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

182
ENROLLED
Senate Bill No. 182
(By Mr. Vickers, Mr. President)

[Passed March 9, 1945; in effect April 1, 1945.]

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 the context clearly requires otherwise:

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

“Annual payroll” means the total amount of wages for employment paid by an employer during one year.
"Average annual payroll" means the average of the annual payrolls of an employer for the last three years.

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

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

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

"Benefit year" with respect to an individual means the fifty-two consecutive weeks period beginning with the day on which he filed a valid claim for benefits, and thereafter the fifty-two consecutive weeks period beginning 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
bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has on January first, one thousand nine hundred thirty-five, or subsequent thereto, had in its employ one or more individuals performing service within this state.

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

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

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

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

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

(4) Service shall be deemed to be localized within a
state, if: (a) The service is performed entirely within such state; or, (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within this state. For example, is temporary or transitory in nature or consists of isolated transactions.

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

(a) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and (b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

The term “employment” shall not include:

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

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

(3) Service performed in the employ of the United States or an instrumentality of the United States exempt under the Constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this state shall not be certified for any year by the social security board under section one thousand six hundred three (c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be re-
funded by the director from the fund in the same manner
and within the same period as is provided in section nine-
teen of article five of this law with respect to payments
erroneously collected.

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

(6) Domestic service in a private home.

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

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

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

Notwithstanding the foregoing exclusions from the definition of “employment,” services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

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

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

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

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

"Total and partial unemployment":

(1) An individual shall be deemed to be totally unemployed in any week during which he performs no services and with respect to which no wages are payable to him.

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

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

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

(2) The amount of any payment made to, or on behalf
of, an individual in its employ (without deduction from
the remuneration of the individual in its employ), under
a plan or system established by an employer which makes
provision for individuals in its employ generally or for a
class or classes of such individuals (including any amount
paid by an employer for insurance or annuities, or into
a fund, to provide for any such payment), on account of
(A) retirement, or (B) sickness or accident disability,
or (C) medical and hospitalization expenses in connec-
tion with sickness or accident disability, or (D) death:

Provided, That the individual in its employ (i) has not
the option to receive, instead of provision for such death
benefit, any part of such payment or, if such death benefit
is insured, any part of the premiums (or contributions to
217-a premiums) paid by his employer, and (ii) has not the
right, under the provisions of the plan or system or policy
of insurance providing for such death benefit, to assign
such benefit, or to receive such consideration in lieu of such
benefit either upon his withdrawal from the plan or sys-
tem providing for such benefit or upon termination of
such plan or system or policy or of insurance of his services
with such employer.

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

(4) Payments, not required under any contract of hire,
made to an individual with respect to his period of train-
ing or service in the armed forces of the United States by
any employer by which such individual was formerly
employed.
Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid by his employing unit, if accounted for and reported to such employing unit.

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

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

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

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

Article 2. The Director of Unemployment Compensation.

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

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

The director is also authorized, with the approval of the advisory council, to apply for an advance to the unemployment compensation fund in accordance with the conditions specified in title twelve of the social security act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of that title.
Article 5. Employer Coverage and Responsibility.

Section 7. Separate Accounts.—(1) The director shall maintain a separate account for each employer, and shall credit his account with all contributions heretofore and hereafter paid by him. Nothing in this act shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the fund, either on his own behalf or on behalf of such individuals. The account of any employer which has been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

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

(3) The director shall, for the year one thousand nine hundred forty-one and for each calendar year there-
after, classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their account, with a view of fixing such contribution rates as will reflect such experience. For the purpose of fixing such contribution rates for each calendar year the books of the department shall be closed on January thirty-one of such year, and any contributions thereafter paid with respect to wages paid for employment during preceding calendar years, as well as benefits thereafter paid with respect to compensable weeks ending on or before December thirty-one of the preceding year, shall not be taken into account until the time for fixing contribution rates for the succeeding calendar year: Provided, however, That any payment made on or before the termination of an extension of time for such payment granted pursuant to a regulation of the director authorizing such extension, shall be taken into account for the purpose of fixing contribution rates: Provided further, That whenever through mistake or inadvertence erroneous credits or charges are found to have been made to or against
the reserve account of any employer, the rate shall be
adjusted as of January one of the calendar year in which
such mistake or inadvertence is discovered; but pay-
ments made under any rate assigned prior to January
one of such year shall not be deemed to be erroneously
collected.

Sec. 10. Experience Ratings; Decreased Rates.—On and
after January one, one thousand nine hundred forty-five,
after the requirements of section nine have been complied
with, an employer's payment shall remain two and seven-
tenths per cent (2.7%), until: (1) There have elapsed
three consecutive years immediately preceding the com-
putation date throughout which an employer's account
was chargeable with benefits.
(2) His payments credited to his account for all past
years exceed the benefits charged to his account by an
amount equal to at least five and one-half per cent (5.5%)
of his average annual pay roll, in which case his rate
shall be two and four-tenths per cent (2.4%).
(3) His payments credited to his account for all past
years exceed the benefits charged to his account by an
amount equal to at least six and one half per cent (6.5%) of his average annual pay roll, in which case his rate shall be two and one-tenth per cent (2.1%).

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

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

(6) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least nine per cent (9%) of his average annual pay roll, in which case his rate shall be one and two-tenths per cent (1.2%).

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

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

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

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

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

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

Sec. 10-b. Transfer of Business.—If a subject employer shall transfer his entire organization, trade or business, or substantially all the assets thereof, to another employer, the director shall combine the contribution records and the benefit experience records of the transferring and acquiring employers. The acquiring employer's contribution rate for the remainder of the calendar year shall not be affected by the transfer but such rate shall
Enr. S. B. No. 182] 22

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

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

(3) In addition to all other civil remedies prescribed
Enr. S. B. No. 182] 24

23 therein 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-
vision, so far as the assets in administration will permit,
for the regular payment of such payments as the same
become due.

(5) The secretary of state of this state shall withhold
the issuance of any certificate of dissolution or with-
drawal in the case of any corporation organized under
the laws of this state, or organized under the laws of an-
other state and admitted to do business in this state,
until notified by the director that all payments and in-
terest thereon against any such corporation which is an
employer under this chapter have been paid or that
provision satisfactory to the director has been made for
payment.

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

Interest collected pursuant to this section shall be
paid into the unemployment compensation special ad-
ministration fund.
Sec. 18. Priorities.—(1) In the event of any distribution of an employer's assets pursuant to an order of the court under a law of this state, payments then or thereafter due and interest allowable thereon shall be paid in full prior to all other claims except taxes and claims for wages. Wage claims in excess of two hundred fifty dollars per claimant or earned more than six months before the commencement of the proceeding, shall not be entitled to priority.

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

Sec. 19. Refunds.—Within two years after the date on which payment of contribution, or interest thereon, is made, an employer, who has paid such payment or interest, may make application for:
(1) An adjustment thereof in connection with subsequent payments.

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

If the director determines that payments and interest were erroneously collected, he shall make the adjustment, without interest, in connection with subsequent payments of the employer, or if such adjustment cannot be made, refund the amount of the payments erroneously collected, without interest, from the clearing account of the unemployment compensation fund, and the amount of the interest erroneously collected, from the unemployment compensation special administration fund.

For like cause and within the same period the director, on his own initiative, may make an adjustment or refund:

Provided, That nothing in this chapter shall be construed as permitting a cash refund of any contribution required under the law in effect when such contribution became due.

Article 6. Employee Eligibility; Benefits.

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

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

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

(3) He is able to work and is available for full time
work for which he is fitted by prior training or experience.

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

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

Sec. 1-a. **Seasonal Employment.**—An individual work-
ing less than one hundred days during his base period in
an industry recognized as seasonal, such as food process-
ing and canning, shall not be eligible for benefits unless
he has earned wages during his base period in other
covered employment equal to not less than one hundred
dollars.
Sec. 4. *Disqualification for Benefits.*—Upon the determination of the facts by the director, an individual shall be disqualified for benefits:

1. For the week in which he left his most recent work voluntarily without good cause, involving fault on the part of the employer, and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate. However, if the claimant returns to work in covered employment during his benefit year the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification.

2. For the week in which he was discharged by his last employing unit for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate. However, if the claimant returns to work in covered employment during his benefit year the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification.
(3) For the week in which he failed without good cause, to apply for available suitable work, accept suitable work when offered, or return to his customary self-employment when directed to do so by the director, and for the four weeks which immediately follow and for such additional period as any offer of suitable work shall continue open for his acceptance, and his maximum benefit amount shall be reduced by an amount equal to his weekly benefit rate times the number of weeks of disqualification. However, if the claimant returns to work in covered employment during his benefit year the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification.

(4) For a week in which his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he was last employed, unless the director is satisfied that he was not (one) participating, financing, or directly interested in such dispute, and (two) did not belong to a grade or class of workers who were participating, financing, or directly interested in the
labor dispute which resulted in the stoppage of work. No disqualification under this subsection shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his plant or operation or dismisses his employees in order to force wage reduction, changes in hours or working conditions.

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

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

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

(c) Remuneration in the form of a primary insurance benefit under title two of the social security act, as amended, or similar payments under any act of Congress.
(d) Unemployment compensation benefits under the laws of the United States or any other state.

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

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

(8) For the purposes of this section an employer’s account shall not be charged under any of the following conditions: (1) When benefits are paid without any disqualification to an individual who has left work voluntarily for good cause not attributable to the employer. (2) When
benefits are paid for unemployment immediately after the expiration of a period of disqualification for (a) leaving work voluntarily without good cause, (b) discharge for misconduct, (c) failing without good cause to apply for suitable work, accept suitable work when offered, or return to his customary self-employment when directed to do so by the director.

Sec. 10. Benefit Rate; Total Unemployment.—Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in column (C) in table A in this paragraph, on the line on which in column (A) there is indicated the employee's wage class as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in column (B) in table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages.
<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period</th>
<th>Weekly Benefit Rate</th>
<th>Maximum Benefit Year for Total and/or Partial Unemployment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Col. A)</td>
<td>(Col. B)</td>
<td>(Col. C)</td>
<td>(Col. D)</td>
</tr>
<tr>
<td>Under-$300.00</td>
<td>Ineligible</td>
<td>$8.00</td>
<td>$168.00</td>
</tr>
<tr>
<td>$300.00-$399.00</td>
<td>9.00</td>
<td>189.00</td>
<td></td>
</tr>
<tr>
<td>400.00-499.00</td>
<td>10.00</td>
<td>210.00</td>
<td></td>
</tr>
<tr>
<td>500.00-599.00</td>
<td>11.00</td>
<td>231.00</td>
<td></td>
</tr>
<tr>
<td>600.00-699.00</td>
<td>12.00</td>
<td>252.00</td>
<td></td>
</tr>
<tr>
<td>700.00-799.00</td>
<td>13.00</td>
<td>273.00</td>
<td></td>
</tr>
<tr>
<td>800.00-899.00</td>
<td>14.00</td>
<td>294.00</td>
<td></td>
</tr>
<tr>
<td>900.00-999.00</td>
<td>15.00</td>
<td>315.00</td>
<td></td>
</tr>
<tr>
<td>1000.00-1099.00</td>
<td>16.00</td>
<td>336.00</td>
<td></td>
</tr>
<tr>
<td>1100.00-1199.00</td>
<td>17.00</td>
<td>357.00</td>
<td></td>
</tr>
<tr>
<td>1200.00-1299.00</td>
<td>17.50</td>
<td>367.50</td>
<td></td>
</tr>
<tr>
<td>1300.00-1399.00</td>
<td>18.00</td>
<td>378.00</td>
<td></td>
</tr>
<tr>
<td>1400.00-1499.00</td>
<td>18.50</td>
<td>388.50</td>
<td></td>
</tr>
</tbody>
</table>
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 payable, in accordance with general rules to be prescribed by the director, to otherwise eligible individuals who have entered the armed forces of the United States of America since June thirty, one thousand nine hundred forty, on the basis of their insured work prior to such entrance. Such rules with respect to such individuals shall supersede any inconsistent provisions of this chapter, but so far as practicable shall secure results reasonably similar to those provided in the analogous provisions of this chapter: Provided, however, (1) That such individual has been discharged or released from the armed forces under conditions other than dishonorable and files a claim for benefits pursuant hereto prior to April first, one thousand nine hundred forty-seven; (2) that "military service" as used herein means service in the land, air, and naval forces of the United States, or any other service in the armed forces of the United States under any act of Congress; and (3) that benefit rights under this section shall not be payable until after the benefit rights have been utilized under any act of Con-
Article 7. Claim Procedure.

Section 11. Benefits Pending Appeal.—If an appeal is filed, benefits for the period prior to final determination of the board shall be paid only after such determination. If benefits are allowed by the decision of the board on appeal from the decision of the appeal tribunal the benefits shall be paid whether such decision reverses or affirms the decision of the appeal tribunal and regardless of any further appeal: Provided, That such decision does not relate to a disqualification under subsection (4) of section four of article six; but if the decision of the board is reversed on appeal an employer's account shall not be charged with the benefits so paid.

Article 8. Unemployment Compensation Fund.

Section 1. Establishment.—There is hereby established as a special fund, separate and apart from all public moneys or funds of the state, an unemployment compensation fund. The fund shall consist of:

(1) All payments collected under this chapter.
(2) Interest earned upon money in the fund.

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

(4) Earnings of such property or securities.

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

(6) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with title twelve of the social security act, as amended.

All money in the fund shall be mingled and undivided.

Sec. 5. Clearing Account.—Upon the receipt of payments and other moneys payable into the fund under this chapter, the director shall immediately deposit them in the clearing account. Refunds payable under section nineteen, article five, of payments erroneously collected, shall be made from the clearing account. Such refunds shall be made upon warrants issued by the director. Interest collected on delinquent payments shall be paid out of the clearing account, upon warrants issued by the director, into the state treasury to be credited to the
unemployment compensation special administration fund.

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

Article 9. Unemployment Compensation Administration Funds.

Section 5-a. Special Administration Fund.—There is hereby created in the state treasury a fund to be known as the unemployment compensation special administration fund, which shall consist of interest collected on delinquent payments pursuant to section seventeen of article five of this chapter. The moneys deposited with this fund are hereby appropriated and made available to the order of the director for the purpose of (a) replacement
fund as provided in section eight of this article, (b) to meet special, extraordinary, and contingent expenses not provided for in the unemployment compensation administration fund, and (c) refunds pursuant to section nineteen of article five, of interest erroneously collected. This fund shall be administered and disbursed in the same manner and under the same conditions as other special funds of the state treasury. Balances to the credit of the special administration fund shall not lapse at any time but shall be continuously available to the director for expenditures consistent with this chapter: Provided, (1) that not more than twelve thousand five hundred dollars shall be expended from said fund in any fiscal year for purposes (a) and (b); (2) that at the beginning of each calendar quarter the director shall estimate the amount that may be required in that quarter for refunds of interest erroneously collected; (3) that thereupon the excess, if any, over the amounts provided to be expended under this section shall be paid into the unemployment compensation trust fund.

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

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

Information thus obtained shall not be published or be open to public inspection so as to reveal the identity of the employing unit or the individual. A claimant of benefit, however, shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

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

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

Charles C. Morris
Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect April 1, 1945

J. Howard Price
Clerk of the Senate

Clerk of the House of Delegates

Arnold W. Sickles
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 15th day of March, 1945.

W. Wilson Moore
Governor

Filed in the office of the Secretary of State
of West Virginia, MAR 16 1945
Wm. S. O'Brien, Secretary of State