WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1949

ENROLLED

SENATE BILL No. 124

(By Mr. )

PASSED February 25, 1949

In Effect June 30, 1949
ENROLLED

Senate Bill No. 124
(By Mr. Johnston, Mr. President)

[Passed February 25, 1949; in effect June 30, 1949.]

AN ACT to amend and reenact sections three, four, five and
seven, article one; sections one, six and seventeen, article
two; section one, article three; sections seven, ten, ten-a,
ten-b, seventeen and nineteen, article five; sections four,
nine, ten and eleven, article six; sections eight, nine, ten,
fifteen and seventeen, article seven; sections one and five,
article eight; sections one, three, five-a and eight, article
nine; section ten, article ten; to add section four-a to article
five, all of chapter twenty-one-a of the code of West Vir­
ginia, 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 sections three, four, five and seven, article one; sections one, six and seventeen, article two; section one, article three; sections seven, ten, ten-a, ten-b, seventeen and nineteen, article five; sections four, nine, ten and eleven, article six; sections eight, nine, ten, fifteen and seventeen, article seven; sections one and five, article eight; sections one, three, five-a and eight, article nine; section ten, article ten; to add section four-a to article five, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature second extraordinary session, one thousand nine hundred thirty-six, as amended, be amended and reenacted to read as follows:


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

“Administration fund” means the employment security 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 a twelve month period ending with June thirty of any calendar year.
“Average annual payroll” means the average of the last three annual payrolls of an employer.

“Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year.

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

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

“Benefit year” with respect to an individual means the one year period beginning with the day on which he filed a valid claim for benefits, and thereafter the one year period beginning with the day on which such individual next files a valid claim for benefits after the termination of his last preceding benefit year. An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible
30 for benefits under the provisions of this chapter.
31 "Benefits" means the money payable to an individual
32 with respect to his unemployment.
33 "Board" means board of review.
34 "Calendar quarter" means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty, or December thirty-one, or the equivalent thereof as the director may by regulation prescribe.
39 "Computation date" means June thirty of the year immediately preceding the January one, on which an employer's contribution rate becomes effective.
42 "Director" means the employment security director.
43 "Employing unit" means an individual, or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, corporation (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 sub-
sequent 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 section, 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
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71 base of operations, or, if there is no base of operations,
72 then the place from which such service is directed or con-
73 trolled, is in this state; or (ii) the base of operations or
74 place from which such service is directed or controlled is
75 not in any state in which some part of the service is per-
76 formed but the individual's residence is in this state.
77 (3) Service not covered under paragraph two of this sub-
78 section and performed entirely without this state, with re-
79 spect to no part of which contributions are required and
80 paid under an unemployment compensation law of any
81 other state or of the federal government, shall be deemed
82 to be employment subject to this chapter if the individual
83 performing such services is a resident of this state and the
84 director approves the election of the employing unit for
85 whom such services are performed that the entire service
86 of such individual shall be deemed to be employment
87 subject to this chapter.
88 (4) Service shall be deemed to be localized within a
89 state, if: (a) The service is performed entirely within such
90 state; or (b) the service is performed both within and
91 without such state; or (c) the service is performed both
within or 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 chapter 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.

(6) All service performed by an officer or member of the crew of an American vessel (as defined in section three hundred five of an act of Congress entitled "Social Security Act Amendment of 1946," approved August tenth, one thousand nine hundred forty-six) on or in connection with
such vessel, provided that the operations of such vessel operating on navigable waters within or within and without the United States is ordinarily and regularly supervised, managed, directed and controlled, is within this state.

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 em-
ployers, employing units, individuals, and services: Pro-
vided, That if this state shall not be certified for any year
by the social security administration under section one
thousand six hundred three (c) of the federal internal rev-
venue code, the payments required of such instrumentali-
ties with respect to such year shall be refunded by the di-
rector from the fund in the same manner and within the
same period as is provided in section nineteen of article
five of this chapter 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 un-
employment insurance act (fifty-two stat. one thousand
ninety-four), and service with respect to which unemploy-
ment benefits are payable under an unemployment com-
ensation system for maritime employees established by
an act of Congress. The director may enter into agree-
ments with the proper agency established under such an
act of Congress to provide reciprocal treatment to individ-
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155 uals who, after acquiring potential rights to unemploy-
156 ment compensation under an act of Congress, or who have,
157 after acquiring potential rights to unemployment compen-
158 sation under an act of Congress, acquired rights to benefit
159 under this chapter. Such agreements shall become effec-
160 tive ten days after such publications as complies with the
161 general rules of the department.

162 (5) Agricultural labor.

163 (6) Domestic service in a private home.

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

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

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

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

Notwithstanding the foregoing exclusions from the definition of “employment,” services, except agricultural labor and domestic service in a private home, 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 or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this
"Separated from employment" means, for the purposes of this chapter, the total severance whether by quitting, discharge, or otherwise, of the employer-employee relationship.

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

"Total and partial unemployment":

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

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

"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 remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand nine hundred thirty-eight has been paid to an individual by an employer during any calendar year after one thousand nine hundred thirty-eight has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven, and thirteen of article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages; and
provided, that the remuneration paid to an individual by
an employer with respect to employment in another state
or other states upon which contributions were required of
and paid by such employer under an unemployment com-
pensation law of such other state or states shall be included
as a part of the remuneration equal to three thousand dol-
ars herein referred to.

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

The reasonable cash value of remuneration in any med-
ium 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 ac-
cordance with the regulations prescribed by the director.

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

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

Sec. 4. Department of Employment Security.—There
is created a department of employment security, com-
posed of a division of unemployment compensation and
a division of employment service, and such other divisions
or units as the director determines to be necessary.

Sec. 5. Federal-State Cooperation.—The department
shall cooperate with the social security administration of
the federal government, similar agencies of the several
states, and such other agencies as are concerned with the
problem of employment security and public assistance
and relief.

Sec. 7. Employment Agencies Transfer.—The "State
Public Employment Agency" now maintained in the de-
partment of labor shall be transferred on January one,
one thousand nine hundred thirty-seven, and shall be
made the State Employment Service Division of the de-
partment of employment security.

Article 2. The Director of Employment Security.

Section 1. Appointment.—The department shall be in
charge of a director of employment security. The director
shall be appointed by the governor, by and with the ad-
vice and consent of the senate, for a term of six years and
shall hold his office subject to the will and pleasure of the
governor.

Sec. 6. Powers and Duties.—The director shall be the
executive and administrative head of the department and
shall have the power and duty, to:

(1) Exercise general supervision of and make regu-
lations for the government of the department.
(2) Prescribe uniform rules pertaining to investigations, departmental hearings, and promulgate rules and regulations.

(3) Supervise fiscal affairs and responsibilities of the department.

(4) Prescribe the qualifications of, appoint, remove, and fix the compensation of the officers and employees of the department, subject to the provisions of section ten, article four of this chapter, relating to the board of review.

(5) Organize and administer the department so as to comply with the requirements of this chapter and to satisfy any conditions established in applicable federal legislation.

(6) Make reports in such form and containing such information as the federal social security administration may from time to time require, and comply with such provisions as the federal social security administration may from time to time find necessary to assure the correctness and verification of such reports.

(7) Make available to any agency of the United States
charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of the recipient's rights to further compensation under this chapter.

(8) Keep an accurate and complete record of all departmental proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the department.

(9) Sign and execute in the name of the state, by "The State Department of Employment Security," any contract or agreement with the federal government, its agencies, other states, their subdivisions, or private persons.

(10) Prescribe a salary scale to govern compensation of appointees and employees of the department.

(11) Make the original determination of right in claims for benefits.

(12) Make recommendations, and an annual report to
the Governor concerning the condition, operation, and
functioning of the department.

(13) Invoke any legal, equitable or special remedy for
the enforcement of orders or the provisions of this chapter.

(14) Exercise any other power necessary to standard-
ize administration, expedite departmental business, as-
sure the establishment of fair rules and regulations and
promote the efficiency of the service.

Sec. 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 promotion 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 there-
with.

The department of employment security is designated
the agent of this state for the purpose of compliance with
the act of congress entitled “An act to provide for the es-
tablishment 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 un-
employment 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 3. Advisory Council.

Section 1. Creation.—There is hereby created in the
Department of Employment Security a “State Advisory
Council” composed of six members.

Article 5. Employer Coverage and Responsibility.

Sec. 4-a. Voluntary Payments.—An employer may make
voluntary payments under such regulations as the di-
rector may prescribe, in addition to the required pay-
ments, and such voluntary payments shall be credited
to the employer's account in the same manner and under
the same conditions as the required payments. Any pay-
ment so made shall not be considered a prepayment of
any future payment required nor can such payment be
refunded under any condition.

Sec. 7. Separate Accounts.—(1) The director shall
maintain a separate account for each employer, and shall
credit his account with all contributions heretofore and
hereafter paid by him. Nothing in this chapter 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 cal-
endar years shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for total or
partial unemployment occurring in any benefit year be-
ginning after June thirty, one thousand nine hundred
forty-nine, shall be charged to the account of the last em-
ployer with whom he has had as much as three weeks of
continuous employment: Provided, That no employer's
account will be charged with benefits paid to any indi-
vidual who has been separated from noncovered employ-
ment in which he was employed as much as three weeks.

(3) The director shall, for the year one thousand nine hundred forty-eight and for each calendar year thereafter, 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 accounts, with a view of fixing such contribution rates as will reflect such experience. For the purpose of fixing such contribution rates for each calendar year, the books of the department shall be closed on July thirty-one of the preceding calendar year, and any contributions thereafter paid, as well as benefits thereafter paid with respect to compensable weeks ending on or before June thirty of the preceding calendar year, shall not be taken into account until the next annual date for fixing contribution rates: Provided, however, That if an employer has failed to furnish to the director on or before July thirty-one of such preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate such employer’s rate shall be two and seventenths per cent: Provided further, That any payment
made or any information necessary for the computation
of a reduced rate furnished on or before the termination
of an extension of time for such payment or reporting of
such information granted pursuant to a regulation of the
director authorizing such extension, shall be taken into
account for the purposes of fixing contribution rates:
Provided further, That when the time for filing any re-
port or making any payment required hereunder falls on
Saturday, Sunday, or a legal holiday the due date shall
be deemed to be the next succeeding business day: Pro-
vided further, That whenever through mistake or in-
advertence 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 payments 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-
eight, after the requirements of section nine have been
complied with, an employer's payment shall remain two
and seven-tenths per cent until: (1) There have elapsed
thirty-six consecutive months immediately preceding
the computation 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 of
his average annual pay roll, in which case his rate shall
be two and four-tenths per cent.

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

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

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

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

34 (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 of his average annual pay roll, in which case his rate shall be nine-tenths of one per cent.

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

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

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

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

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

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

After the director is satisfied that an employer has complied with these requirements he shall decrease
the employer's rate to the next lower rate if the fund, including the trust fund, clearing account, and benefit account, is as much as eighty million dollars on the computation date, and shall decrease the employer's rate one additional step if the fund is as much as ninety million dollars on the computation date, and shall decrease the employer's rate one additional step for each five million dollars that the fund is above ninety million dollars up to and including one hundred fifteen million dollars on the computation date.

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, falls below the sum of fifty million dollars, the director shall, effective at the commencement of the next calendar quarter, suspend the decreased rates as provided in this chapter, and all contributions of employers due thereafter shall be paid at the rate of two and seven-tenths per cent.

(2) As of January first of the year next following the date on which the unemployment compensation fund,
including the trust fund, clearing account, and benefit account, reaches the sum of fifty-five million dollars, the director shall supersede such suspension.

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 apply to the whole of his business, including the portion acquired by the transfer, through the following December thirty-first. If a subject employer shall make such transfer to an employing unit which is not an employer on the date of the transfer, such subject employer's rate shall continue as the rate of the acquiring employing unit until the next effective rate date. If an employing unit acquires simultaneously the entire organization, trade or business, or substantially all the assets thereof, of two or more covered employers,
the successor shall be assigned as a contribution rate
the then current rate of the transferring employer which
had, in the calendar quarter immediately preceding the
date of the transfer, the higher or highest pay roll. As
to any transfers which occur prior to July thirty-first of
the current calendar year such rate shall remain ef-
flective for the balance of that calendar year: Provided,
however, That if the transfers occur subsequent to July
thirty-first such rate shall remain effective for the bal-
ance of that calendar year and the rate for the suc-
ceeding calendar year shall, notwithstanding anything
to the contrary provided in section seven of article five
of this chapter, be recomputed on the basis of the com-
bined experience of the transferring employers as of
July thirty-first of the year in which the transfers occur.
In case the transferring employer is delinquent in the
payment of contributions or interest thereon the ac-
quiring employer shall not be entitled to any benefit of
the contribution record of the transferring employer
unless payment of such delinquent contributions and
interest thereon is assumed by the acquiring employer.
The director shall upon joint request of the transferor and transferee furnish the transferee a statement of the amount of any contribution and interest due and unpaid by the transferor. A statement so furnished shall be controlling for the purposes of the foregoing proviso.

Sec. 17. Interest on Past-due Payments.—Payments unpaid on the date on which due and payable, as prescribed 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 employment security special administration fund.

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 (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
9 were erroneously collected, he shall make the adjust-
10 ment, without interest, in connection with subsequent
11 payments of the employer, or if such adjustment can-
12 not be made, refund the amount of the payments er-
13 roneously collected, without interest, from the clearing
14 account of the unemployment compensation fund, and
15 the amount of the interest erroneously collected, from
16 the employment security 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 4. Disqualification for Benefits.—Upon the de-
2 termination 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
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 an 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 sub-section 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 total 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, from and after receipt by him of his first payment for such benefits.

(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
70 employed because of pregnancy, or has voluntarily
71 quit employment to marry or to perform any marital,
72 parental or family duty, or to attend to his or her
73 personal business or affairs, and until the individual
74 returns to covered employment and has been em-
75 ployed in covered employment at least thirty working
76 days.
77 (7) For each week in which an individual is unem-
78 ployed because, having voluntarily left employment to
79 attend a school, college, university, or other educational
80 institution, he is attending such school, college, uni-
81 versity, or other educational institution, or is awaiting
82 entrance thereto or is awaiting the starting of a new
83 term or session thereof.
84 (8) For each week in which he is unemployed because
85 of his request or that of his duly authorized agent for a
86 vacation period at a specified time that would leave the
87 employer no other alternative but to suspend opera-
88 tions.
89 (9) For the purposes of this section an employer's ac-
90 count shall not be charged under any of the following
conditions: (1) When benefits are paid without any disqualification to an individual who has left his most recent work for good cause not involving fault on the part of 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 involving fault on the part of the employer, (b) discharge for misconduct, (c) failing 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.

Sec. 9. Place of Payment.—Benefits shall be paid through employment offices or, if the director by rules so prescribed, through employment security offices, in accordance with such regulations as the director shall prescribe.

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, except as other-
wise provided under the term "total and partial un-
employment" 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. An individual who is totally unemployed but
earns in excess of six dollars as a result of odd job or
subsidiary work in any benefit week shall be paid bene-
fits for such week in accordance with the provisions of
this chapter pertaining to benefits for partial unemploy-
ment. The provisions of sections ten and eleven of this
article shall apply to all benefit weeks occurring in
benefit years beginning after the effective date of this
act; for benefit weeks occurring in benefit years prior
thereto the provisions then in effect shall apply.
<table>
<thead>
<tr>
<th></th>
<th>Wages in Base</th>
<th>Weekly Benefit</th>
<th>Total and/or Partial Unemployment</th>
</tr>
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<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>Amount</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>$300.00-$399.99</td>
<td>$8.00</td>
<td>$184.00</td>
</tr>
<tr>
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</tr>
<tr>
<td>5</td>
<td>700.00-799.99</td>
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<td>276.00</td>
</tr>
<tr>
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</tr>
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<td></td>
<td>Weekly Range</td>
<td>Benefit Rate</td>
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<td>--------------</td>
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<tr>
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<td>1600.00-1749.99</td>
<td>19.00</td>
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<td>1750.00-1899.99</td>
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<td>1900.00-2049.99</td>
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<td>51</td>
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<tr>
<td>52</td>
<td>18</td>
<td>2500.00 and over</td>
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</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 six 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 to such individual for the week for which he is claiming benefits without regard to the provisions of subsections one and four of section one of this article.
Article 7. Claim Procedure.

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

Upon appeal from the determination of a deputy, an individual shall be entitled to a fair hearing and reasonable opportunity to be heard before an appeal tribunal as provided in section seven of this article.

Within eight days after receipt by the board of notice of appeal from the decision of a deputy, the board shall fix the time and place for hearing such appeal, and notify the claimant, last employer, and the director, ten days in advance of the date set for hearing.
21 Upon consideration of all evidence the appeal tribunal shall make a decision within twenty-one days after the date of the hearing and shall notify the claimant, last employer, and the director of its findings and decision.

Sec. 9. Finality of Examiner's Decision.—A claimant, last employer, or other interested party may file an appeal to the board from the decision of an appeal tribunal within eight calendar days after notice of the decision has been delivered or mailed to the claimant and last employer as provided in section eight of this article. The director shall of necessity be deemed an interested party. The decision of the appeal tribunal shall be final and benefits shall be paid or denied in accordance therewith unless an appeal is filed within such time.

Sec. 10. Board of Review.—The board may, after notice to the claimant, last employer, and the director, eight days in advance of the date set for hearing:

1. On its own motion affirm, modify, or set aside a decision of an appeal tribunal;

2. Direct the taking of additional evidence in a disputed claim;
(3) Permit parties to the decision of an appeal tribunal to initiate further appeals before it;

(4) Where it deems necessary in the interest of any party that additional testimony be taken, refer a case on its own motion or at the request of any party to a trial examiner for the expeditious taking of such additional testimony; but no such referral shall be made at the request of any party except for good cause shown: Provided further, That where all parties are present at the hearing such additional testimony may be taken before the board.

Sec. 15. Report of Decision.—The board shall, within fifteen days after the conclusion of the hearing, notify the claimant, last employer, and the director of its findings and decision on an appeal.

Sec. 17. Finality of Board's Decision.—The decision of the board shall be final and benefits shall be paid or denied in accordance therewith, unless a claimant, last employer, or other interested party appeals to a court within thirty days after mailing of notification of the board's decision.
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 employment security 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 employment security special administration fund.

**Article 9. Employment Security Administration Funds.**

Section 1. *Administration Fund.*—There is hereby created in the state treasury a special fund to be known as the employment security administration fund. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in section seven of this article shall be expended solely for the purposes and in the amounts found necessary by the Social Security Administration for the proper and efficient administration of this chapter.

Sec. 3. *Contents of Fund.*—The fund shall consist of:

1. Moneys appropriated by the state.
2. Moneys received from the United States or any
agency thereof, including the Social Security Administration and the United States Employment Service.

(3) Moneys received from any other source.

Sec. 5-a. Special Administration Fund.—There is hereby created in the state treasury a fund to be known as the employment security 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) replacements in the employment security administration fund as provided in section eight of this article, (b) to meet special, extraordinary, and contingent expenses not provided for in the employment security 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.

Sec. 8. Reimbursement of Fund.—If any moneys received after June thirty, one thousand nine hundred forty-one, from the social security administration under title three of the social security act, or any unencumbered balances in the employment security administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the pro-
visions of the Wagner-Peyser Act, are found by the social security administration, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the social security administration for the proper administration of this law, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the employment security administration fund for expenditure as provided by the unemployment compensation law. Upon receipt of notice of such a finding by the social security administration, the director shall promptly report the amount required for such replacement to the governor and the governor shall, at the earliest opportunity, submit to the Legislature a request for the appropriation of such amount. This article shall not be construed to relieve this state of its obligation with respect to funds received prior to July one, one thousand nine hundred forty-one, pursuant to the provisions of title three of the Social Security Act.

Section 10. General Penalty.—A person who wilfully
2 violates a provision of this chapter or rule or regulation
3 thereunder for which a specific penalty has not been
4 imposed shall be guilty of a misdemeanor and upon con-
5 viction shall be fined not less than twenty dollars nor
6 more than two hundred dollars, or be imprisoned for not
7 longer than thirty days, or both. Each day such viola-
8 tion continues shall be a separate offense.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Herbert Beurling  
Chairman Senate Committee

[Signature]  
Chairman House Committee

Originated in the Senate.

Takes effect June 30, 1949

Howard M. Myers  
Clerk of the Senate

[Signature]  
Clerk of the House of Delegates

[Signature]  
President of the Senate

W.E. Walton  
Speaker House of Delegates

The within approved this the 1st day of March, 1949.

[Signature]  
Owen L. Patterson  
Governor.