) As of January first next following the calendar year  
13 in which the unemployment compensation fund, includ-  
14 ing the trust fund, clearing account, and benefit account,  
15 and excluding therefrom the amount required to pay the  
16 maximum benefit amount as determined on all claims  
17 allowed, reaches the sum of forty million dollars, the  
18 director shall supersede such suspension. New rates shall  
19 thereupon be computed as 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  
6 and acquiring employers. The acquiring employer's  
7 contribution rate for the remainder of the calendar year  
8 shall not be affected by the transfer but such rate shall

9 apply to the whole of his business, including the portion  
10 acquired by the transfer, through the following Decem-  
11 ber thirty-first. If a subject employer shall make such  
12 transfer to an employing unit which is not an employer  
13 on the date of the transfer, such subject employer's rate  
14 shall continue as the rate of the acquiring employing unit  
15 until the next computation date: *Provided, however,*  
16 That in case the transferring employer is delinquent in  
17 the payment of contributions or interest thereon the  
18 acquiring employer shall not be entitled to any benefit  
19 of the contribution record of the transferring employer  
20 unless payment of such delinquent contributions and in-  
21 terest thereon is assumed by the acquiring employer.  
22 The director shall upon joint request of the transferor and  
23 transferee, before the transfer, furnish the transferee a  
24 statement of the amount of any contribution and interest  
25 due and unpaid by the transferor, and shall, upon such  
26 transfer, furnish such statement to the transferee upon  
27 the transferee's request. A statement so furnished shall  
28 be controlling for the purposes of the foregoing proviso.

Sec. 16. *Collection of Payments.*— (1) The director in the

2 name of the state shall commence a civil action against  
3 an employer who, after due notice, defaults in any pay-  
4 ment or interest thereon. If judgment is against the  
5 employer he shall pay the costs of the action. Civil  
6 actions under this section shall be given preference on  
7 the calendar of the court over all other civil actions ex-  
8 cept petitions for judicial review under article seven of  
9 this chapter and cases arising under the Workmen's  
10 Compensation Law.

11 (2) A payment and interest thereon due and unpaid  
12 under this chapter shall be a debt due the state in favor  
13 of the director. It shall be a personal obligation of the  
14 employer and shall, in addition thereto, be a lien, en-  
15 forceable by suit in equity, upon all the property of the  
16 employer: *Provided, however,* That no such lien shall be  
17 enforceable as against a purchaser (including lien credit-  
18 or) of real estate or personal property for a valuable  
19 consideration, without notice, unless docketed as provided  
20 in chapter ninety-nine, of the acts of the Legislature,  
21 regular session, one thousand nine hundred forty-three.

22 (3) In addition to all other civil remedies prescribed

23 herein the director may in the name of the state distrain  
24 upon any personal property, including intangibles, of  
25 any employer delinquent for any payment and interest  
26 thereon. If the director has good reason to believe that  
27 such property or a substantial portion thereof is about  
28 to be removed from the county in which it is situated,  
29 he may likewise distrain in the name of the state before  
30 such delinquency occurs. For such purpose the director  
31 may require the services of a sheriff of any county in  
32 the state in levying such distress in the county in which  
33 such sheriff is an officer and in which such personal  
34 property is situated. A sheriff so collecting any payments  
35 and interest thereon shall be entitled to such compensa-  
36 tion as is provided by law for his services in the levy  
37 and enforcement of executions.

38 (4) In case a business subject to the payments and  
39 interest thereon imposed under this chapter shall be  
40 operated in connection with a receivership or insolvency  
41 proceeding in any state court in this state, the court under  
42 whose direction such business is operated shall, by the  
43 entry of a proper order or decree in the cause, make pro-

44 vision, so far as the assets in administration will permit,  
45 for the regular payment of such payments as the same  
46 become due.

47 (5) The secretary of state of this state shall withhold  
48 the issuance of any certificate of dissolution or with-  
49 drawal in the case of any corporation organized under  
50 the laws of this state, or organized under the laws of an-  
51 other state and admitted to do business in this state,  
52 until notified by the director that all payments and in-  
53 terest thereon against any such corporation which is an  
54 employer under this chapter have been paid or that  
55 provision satisfactory to the <sup>Director</sup>~~director~~ has been made for  
56 payment.

Sec. 17. *Interest on Past-due Payments.* Payments un-  
2 paid on the date on which due and payable, as pre-  
3 scribed by the director, shall bear interest at the rate  
4 of one per cent per month until payment plus accrued  
5 interest is received by the director.

6 Interest collected pursuant to this section shall be  
7 paid into the unemployment compensation special ad-  
8 ministration fund.

Sec. 18. *Priorities.*—(1) In the event of any distribution  
2 of an employer's assets pursuant to an order of the  
3 court under a law of this state, payments then or there-  
4 after due and interest allowable thereon shall be paid in  
5 full prior to all other claims except taxes and claims  
6 for wages. Wage claims in excess of two hundred fifty  
7 dollars per claimant or earned more than six months  
8 before the commencement of the proceeding, shall not  
9 be entitled to priority.

10 (2) In the event of an employer's adjudication in  
11 bankruptcy, judicially confirmed extension proposal, or  
12 composition, under the Federal Bankruptcy Act of one  
13 thousand eight hundred ninety-eight, as amended, claims  
14 for payments then or thereafter due and interest thereon,  
15 which have not been reduced to lien, shall be entitled to  
16 such priority as is provided in said Bankruptcy Act for  
17 taxes due any state of the United States.

Sec. 19. *Refunds.*—Within two years after the date on  
2 which payment of contribution, or interest thereon, is  
3 made, an employer, who has paid such payment or in-  
4 terest, may make application for:

5 (1) An adjustment thereof in connection with subse-  
6 quent payments.

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

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

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

**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 experience.

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

14 (5) He has within his base period earned wages for em-  
15 ployment equal to not less than three hundred dollars.

Sec. 1-a. *Seasonal Employment.*—An individual work-  
2 ing less than one hundred days during his base period in  
3 an industry recognized as seasonal, such as food process-  
4 ing and canning, shall not be eligible for benefits unless  
5 he has earned wages during his base period in other  
6 covered employment equal to not less than one hundred  
7 dollars.

Sec. 4. *Disqualification for Benefits.*—Upon the deter-

2 mination of the facts by the director, an individual shall  
3 be disqualified for benefits:

4 (1) For the week in which he left his most recent work  
5 voluntarily without good cause, involving fault on the part  
6 of the employer, and the six weeks immediately following  
7 such week. Such disqualification shall carry a reduction in  
8 the maximum benefit amount equal to six times the indi-  
9 vidual's weekly benefit rate. However, if the claimant re-  
10 turns to work in covered employment during his benefit  
11 year the maximum benefit amount shall be increased by the  
12 amount of the decrease imposed under the disqualification.

13 (2) For the week in which he was discharged by his  
14 last employing unit for misconduct and the six weeks im-  
15 mediately following such week. Such disqualification  
16 shall carry a reduction in the maximum benefit amount  
17 equal to six times the individual's weekly benefit rate.  
18 However, if the claimant returns to work in covered em-  
19 ployment during his benefit year the maximum benefit  
20 amount shall be increased by the amount of the decrease  
21 imposed under the disqualification.

22 (3) For the week in which he failed without good cause,  
23 to apply for available suitable work, accept suitable work  
24 when offered, or return to his customary self-employ-  
25 ment when directed to do so by the director, and for the  
26 four weeks which immediately follow and for such addi-  
27 tional period as any offer of suitable work shall continue  
28 open for his acceptance, and his maximum benefit amount  
29 shall be reduced by an amount equal to his weekly bene-  
30 fit rate times the number of weeks of disqualification.  
31 However, if the claimant returns to work in covered em-  
32 ployment during his benefit year the maximum benefit  
33 amount shall be increased by the amount of the decrease  
34 imposed under the disqualification.

35 (4) For a week in which his total or partial unemploy-  
36 ment is due to a stoppage of work which exists because of  
37 a labor dispute at the factory, establishment, or other  
38 premises at which he was last employed, unless the di-  
39 rector is satisfied that he was not (one) participating,  
40 financing, or directly interested in such dispute, and  
41 (two) did not belong to a grade or class of workers who  
42 were participating, financing, or directly interested in the

43 labor dispute which resulted in the stoppage of work. No  
44 disqualification under this subsection shall be imposed if  
45 the employees are required to accept wages, hours or con-  
46 ditions of employment substantially less favorable than  
47 those prevailing for similar work in the locality, or if em-  
48 ployees are denied the right of collective bargaining un-  
49 der generally prevailing conditions, or if an employer  
50 shuts down his plant or operation or dismisses his em-  
51 ployees in order to force wage reduction, changes in  
52 hours or working conditions.

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

55 (a) Wages in lieu of notice or payments under any  
56 form of a separation wage plan.

57 (b) Compensation for temporary partial disability un-  
58 der the workmen's compensation law of any state or un-  
59 der a similar law of the United States.

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

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

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

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

79 (8) For the purposes of this section an employer's ac-  
80 count shall not be charged under any of the following con-  
81 ditions: (1) When benefits are paid without any disquali-  
82 fication to an individual who has left work voluntarily for  
83 good cause not attributable to the employer. (2) When

84 benefits are paid for unemployment immediately after the  
85 expiration of a period of disqualification for (a) leaving  
86 work voluntarily without good cause, (b) discharge for  
87 misconduct, (c) failing without good cause to apply for  
88 suitable work, accept suitable work when offered, or re-  
89 turn to his customary self-employment when directed to  
90 do so by the director.

Sec. 10. *Benefit Rate; Total Unemployment.*—Each eli-  
2 gible individual who is totally unemployed in any week  
3 shall be paid benefits with respect to that week at the  
4 weekly rate appearing in column (C) in table A in this  
5 paragraph, on the line on which in column (A) there  
6 is indicated the employee's wage class 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  
11 an employee to receive benefits shall not be prejudiced  
12 nor the amount thereof be diminished by reason of failure  
13 by an employer to pay either the wages earned by the em-  
14 ployee or the contribution due on such wages.

15

TABLE A

Maximum Benefit in  
Benefit Year for  
Total and/or Partial  
Unemployment

16	Wage	Wages in	Weekly	
17	Class	Base Period	Benefit Rate	
18	(Col. A)	(Col. B)	(Col. C)	(Col. D)
19		Under-\$ 300.00	Ineligible	Amount
20	1	\$ 300.00-\$ 399.00	\$ 8.00	\$168.00
21	2	400.00- 499.00	9.00	189.00
22	3	500.00- 599.00	10.00	210.00
23	4	600.00- 699.00	11.00	231.00
24	5	700.00- 799.00	12.00	252.00
25	6	800.00- 899.00	13.00	273.00
26	7	900.00- 999.00	14.00	294.00
27	8	1000.00- 1099.00	15.00	315.00
28	9	1100.00- 1199.00	16.00	336.00
29	10	1200.00- 1299.00	17.00	357.00
30	11	1300.00- 1399.00	17.50	367.50
31	12	1400.00- 1499.00	18.00	378.00

32	13	1500.00- 1599.00	18.50	388.50
33	14	1600.00- 1699.00	19.00	399.00
34	15	1700.00- 1799.00	19.50	409.50
35	16	1800.00 and over	20.00	420.00

Sec. 11. *Benefit Rate; Partial Unemployment.*—An eligible individual who is partially unemployed in any week shall upon claim therefor 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 equal to his weekly benefit rate, as determined in accordance with section ten of this article, less that part of wages from any source payable to him with respect to such week which is in excess of three dollars; provided, that such amount of benefits if not a multiple of one dollar shall be computed to the next higher multiple of one dollar. Such partial benefits shall be paid without regard to the current employment status of such individual, and without regard to the provisions of subsections one, three, and four, of section one, of this article, at the time he files his claim.

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 pro-  
11 visions of this chapter: *Provided, however,* (1) That such  
12 individual has been discharged or released from the  
13 armed forces under conditions other than dishonorable  
14 and files a claim for benefits pursuant hereto prior to  
15 April first, one thousand nine hundred forty-seven; (2)  
16 that “military service” as used herein means service in  
17 the land, air, and naval forces of the United States, or  
18 any other service in the armed forces of the United States  
19 under any act of Congress; and (3) that benefit rights  
20 under this section shall not be payable until after the  
21 benefit rights have been utilized under any act of Con-

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

**Article 7. Claim Procedure.**

Section 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. If  
4 benefits are allowed by the decision of the board on ap-  
5 peal from the decision of the appeal tribunal the benefits  
6 shall be paid whether such decision reverses or affirms the  
7 decision of the appeal tribunal and regardless of any fur-  
8 ther appeal: *Provided*, That such decision does not relate  
9 to a disqualification under subsection (4) of section four  
10 of article six; but if the decision of the board is re-  
11 versed on appeal an employer's account shall not be  
12 charged with the benefits so paid.

**Article 8. Unemployment Compensation Fund.**

Section 1. *Establishment.*—There is hereby established  
2 as a special fund, separate and apart from all public  
3 moneys or funds of the state, an unemployment com-  
4 pensation fund. The fund shall consist of:  
5 (1) All payments collected under this chapter.

6 (2) Interest earned upon money in the fund.

7 (3) Property or securities acquired through the use of  
8 the fund.

9 (4) Earnings of such property or securities.

10 (5) Amounts transferred from the unemployment  
11 compensation special administration fund.

12 (6) Any moneys received from the federal unemploy-  
13 ment account in the unemployment trust fund in ac-  
14 cordance with title twelve of the social security act, as  
15 amended.

16 All money in the fund shall be mingled and undivided.

Sec. 5. *Clearing Account.*—Upon the receipt of pay-  
2 ments and other moneys payable into the fund under this  
3 chapter, the director shall immediately deposit them in  
4 the clearing account. Refunds payable under section  
5 nineteen, article five, of payments erroneously collected,  
6 shall be made from the clearing account. Such refunds  
7 shall be made upon warrants issued by the director.  
8 Interest collected on delinquent payments shall be paid  
9 out of the clearing account, upon warrants issued by the  
10 director, into the state treasury to be credited to the

11 unemployment compensation special administration fund.

Sec. 7. *Deposit with Federal Government.*—Except as  
2 otherwise provided in section five of this article, after  
3 clearance, moneys in the clearing account shall be de-  
4 posited immediately with the secretary of the treasury  
5 of the United States to the credit of the account of this  
6 state in the unemployment trust fund, established under  
7 section nine hundred four of the social security act. The  
8 deposit of these funds shall not be conditioned by the  
9 requirements imposed upon public funds of this state.

**Article 9. Unemployment Compensation Administration Funds.**

Section 5-a. *Special Administration Fund.*—There is  
2 hereby created in the state treasury a fund to be known  
3 as the unemployment compensation special administra-  
4 tion fund, which shall consist of interest collected on  
5 delinquent payments pursuant to section seventeen of  
6 article five of this chapter. The moneys deposited with  
7 this fund are hereby appropriated and made available  
8 to the order of the director for the purpose of (a) replace-  
9 ments in the unemployment compensation administration

10 fund as provided in section eight of this article, (b) to  
11 meet special, extraordinary, and contingent expenses not  
12 provided for in the unemployment compensation adminis-  
13 tration fund, and (c) refunds purusant to section nine-  
14 teen of article five, of interest erroneously collected. This  
15 fund shall be administered and disbursed in the same  
16 manner and under the same conditions as other special  
17 funds of the state treasury. Balances to the credit of  
18 the special administration fund shall not lapse at any  
19 time but shall be continuously available to the director  
20 for expenditures consistent with this chapter: *Provided*,  
21 (1) that not more than twelve thousand five hundred  
22 dollars shall be expended from said fund in any fiscal  
23 year for purposes (a) and (b); (2) that at the beginning  
24 of each calendar quarter the director shall estimate the  
25 amount that may be required in that quarter for refunds  
26 of interest erroneously collected; (3) that thereupon the  
27 excess, if any, over the amounts provided to be expended  
28 under this section shall be paid into the unemployment  
29 compensation trust fund.

**Article 10. General Provisions.**

Section 11. *Information.*—The director may require an  
2 employing unit to provide sworn or unsworn reports  
3 concerning:

- 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 or the individual. A claimant of  
12 benefit, however, shall be supplied with information from  
13 such records to the extent necessary for the proper  
14 presentation of his claim. Such information may be made  
15 available to any agency of this or any other state, or any  
16 federal agency, charged with the administration of an  
17 unemployment compensation law or the maintenance of  
18 a system of public employment offices.

19 A person who violates the provisions of this section  
20 shall be guilty of a misdemeanor, and upon conviction

21 shall be fined not less than twenty dollars nor more than  
22 two hundred dollars, or imprisoned not longer than ninety  
23 days, or both.

24 No action for slander or libel, either criminal or civil,  
25 shall be predicated upon information furnished by any  
26 employer or any employee to the director in connection  
27 with the administration of any of the provisions of this  
28 chapter.

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

Charles C Morris

Chairman Senate Committee

John DeLoach Jr.  
Chairman House Committee

Originated in the Senate

Takes effect April 1, 1945 passage

Howard T. Lee  
Clerk of the Senate

John P. Stapp  
Clerk of the House of Delegates

Arnold W. Sickers  
President of the Senate

John E. Amor  
Speaker House of Delegates

The within Approved this the 15<sup>th</sup>  
day of March, 1945.

Oliver M. Edwards  
Governor.

Filed in the office of the Secretary of State  
of West Virginia MAR 16 1945

Wm. S. O'BRIEN,  
Secretary of State