

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

SENATE BILL No. 270

(By Mr. Vickers, Mr. President)



PASSED March 8, 1947

In Effect April 1, 1947 Passage



270

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(By MR. VICKERS, MR. PRESIDENT)

[Passed March 8, 1947; in effect April 1, 1947.]

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

Be it enacted by the Legislature of West Virginia:

That section three, article one; section six-a, article two; sections five and six, article four; sections seven, ten and ten-b, article five; sections four and ten, article six; sections eight, nine, ten, and fifteen, article seven; and sections eleven and

seventeen, article ten, 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 admin-
5 istrative expenses under this chapter shall be paid;

6 “Annual payroll” means the total amount of wages for
7 employment paid by an employer during a twelve month
8 period ending with June thirty of any calendar year.

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

11 The “base period” for an individual who files an initial
12 claim for benefits between April first and September thir-
13 tieth (both dates inclusive) of any year shall be the pre-
14 ceding calendar year; the base period for an individual
15 who files an initial claim for benefits between October

16 first and the next following March thirty-first (both dates
17 inclusive) shall be the twelve consecutive month period
18 ending on the preceding June thirtieth;

19 "Base period employer" means any employer who in
20 the base period for any benefit year paid wages to an
21 individual who filed claim for unemployment compen-
22 sation within such benefit year;

23 "Base period wages" means wages paid to an indi-
24 vidual during the base period by all his base period
25 employers;

26 "Benefit year" with respect to an individual means the
27 one year period beginning with the day on which he filed
28 a valid claim for benefits, and thereafter the one year
29 period beginning with the day on which such individual
30 next files a valid claim for benefits after the termination
31 of his last preceding benefit year. An initial claim for
32 benefits filed in accordance with the provisions of this
33 chapter shall be deemed to be a valid claim within the
34 purposes of this definition if the individual has been paid
35 wages in his base period sufficient to make him eligible
36 for benefits under the provisions of this chapter;

37 "Benefits" means the money payable to an individual
38 with respect to his unemployment;

39 "Board" means board of review;

40 "Calendar quarter" means the period of three con-
41 secutive calendar months ending on March thirty-one,
42 June, thirty, September thirty, or December thirty-one,
43 or the equivalent thereof as the director may by regula-
44 tion prescribe;

45 "Computation date" means June thirty of the year im-
46 mediately preceding the January one, on which an em-
47 ployer's contribution rate becomes effective;

48 "Director" means the unemployment compensation
49 director;

50 "Employing unit" means an individual, or type of or-
51 ganization, including any partnership, association, trust,
52 estate, joint stock company, insurance company, corpora-
53 tion (domestic or foreign), or the receiver, trustee in
54 bankruptcy, trustee or successor thereof, or the legal
55 representative of a deceased person, which has on Janu-
56 ary first, one thousand nine hundred thirty-five, or sub-
57 sequent thereto, had in its employ one or more individ-

58 uals performing service within this state;

59 "Employer" means an employing unit which for some
60 portion of a day, not necessarily simultaneously, in each
61 of twenty different calendar weeks, which weeks need not
62 be consecutive, within either the current calendar year,
63 or the preceding calendar year, has had in employment
64 eight or more individuals irrespective of whether the
65 same individuals were or were not employed on each of
66 such days, or who or which is or becomes a liable em-
67 ployer under any federal unemployment tax act;

68 "Employment", subject to the other provisions of this
69 section, means:

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

73 (2) The term "employment" shall include an individ-
74 ual's entire service, performed within or both within and
75 without this state if: (a) The service is localized in this
76 state; or (b) the service is not localized in any state but
77 some of the service is performed in this state and (i) the
78 base of operations, or, if there is no base of operations,

79 then the place from which such service is directed or con-
80 trolled, is in this state; or (ii) the base of operations or
81 place from which such service is directed or controlled is
82 not in any state in which some part of the service is per-
83 formed but the individual's residence is in this state.

84 (3) Service not covered under paragraph two of this
85 sub-section and performed entirely without this state,
86 with respect to no part of which contributions are re-
87 quired and paid under an unemployment compensation
88 law of any other state or of the federal government, shall
89 be deemed to be employment subject to this chapter if
90 the individual performing such services is a resident of
91 this state and the director approves the election of the
92 employing unit for whom such services are performed
93 that the entire service of such individual shall be deemed
94 to be employment subject to this chapter.

95 (4) Service shall be deemed to be localized within a
96 state, if: (a) The service is performed entirely within
97 such state; or (b) the service is performed both within
98 and without such state; or (c) the service is performed
99 both within and without such state, but the service per-

100 formed without such state is incidental to the individual's
101 service within this state. For example, is temporary or
102 transitory in nature or consists of isolated transactions.

103 (5) Services performed by an individual for wages
104 shall be deemed to be employment subject to this chapter
105 unless and until it is shown to the satisfaction of the di-
106 rector that: (a) Such individual has been and will con-
107 tinue to be free from control or direction over the per-
108 formance of such services, both under his contract of
109 service and in fact; and (b) such service is either outside
110 the usual course of the business for which such service
111 is performed or that such service is performed outside
112 of all the places of business of the enterprise for which
113 such service is performed; and (c) such individual is
114 customarily engaged in an independently established
115 trade, occupation, profession or business.

116 (6) All service performed by an officer or member
117 of the crew of an American vessel (as defined in section
118 three hundred five of an act of Congress entitled "Social
119 Security Act Amendment of 1946," approved August
120 tenth, one thousand nine hundred forty-six) on or in

121 connection with such vessel, provided that the operating
122 office, from which the operations of such vessel operat-
123 ing on navigable waters within or within and without
124 the United States is ordinarily and regularly super-
125 vised, managed, directed and controlled, is within this
126 state.

127 The term "employment" shall not include

128 (1) Services performed in the employ of this
129 state or any political subdivision thereof, or any
130 instrumentality of this state or its subdivi-
131 sions.

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

134 (3) Service performed in the employ of the United
135 States or an instrumentality of the United States exempt
136 under the Constitution of the United States from the
137 payments imposed by this law, except that to the extent
138 that the Congress of the United States shall permit states
139 to require any instrumentalities of the United States to
140 make payments into an unemployment fund under a
141 state unemployment compensation law, all of the provi-

142 sions of this law shall be applicable to such instrumen-
143 talities, and to service performed for such instrumentali-
144 ties, in the same manner, to the same extent and on the
145 same terms as to all other employers, employing units,
146 individuals, and services: *Provided*, That if this state
147 shall not be certified for any year by the social security
148 administration under section one thousand six hundred
149 three (c) of the federal internal revenue code, the pay-
150 ments required of such instrumentalities with respect to
151 such year shall be refunded by the director from the
152 fund in the same manner and within the same period
153 as is provided in section nineteen of article five of this
154 chapter with respect to payments erroneously collected.

155 (4) Service performed after June thirty, one thousand
156 nine hundred thirty-nine, with respect to which unem-
157 ployment compensation is payable under the railroad
158 unemployment insurance act (fifty-two stat. one thou-
159 sand ninety-four), and service with respect to which
160 unemployment benefits are payable under an unemploy-
161 ment compensation system for maritime employees estab-
162 lished by an act of Congress. The director may enter

163 into agreements with the proper agency established un-
164 der such an act of Congress to provide reciprocal treatment
165 to individuals who, after acquiring potential rights to
166 unemployment compensation under an act of Congress,
167 or who have, after acquiring potential rights to unem-
168 ployment compensation under an act of Congress, ac-
169 quired rights to benefits under this chapter. Such agree-
170 ments shall become effective ten days after such publica-
171 tion as complies with the general rules of the department.

172 (5) Agricultural labor.

173 (6) Domestic service in a private home .

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

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

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

184 (10) Service as an officer or member of a crew of an
185 American vessel performed on or in connection with such
186 vessel, if the operating office, from which the operations
187 of the vessel operating on navigable waters within or
188 without the United States are ordinarily and regularly
189 supervised, managed, directed and controlled, is without
190 this state.

191 Notwithstanding the foregoing exclusions from the defi-
192 nition of "employment", services, except agricultural
193 labor and domestic service in a private home, shall be
194 deemed to be in employment if with respect to such
195 services a tax is required to be paid under any federal
196 law imposing a tax against which credit may be taken
197 for contributions required to be paid into a state unem-
198 ployment compensation fund.

199 "Employment office" means a free employment office
200 or branch thereof, operated by this state, or any free
201 public employment office maintained as a part of a state-
202 controlled system of public employment offices in any
203 other state.

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

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

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

211 "Total and partial unemployment":

212 (1) An individual shall be deemed totally unemployed
213 in any week in which such individual is separated from
214 employment for an employing unit and during which he
215 performs no services and with respect to which no wages
216 are payable to him.

217 (2) An individual who has not been separated from
218 work shall be deemed to be partially unemployed in any
219 week in which he performs no services and with respect
220 to which no wages are payable to him, or in any week
221 in which due to lack of full time work wages payable to
222 him are less than his weekly benefit amount plus three
223 dollars.

224 "Wages" means all remuneration for personal service,
225 including commissions and bonuses and the cash value
226 of all remuneration in any medium other than cash pro-
227 vided that the term "wages" shall not include:

228 (1) That part of the remuneration which, after remun-
229 eration equal to three thousand dollars has been paid to
230 an individual by an employer with respect to employ-
231 ment during any calendar year, is paid after December
232 thirty-one, one thousand nine hundred thirty-nine, and
233 prior to January one, one thousand nine hundred forty-
234 seven, to such individual by such employer with respect
235 employment during such calendar year; or that part of
236 the remuneration which, after remuneration equal to
237 three thousand dollars with respect to employment after
238 one thousand nine hundred thirty-eight has been paid
239 to an individual by an employer during any calendar
240 year after one thousand nine hundred forty-six, is paid
241 to such individual by such employer during such calen-
242 dar year, except that for the purposes of sections one,
243 ten, eleven, and thirteen of article six of this chapter,
244 all remuneration earned by an individual in employment

245 shall be credited to the individual and included in his
246 computation of base period wages; and provided, that
247 the remuneration paid to an individual by an employer
248 with respect to employment in another state or other
249 states upon which contributions were required of and
250 paid by such employer under an unemployment com-
251 pensation law of such other state or states shall be in-
252 cluded as a part of remuneration equal to three thousand
253 dollars herein referred to.

254 (2) The amount of any payment made to, or on be-
255 half of, an individual in its employ (without deduction
256 from the remuneration of the individual in its employ),
257 under a plan or system established by an employer
258 which makes provision for individuals in its employ gen-
259 erally or for a class or classes of such individuals (in-
260 cluding any amount paid by an employer for insurance
261 or annuities, or into a fund, to provide for any such pay-
262 ment), on account of (A) retirement or (B) sickness or
263 accident disability, or (C) medical and hospitalization
264 expenses in connection with sickness or accident disa-
265 bility, or (D) death: *Provided*, That the individual in

266 its employ (i) has not the option to receive, instead of
267 provision for such death benefit, any part of such pay-
268 ment or, if such death benefit is insured, any part of
269 the premiums (or contributions to premiums) paid by
270 his employer, and (ii) has not the right, under the pro-
271 visions of the plan or system or policy of insurance pro-
272 viding for such death benefit, to assign such benefit, or
273 to receive such consideration in lieu of such benefit,
274 either upon his withdrawal from the plan or sys-
275 tem providing for such benefit or upon termina-
276 tion of such plan or system or policy or of insurance
277 of his services with such employer.

278 (3) The payment by an employer (without de-
279 duction from the remuneration of the individual
280 in its employ) of the tax imposed upon an in-
281 dividual in its employ under section one thousand
282 four hundred of the federal internal revenue
283 code; or

284 (4) Payments, not required under any contract of hire,
285 made to an individual with respect to his period of
286 training or service in the armed forces of the United

287 States by any employer by which such individual was
288 formerly employed.

289 Gratuities customarily received by an individual in
290 the course of his employment from persons other than
291 his employing unit shall be treated as wages paid by his
292 employing unit, if accounted for and reported to such
293 employing unit.

294 The reasonable cash value of remuneration in any
295 medium other than cash shall be estimated and deter-
296 mined in accordance with rules prescribed by the di-
297 rector.

298 "Week" means a calendar week, ending at midnight
299 Saturday, or the equivalent thereof, as determined in
300 accordance with the regulations prescribed by the di-
301 rector.

302 "Weekly benefit rate" means the maximum amount of
303 benefit an eligible individual will receive for one week
304 of total unemployment.

305 "Year" means a calendar year or the equivalent there-
306 of, as determined by the director.

Article 2. The Director of Unemployment Compensation.

Section 6-a. *Reciprocal Agreements.*—(1) The director
2 may enter into reciprocal arrangements with appropriate
3 and duly authorized agencies of other states or the fed-
4 eral government, or both, whereby:

5 (a) Services performed by an individual for a single
6 employing unit for which services are customarily per-
7 formed by such individual in more than one state shall
8 be deemed to be services performed entirely within any
9 one of the states (i) in which any part of such individ-
10 ual's service is performed or (ii) in which such indi-
11 vidual has his residence or (iii) in which the employing
12 unit maintains a place of business, provided there is in
13 effect, as to such services, an election by an employing
14 unit, and approved by the agency charged with the ad-
15 ministration of such state's unemployment compensation
16 law pursuant to which services performed by such indi-
17 vidual for such employing unit are deemed to be per-
18 formed entirely within such state;

19 (b) Potential rights to benefits accumulated under the
20 the unemployment compensation laws of one or more

21 states or under one or more such laws of the federal gov-
22 ernment, or both, may constitute the basis for the pay-
23 ment of benefits through a single appropriate agency
24 under terms which the director finds will be fair and
25 reasonable as to all affected interests and will not result
26 in any substantial loss to the fund;

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

42 ments from the fund for such of the compensation paid
43 under such other law upon the basis of wages for in-
44 sured work, as the director finds will be fair and reason-
45 able as to all affected interests; and

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

55 (2) Reimbursements paid from the fund pursuant to
56 paragraph (c) of subsection one of this section shall be
57 deemed to be benefits for the purpose of this chapter. The
58 director is authorized to make to other state or federal
59 agencies and to receive from such other state or federal
60 agencies, reimbursements from or to the fund, in accord-
61 ance with arrangements entered into pursuant to sub-
62 section one of this section.

63 (3) To the extent permissible under the laws and
64 Constitution of the United States, the director is author-
65 ized to enter into or cooperate in arrangements whereby
66 facilities and services provided under this chapter and
67 facilities and services provided under the unemploy-
68 ment compensation law of any foreign government, may
69 be utilized for the taking of claims and the payment of
70 benefits under the employment security law of this state
71 or under a similar law of such government.

Article 4. Board of Review.

Section 5. *Compensation.*—Each member of the board
2 shall receive an annual salary of five thousand dollars
3 and the necessary traveling expenses incurred in the per-
4 formance of his duties.

5 Requisition for traveling expenses shall be accom-
6 panied by a sworn and itemized statement which shall
7 be filed with the Auditor and permanently preserved as
8 a public record.

9 The salaries and the expenses of the members shall be
10 paid from the administration fund.

Sec. 6. *Meetings.*—The offices and meeting place of
2 the board shall be at the capitol; but the board may sit
3 at such other places as the prompt and efficient hearing
4 of claims may require. The board shall sit for hearing
5 of appeals at least every ten days.

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 chapter shall be
5 construed to grant any employer or individual in his
6 service prior claims or rights to the amounts paid by him
7 into the fund, either on his own behalf or on behalf of
8 such individuals. The account of any employer which
9 has been inactive for a period of four consecutive calen-
10 dar years 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 employ-
13 ers. The amount of benefits so chargeable against each
14 base period employer's account shall bear the same ratio
15 to the total benefits paid to an individual as the base

16 period wages paid to such individual by such employer
17 bear to the total amount of base period wages paid to such
18 individual by all his base period employers: *Provided,*
19 *however,* that benefits paid to an individual for partial
20 unemployment shall be charged to the account of his last
21 covered employer; and *provided, further,* that benefits
22 paid for partial unemployment resulting solely from odd
23 job and/or subsidiary work shall be charged in the same
24 manner as benefits for total unemployment.

25 (3) The director shall, for the year one thousand nine
26 hundred forty-eight and for each calendar year there-
27 after, classify employers in accordance with their actual
28 experience in the payment of contributions on their own
29 behalf and with respect to benefits charged against their
30 accounts, with a view of fixing such contribution rates
31 as will reflect such experience. For the purpose of fixing
32 such contribution rates for each calendar year, the books
33 of the department shall be closed on July thirty-one of
34 the preceding calendar year, and any contributions there-
35 after paid, as well as benefits thereafter paid with respect
36 to compensable weeks ending on or before June thirty

37 of the preceding calendar year, shall not be taken into
38 account until the next annual date for fixing contribu-
39 tion rates: *Provided, however,* That if an employer has
40 failed to furnish to the director on or before July thirty-
41 one of such preceding calendar year the wage informa-
42 tion for all past periods necessary for the computation
43 of the contribution rate such employer's rate shall be two
44 and seven-tenths per cent: *Provided further,* That any
45 payment made or any information necessary for the com-
46 putation of a reduced rate furnished on or before the
47 termination of an extension of time for such payment or
48 reporting of such information granted pursuant to a reg-
49 ulation of the director authorizing such extension, shall
50 be taken into account for the purposes of fixing contribu-
51 tion rates: *Provided further,* That whenever through mis-
52 take or inadvertence erroneous credits are found to have
53 been made to or against the reserve account of any em-
54 ployer, the rate shall be adjusted as of January one of
55 the calendar year in which such mistake or inadvertence
56 is discovered; but payments made under any rate as-

57 signed prior to January one of such year shall not be
58 deemed to be erroneously collected.

Sec. 10. *Experience Ratings; Decreased Rates.* — On
2 and after January one, one thousand nine hundred forty-
3 eight, after the requirements of section nine have been
4 complied with, an employer's payment shall remain two
5 and seven-tenths per cent until: (1) There have elapsed
6 thirty-six consecutive months immediately preceding the
7 computation date throughout which an employer's ac-
8 count 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 of his
12 average annual pay roll, in which case his rate shall be
13 two and four-tenths per cent.

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 of his
17 average annual pay roll, in which case his rate shall be
18 two and one-tenth, per cent.

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

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

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 of his average
32 annual pay roll, in which case his rate shall be one and
33 two-tenths per cent.

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 of his average an-
37 nual pay roll, in which case his rate shall be nine-tenths
38 of one per cent.

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 of his average
42 annual pay roll, in which case his rate shall be seven-
43 tenths of one per cent.

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 of his average
47 annual pay roll, in which case his rate shall be five-tenths
48 of one per cent.

49 (10) His payments credited to his account for all past
50 years exceed the benefits charged to his account by an
51 amount equal to at least thirteen per cent of his average
52 annual pay roll, in which case his rate shall be three-
53 tenths of one per cent.

54 (11) His payments credited to his account for all past
55 years exceed the benefits charged to his account by an
56 amount equal to at least thirteen and five-tenths per cent
57 of his average annual pay roll, in which case his rate
58 shall be one-tenth of one per cent.

59 (12) His payments credited to his account for all past
60 years exceed the benefits charged to his account by an
61 amount equal to at least fourteen per cent of his average
62 annual pay roll, in which case his rate shall be zero.

63 The director shall determine an employer's compli-
64 ance with these requirements.

Sec. 10-b. If a subject employer shall transfer his en-
2 tire organization, trade or business, or substantially all
3 the assets thereof, to another employer, the director shall
4 combine the contribution records and the benefit experi-
5 ence records of the transferring and acquiring employers.
6 The acquiring employer's contribution rate for the re-
7 mainder of the calendar year shall not be affected by the
8 transfer but such rate shall apply to the whole of his
9 business, including the portion acquired by the transfer,
10 through the following December thirty-first. If a subject
11 employer shall make such transfer to an employing unit
12 which is not an employer on the date of the transfer,
13 such subject employer's rate shall continue as the rate
14 of the acquiring employing unit until the next effective
15 rate date: *Provided, however,* That in case the transfer-

16 ring employer is delinquent in the payment of contribu-
17 tions or interest thereon the acquiring employer shall
18 not be entitled to any benefit of the contribution record
19 of the transferring employer unless payment of such de-
20 linquent contributions and interest thereon is assumed
21 by the acquiring employer. The director shall upon joint
22 request of the transferor and transferee, before the trans-
23 fer, furnish the transferee a statement of the amount of
24 any contribution and interest due and unpaid by the
25 transferor, and shall, upon such transfer, furnish such
26 statement to the transferee upon the transferee's request.
27 A statement so furnished shall be controlling for the
28 purposes of the foregoing proviso.

Article 6. Employee Eligibility; Benefits.

Section 4. *Disqualification for Benefits.*—Upon the
2 determination of the facts by the director, an individual
3 shall be disqualified for benefits:

4 (1) For the week in which he left his most recent
5 work voluntarily without good cause involving fault on
6 the part of the employer and the six weeks immediately
7 following such week. Such disqualification shall carry a

8 . reduction in the maximum benefit amount equal to six
9 times the individual's weekly benefit rate. However, if
10 the claimant returns to work in covered employment
11 during his benefit year the maximum benefit amount
12 shall be increased by the amount of the decrease imposed
13 under the disqualification.

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

23 (3) For the week in which he failed without good
24 cause, to apply for available suitable work, accept suit-
25 able work when offered, or return to his customary self-
26 employment when directed to do so by the director, and
27 for the four weeks which immediately follow and for
28 such additional period as any offer of suitable work shall

29 continue open for his acceptance, and his maximum
30 benefit amount shall be reduced by an amount equal to
31 his weekly benefit rate times the number of weeks of dis-
32 qualification. However, if the claimant returns to work
33 in covered employment during his benefit year the max-
34 imum benefit amount shall be increased by the amount
35 of the decrease imposed under the disqualification.

36 (4) For a week in which his total or partial unem-
37 ployment is due to a stoppage of work which exists be-
38 cause of a labor dispute at the factory, establishment, or
39 other premises at which he was last employed, unless
40 the director is satisfied that he was not (one) participat-
41 ing, financing, or directly interested in such dispute, and
42 (two) did not belong to a grade or class of workers who
43 were participating, financing, or directly interested in
44 the labor dispute which resulted in the stoppage of work.
45 No disqualification under this subsection shall be imposed
46 if the employees are required to accept wages, hours or
47 conditions of employment substantially less favorable
48 than those prevailing for similar work in the locality, or
49 if employees are denied the right of collective bargain-

50 ing under generally prevailing conditions, or if an em-
51 ployer shuts down his plant or operation or dismisses his
52 employees in order to force wage reduction, changes in
53 hours or working conditions.

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

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

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

61 (c) Remuneration in the form of a primary insurance
62 benefit under title two of the Social Security Act, as
63 amended, or similar payments under any act of Congress.

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

66 (6) For the week in which an individual is not em-
67 ployed because of pregnancy, or has voluntarily quit
68 employment to marry or to perform any marital, paren-
69 tal, or family duty, or to attend to his or her personal
70 business or affairs, and until the individual returns to

71 covered employment and has been employed in covered
72 employment at least thirty working days.

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

80 (8) For the purposes of this section an employer's
81 account shall not be charged under any of the following
82 conditions: (1) When benefits are paid without any dis-
83 qualification to an individual who has left his most recent
84 work for good cause not involving fault on the part of
85 the employer. (2) When benefits are paid for unemploy-
86 ment immediately after the expiration of a period of
87 disqualification for (a) leaving work voluntarily with-
88 out good cause involving fault on the part of the em-
89 ployer, (b) discharge for misconduct, (c) failing without
90 good cause to apply for available suitable work, accept
91 suitable work when offered, or return to his customary

92 self-employment when directed to do so by the director.

Sec. 10. *Benefit Rate; Total Unemployment.*— Each
2 eligible individual who is totally unemployed in any
3 week shall be paid benefits with respect to that week at
4 the weekly rate appearing in column (C) in table A in
5 this paragraph, on the line on which in column (A) there
6 is indicated the employee's wage class, except as other-
7 wise provided under the term "total and partial unem-
8 ployment" in section three, article one of this chapter.
9 The employee's wage class shall be determined by his
10 base period wages as shown in column (B) in table A.
11 The right of an employee to receive benefits shall not be
12 prejudiced nor the amount thereof be diminished by rea-
13 son of failure by an employer to pay either the wages
14 earned by the employee or the contribution due on such
15 wages. An individual who is totally unemployed but earns
16 in excess of three dollars as a result of odd job or subsidi-
17 ary work in any benefit week shall be paid benefits for
18 such week in accordance with the provisions of this chap-
19 ter pertaining to benefits for partial unemployment.

TABLE A

	Wage Class	Wages in Base Period	Weekly Benefit Rate	Maximum Bene- fit in Benefit Year for Total and/or Partial Unemployment
	(Col. A)	(Col. B)	(Col. C)	(Col. D)
20		Under - \$ 300.00	Ineligible	Amount
21	1	\$ 300.00 - \$ 399.99	\$ 8.00	\$168.00
22	2	400.00 - 499.99	9.00	189.00
23	3	500.00 - 599.99	10.00	210.00
24	4	600.00 - 699.99	11.00	231.00
25	5	700.00 - 799.99	12.00	252.00
26	6	800.00 - 899.99	13.00	273.00
27	7	900.00 - 999.99	14.00	294.00
28	8	1000.00 - 1099.99	15.00	315.00
29	9	1100.00 - 1199.99	16.00	336.00
30	10	1200.00 - 1299.99	17.00	357.00
31	11	1300.00 - 1399.99	17.50	367.50
32	12	1400.00 - 1499.99	18.00	378.00
33	13	1500.00 - 1599.99	18.50	388.50
34	14	1600.00 - 1699.99	19.00	399.00
35	15	1700.00 - 1799.99	19.50	409.50
36	16	1800.00 and over	20.00	420.00

Article 7. Claim Procedure.

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

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

17 Within eight days after receipt by the board of notice
18 of appeal from the decision of a deputy, the board shall
19 fix the time and place for hearing such appeal, and notify
20 the claimant, last employer, the director, and any base

21 period employer upon his request, ten days in advance
22 of the date set for hearing.

23 Upon consideration of all evidence the appeal tribunal
24 shall make a decision within twenty-one days after the
25 date of the hearing and shall notify the claimant, last em-
26 ployer, the director, and any base period employer upon
27 his request, of its findings and decision.

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

Sec. 10. *Board of Review.*—The board may, after no-
2 tice to the claimant, last employer, the director, and any
3 base period employer, upon his request, eight days in
4 advance, of the date set for hearing.

5 (1) On its own motion affirm, modify, or set aside a
6 decision of an appeal tribunal;

7 (2) Direct the taking of additional evidence in a dis-
8 puted claim;

9 (3) Permit parties to the decision of an appeal tribunal
10 to initiate further appeals before it.

11 (4) Where it deems necessary in the interest of any
12 party that additional testimony be taken, refer a case on
13 its own motion or at the request of any party to a trial
14 examiner for the expeditious taking of such additional
15 testimony; but no such referral shall be made at the re-
16 quest of any party except for good cause shown: *Pro-*
17 *vided further*, That where all parties are present at the
18 hearing such additional testimony may be taken before
19 the board.

Sec. 15. *Report of Decision.*—The board shall, within
2 fifteen days after the conclusion of the hearing, notify
3 the claimant, last employer, the director, and any base
4 period employer upon his request, of its findings and de-
5 cision on an appeal.

Article 10. General Provisions.

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

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

9 Information thus obtained shall not be published or be
10 open to public inspection so as to reveal the identity of
11 the employing unit or the individual. However, a claim-
12 ant of benefit or any other interested party shall, upon
13 request, be supplied with information from such records
14 to the extent necessary for the proper presentation or de-
15 fense of a claim. Such information may be made avail-
16 able to any agency of this or any other state, or any fed-
17 eral agency, charged with the administration of an un-
18 employment compensation law or the maintenance of
19 a system of public employment offices.

20 A person who violates the provisions of this section
21 shall be guilty of a misdemeanor, and upon conviction
22 shall be fined not less than twenty dollars nor more than

23 two hundred dollars, or imprisoned not longer than ninety
24 days, or both.

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

Sec. 17. The Legislature reserves the right to amend
2 or repeal all or any part of this chapter and no private
3 rights shall vest against any legislative amendment or
4 change or repeal. All rights, privileges, or immunities
5 conferred by this chapter or by acts done pursuant there-
6 to shall exist subject to the power of the Legislature to
7 amend or repeal this chapter at any time.

8 The provisions of this chapter relating to article one,
9 section three, definitions of "Annual payroll", "Average
10 annual payroll", and "Computation date", and to article
11 five, sections seven, ten, and ten-b, shall apply for the
12 rate year one thousand nine hundred forty-eight and for
13 all rate years thereafter; for rate years prior to one thou-
14 sand nine hundred forty-eight the provisions then in ef-
15 fect shall apply.

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

Forest L. McNeer
Chairman Senate Committee

R. S. Matthews
Chairman House Committee

Originated in the Senate

Takes effect April 1, 1947 ~~passage~~.

Howard Meyer
Clerk of the Senate

J. L. Lipp
Clerk of the House of Delegates

Arnold M. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 13
day of March, 1947.

Robert M. Harman
Governor.



Filed in the Office of the Secretary of State
of West Virginia. MAR 13 1947
WM. S. O'BRIEN,
SECRETARY OF STATE