

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949

ENROLLED

SENATE BILL No. 124

(By Mr. Lockston, Mr. President)

PASSED February 25 1949

In Effect June 30, 1949 Passage



124

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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 Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature second extraordinary session, one thousand nine hundred thirty-six, as amended, relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That 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:

Article 1. Department of Employment Security.

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

3 “Administration fund” means the employment security
4 administration fund, from which the administrative ex-
5 penses 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 last
10 three annual payrolls of an employer.

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

14 “Base period employer” means any employer who in the
15 base period for any benefit year paid wages to an indi-
16 vidual who filed claim for unemployment compensation
17 within such benefit year.

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

20 “Benefit year” with respect to an individual means the
21 one year period beginning with the day on which he filed
22 a valid claim for benefits, and thereafter the one year
23 period beginning with the day on which such individual
24 next files a valid claim for benefits after the termination
25 of his last preceding benefit year. An initial claim for
26 benefits filed in accordance with the provisions of this
27 chapter shall be deemed to be a valid claim within the
28 purposes of this definition if the individual has been paid
29 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 consecu-
35 tive calendar months ending on March thirty-one, June
36 thirty, September thirty, or December thirty-one, or the
37 equivalent thereof as the director may by regulation
38 prescribe.

39 "Computation date" means June thirty of the year im-
40 mediately preceding the January one, on which an em-
41 ployer's contribution rate becomes effective.

42 "Director" means the employment security director.

43 "Employing unit" means an individual, or type of or-
44 ganization, including any partnership, association, trust,
45 estate, joint stock company, insurance company, corpora-
46 tion (domestic or foreign), or the receiver, trustee in
47 bankruptcy, trustee or successor thereof, or the legal
48 representative of a deceased person, which has on Janu-
49 ary first, one thousand nine hundred thirty-five, or sub-

50 sequent thereto, had in its employ one or more individuals
51 performing service within this state.

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

61 "Employment," subject to the other provisions of this
62 section, means:

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

66 (2) The term "employment" shall include an individ-
67 ual's entire service, performed within or both within and
68 without this state if: (a) The service is localized in this
69 state; or (b) the service is not localized in any state but
70 some of the service is performed in this state and (i) the

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

92 within or without such state, but the service performed
93 without such state is incidental to the individual's service
94 within this state. For example, is temporary or transitory
95 in nature or consists of isolated transactions.

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

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

108 (6) All service performed by an officer or member of the
109 crew of an American vessel (as defined in section three
110 hundred five of an act of Congress entitled "Social Securi-
111 ty Act Amendment of 1946," approved August tenth, one
112 thousand nine hundred forty-six) on or in connection with

113 such vessel, provided that the operating office, from which
114 the operations of such vessel operating on navigable wa-
115 ters within or within and without the United States is or-
116 dinarily and regularly supervised, managed, directed and
117 controlled, is within this state.

118 The term "employment" shall not include:

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

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

124 (3) Service performed in the employ of the United States
125 or an instrumentality of the United States exempt under
126 the constitution of the United States from the payments
127 imposed by this law, except that to the extent that the Con-
128 gress of the United States shall permit states to require any
129 instrumentalities of the United States to make payments
130 into an unemployment fund under a state unemployment
131 compensation law, all of the provisions of this law shall be
132 applicable to such instrumentalities, and to service per-
133 formed for such instrumentalities, in the same manner, to

134 the same extent and on the same terms as to all other em-
135 ployers, employing units, individuals, and services: *Pro-*
136 *vided*, That if this state shall not be certified for any year
137 by the social security administration under section one
138 thousand six hundred three (c) of the federal internal rev-
139 enue code, the payments required of such instrumentali-
140 ties with respect to such year shall be refunded by the di-
141 rector from the fund in the same manner and within the
142 same period as is provided in section nineteen of article
143 five of this chapter with respect to payments erroneously
144 collected.

145 (4) Service performed after June thirty, one thousand
146 nine hundred thirty-nine, with respect to which unem-
147 ployment compensation is payable under the railroad un-
148 employment insurance act (fifty-two stat. one thousand
149 ninety-four), and service with respect to which unemploy-
150 ment benefits are payable under an unemployment com-
151 pensation system for maritime employees established by
152 an act of Congress. The director may enter into agree-
153 ments with the proper agency established under such an
154 act of Congress to provide reciprocal treatment to individ-

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

176 vessel, if the operating office, from which the operations of
177 the vessel operating on navigable water within or without
178 the United States are ordinarily and regularly supervised,
179 managed, directed and controlled, is without this state.

180 Notwithstanding the foregoing exclusions from the defi-
181 nition of "employment," services, except agricultural la-
182 bor and domestic service in a private home, shall be
183 deemed to be in employment if with respect to such serv-
184 ices a tax is required to be paid under any federal law im-
185 posing a tax against which credit may be taken for con-
186 tributions required to be paid into a state unemployment
187 compensation fund.

188 "Employment office" means a free employment office or
189 branch thereof, operated by this state, or any free public
190 employment office maintained as a part of a state-controlled
191 system of public employment offices in any other state.

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

194 "Payments" means the money required to be paid or
195 that may be voluntarily paid into the state unemploy-
196 ment compensation fund as provided in article five of this

197 chapter.

198 "Separated from employment" means, for the purposes
199 of this chapter, the total severance whether by quitting,
200 discharge, or otherwise, of the employer-employee rela-
201 tionship.

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

204 "Total and partial unemployment":

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

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

217 "Wages" means all remuneration for personal service,

218 including commissions and bonuses and the cash value of
219 all remuneration in any medium other than cash: *Pro-*
220 *vided*, That the term "wages" shall not include:

221 (1) That part of the remuneration which, after remun-
222 eration equal to three thousand dollars has been paid to an
223 individual by an employer with respect to employment
224 during any calendar year, is paid after December thirty-
225 one, one thousand nine hundred thirty-nine, and prior to
226 January one, one thousand nine hundred forty-seven, to
227 such individual by such employer with respect to employ-
228 ment during such calendar year; or that part of the remun-
229 eration which, after remuneration equal to three thousand
230 dollars with respect to employment after one thousand
231 nine hundred thirty-eight has been paid to an individual by
232 an employer during any calendar year after one thousand
233 nine hundred forty-six, is paid to such individual by such
234 employer during such calendar year, except that for the
235 purposes of sections one, ten, eleven, and thirteen of ar-
236 ticle six of this chapter, all remuneration earned by an in-
237 dividual in employment shall be credited to the individual
238 and included in his computation of base period wages; and

239 provided, that the remuneration paid to an individual by
240 an employer with respect to employment in another state
241 or other states upon which contributions were required of
242 and paid by such employer under an unemployment com-
243 pensation law of such other state or states shall be included
244 as a part of the remuneration equal to three thousand dol-
245 lars herein referred to.

246 (2) The amount of any payment made to, or on behalf
247 of, an individual in its employ (without deduction from
248 the remuneration of the individual in its employ), under
249 a plan or system established by an employer which makes
250 provision for individuals in its employ generally or for a
251 class or classes of such individuals (including any amount
252 paid by an employer for insurance or annuities, or into a
253 fund, to provide for any such payment), on account of (A)
254 retirement or (B) sickness or accident disability, or (C)
255 medical and hospitalization expenses in connection with
256 sickness or accident disability, or (D) death: *Provided*,
257 That the individual in its employ (i) has not the option to
258 receive, instead of provision for such death benefit, any
259 part of such payment or if such death benefit is insured,

260 any part of the premiums (or contributions to premiums)
261 paid by his employer, and (ii) has not the right, under the
262 provisions of the plan or system or policy of insurance pro-
263 viding for such death benefit, to assign such benefit, or to
264 receive such consideration in lieu of such benefit, either
265 upon his withdrawal from the plan or system providing for
266 such benefit or upon termination of such plan or system or
267 policy or of insurance of his services with such employer.

268 (3) The payment by an employer (without deduction
269 from the remuneration of the individual in its employ) of
270 the tax imposed upon an individual in its employ under
271 section one thousand four hundred of the federal internal
272 revenue code; or

273 (4) Payments, not required under any contract of hire,
274 made to an individual with respect to his period of train-
275 ing or service in the armed forces of the United States by
276 any employer by which such individual was formerly
277 employed.

278 Gratuities customarily received by an individual in the
279 course of his employment from persons other than his
280 employing unit shall be treated as wages paid by his em-

281 plying unit, if accounted for and reported to such em-
282 plying unit.

283 The reasonable cash value of remuneration in any med-
284 ium other than cash shall be estimated and determined
285 in accordance with rules prescribed by the director.

286 "Week" means a calendar week, ending at midnight
287 Saturday, or the equivalent thereof, as determined in ac-
288 cordance with the regulations prescribed by the director.

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

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

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

Sec. 5. *Federal-State Cooperation.*—The department
2 shall cooperate with the social security administration of
3 the federal government, similar agencies of the several

4 states, and such other agencies as are concerned with the
5 problem of employment security and public assistance
6 and relief.

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

Article 2. The Director of Employment Security.

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

Sec. 6. *Powers and Duties.*—The director shall be the
2 executive and administrative head of the department and
3 shall have the power and duty, to:
4 (1) Exercise general supervision of and make regu-
5 lations for the government of the department.

6 (2) Prescribe uniform rules pertaining to investigations,
7 departmental hearings, and promulgate rules and regu-
8 lations.

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

11 (4) Prescribe the qualifications of, appoint, remove,
12 and fix the compensation of the officers and em-
13 ployees of the department, subject to the provisions
14 of section ten, article four of this chapter, relating to
15 the board of review.

16 (5) Organize and administer the department so as to
17 comply with the requirements of this chapter and to sat-
18 isfy any conditions established in applicable federal leg-
19 islation.

20 (6) Make reports in such form and containing such in-
21 formation as the federal social security administration
22 may from time to time require, and comply with such
23 provisions as the federal social security administration
24 may from time to time find necessary to assure the cor-
25 rectness and verification of such reports.

26 (7) Make available to any agency of the United States

27 charged with the administration of public works or as-
28 sistance through public employment, upon its request, the
29 name, address, ordinary occupation and employment
30 status of each recipient of unemployment compensation,
31 and a statement of the recipient's rights to further com-
32 pensation under this chapter.

33 (8) Keep an accurate and complete record of all de-
34 partmental proceedings; record and file all bonds and
35 contracts and assume responsibility for the custody and
36 preservation of all papers and documents of the depart-
37 ment.

38 (9) Sign and execute in the name of the state, by "The
39 State Department of Employment Security," any con-
40 tract or agreement with the federal government, its agen-
41 cies, other states, their subdivisions, or private persons.

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

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

46 (12) Make recommendations, and an annual report to

47 the Governor concerning the condition, operation, and
48 functioning of the department.

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

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

Sec. 17. *Federal-State Cooperation.*—The director shall
2 have all powers and duties necessary to secure to the state
3 the benefits of congressional action for the promotion and
4 maintenance of a system of public employment offices.
5 To this end the provisions of the act referred to in the
6 preceding section and such additional congressional action
7 consistent with the above act are accepted by the state
8 and the state pledges its observance and compliance there-
9 with.

10 The department of employment security is designated
11 the agent of this state for the purpose of compliance with
12 the act of congress entitled "An act to provide for the es-
13 tablishment of a national employment system and for

14 cooperation with states in the promotion of such systems,
15 and for other purposes," approved June six, one thousand
16 nine hundred thirty-three, as amended.

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

Article 3. Advisory Council.

Section 1. *Creation*.—There is hereby created in the
2 Department of Employment Security a "State Advisory
3 Council" composed of six members.

Article 5. Employer Coverage and Responsibility.

Sec. 4-a. *Voluntary Payments*.—An employer may make
2 voluntary payments under such regulations as the di-
3 rector may prescribe, in addition to the required pay-
4 ments, and such voluntary payments shall be credited
5 to the employer's account in the same manner and under
6 the same conditions as the required payments. Any pay-

7 ment so made shall not be considered a prepayment of
8 any future payment required nor can such payment be
9 refunded under any condition.

Sec. 7. *Separate Accounts.*—(1) The director shall
2 maintain a separate account for each employer, and shall
3 credit his account with all contributions heretofore and
4 hereafter paid by him. Nothing in this chapter shall be
5 construed to grant any employer or individual in his
6 service prior claims or rights to the amounts paid by
7 him into the fund, either on his own behalf or on behalf
8 of such individuals. The account of any employer which
9 has been inactive for a period of four consecutive cal-
10 endar years shall be terminated for all purposes.

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

19 ment in which he was employed as much as three weeks.

20 (3) The director shall, for the year one thousand nine
21 hundred forty-eight and for each calendar year thereafter,
22 classify employers in accordance with their actual experi-
23 ence in the payment of contributions on their own behalf
24 and with respect to benefits charged against their ac-
25 counts, with a view of fixing such contribution rates as
26 will reflect such experience. For the purpose of fixing
27 such contribution rates for each calendar year, the books
28 of the department shall be closed on July thirty-one of
29 the preceding calendar year, and any contributions there-
30 after paid, as well as benefits thereafter paid with respect
31 to compensable weeks ending on or before June thirty of
32 the preceding calendar year, shall not be taken into ac-
33 count until the next annual date for fixing contribution
34 rates: *Provided, however,* That if an employer has failed
35 to furnish to the director on or before July thirty-one of
36 such preceding calendar year the wage information for
37 all past periods necessary for the computation of the con-
38 tribution rate such employer's rate shall be two and seven-
39 tenths per cent: *Provided further,* That any payment

40 made or any information necessary for the computation
41 of a reduced rate furnished on or before the termination
42 of an extension of time for such payment or reporting of
43 such information granted pursuant to a regulation of the
44 director authorizing such extension, shall be taken into
45 account for the purposes of fixing contribution rates:
46 *Provided further*, That when the time for filing any re-
47 port or making any payment required hereunder falls on
48 Saturday, Sunday, or a legal holiday the due date shall
49 be deemed to be the next succeeding business day: *Pro-*
50 *vided further*, That whenever through mistake or in-
51 advertence erroneous credits or charges are found to
52 have been made to or against the reserve account of
53 any employer, the rate shall be adjusted as of January
54 one of the calendar year in which such mistake or
55 inadvertence is discovered; but payments made under
56 any rate assigned prior to January one of such year shall
57 not be 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
7 the computation date throughout which an employer's
8 account 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
12 his average annual pay roll, in which case his rate shall
13 be 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
17 his average annual pay roll, in which case his rate shall
18 be 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
21 by an amount equal to at least seven and one-half
22 per cent of his average annual pay roll, in which
23 case 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
37 annual pay roll, in which case his rate shall be nine-
38 tenths 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
57 cent of his average annual pay roll, in which case his
58 rate 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.

65 After the director is satisfied that an employer has
66 complied with these requirements he shall decrease

67 the employer's rate to the next lower rate if the fund,
68 including the trust fund, clearing account, and benefit
69 account, is as much as eighty million dollars on the
70 computation date, and shall decrease the employer's rate
71 one additional step if the fund is as much as ninety
72 million dollars on the computation date, and shall de-
73 crease the employer's rate one additional step for each
74 five million dollars that the fund is above ninety million
75 dollars up to and including one hundred fifteen million
76 dollars on the computation date.

Sec. 10-a. *Suspension of Decreased Rates.*—(1) If at
2 any time or times the unemployment compensation fund,
3 including the trust fund, clearing account, and benefit
4 account, falls below the sum of fifty million dollars, the
5 director shall, effective at the commencement of the
6 next calendar quarter, suspend the decreased rates as
7 provided in this chapter, and all contributions of em-
8 ployers due thereafter shall be paid at the rate of two
9 and seven-tenths per cent.

10 (2) As of January first of the year next following the
11 date on which the unemployment compensation fund,

12 including the trust fund, clearing account, and benefit
13 account, reaches the sum of fifty-five million dollars, the
14 director shall supersede such suspension.

Sec. 10-b. *Transfer of Business*.—If a subject employer
2 shall transfer his entire organization, trade or business,
3 or substantially all the assets thereof, to another em-
4 ployer, the director shall combine the contribution rec-
5 ords and the benefit experience records of the trans-
6 ferring and acquiring employers. The acquiring em-
7 ployer's contribution rate for the remainder of the cal-
8 endar year shall not be affected by the transfer but such
9 rate shall apply to the whole of his business, including
10 the portion acquired by the transfer, through the fol-
11 lowing December thirty-first. If a subject employer
12 shall make such transfer to an employing unit which is
13 not an employer on the date of the transfer, such sub-
14 ject employer's rate shall continue as the rate of the
15 acquiring employing unit until the next effective rate
16 date. If an employing unit acquires simultaneously the
17 entire organization, trade or business, or substantially
18 all the assets thereof, of two or more covered employers,

19 the successor shall be assigned as a contribution rate
20 the then current rate of the transferring employer which
21 had, in the calendar quarter immediately preceding the
22 date of the transfer, the higher or highest pay roll. As
23 to any transfers which occur prior to July thirty-first of
24 the current calendar year such rate shall remain ef-
25 fective for the balance of that calendar year: *Provided,*
26 *however,* That if the transfers occur subsequent to July
27 thirty-first such rate shall remain effective for the bal-
28 ance of that calendar year and the rate for the suc-
29 ceeding calendar year shall, notwithstanding anything
30 to the contrary provided in section seven of article five
31 of this chapter, be recomputed on the basis of the com-
32 bined experience of the transferring employers as of
33 July thirty-first of the year in which the transfers occur.
34 In case the transferring employer is delinquent in the
35 payment of contributions or interest thereon the ac-
36 quiring employer shall not be entitled to any benefit of
37 the contribution record of the transferring employer
38 unless payment of such delinquent contributions and
39 interest thereon is assumed by the acquiring employer.

40 The director shall upon joint request of the transferor
41 and transferee furnish the transferee a statement of the
42 amount of any contribution and interest due and unpaid
43 by the transferor. A statement so furnished shall be con-
44 trolling for the purposes of the foregoing proviso.

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

6 Interest collected pursuant to this section shall be paid
7 into the employment security special administration
8 fund.

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

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

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

8 If the director determines that payments and interest

9 were erroneously collected, he shall make the 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

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,
10 if the claimant returns to work in covered employment
11 during his benefit year the maximum benefit amount shall
12 be increased by the amount of the decrease imposed un-
13 der 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 disqualifica-
17 tion shall carry a reduction in the maximum benefit
18 amount equal to six times the individual's weekly bene-
19 fit rate. However, if the claimant returns to work in
20 covered employment during his benefit year the maxi-
21 mum benefit amount shall be increased by the amount
22 of the decrease 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 an additional period as any offer of suitable work
29 shall 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
32 disqualification. However, if the claimant returns to
33 work in covered employment during his benefit year
34 the maximum benefit amount shall be increased by the
35 amount of the decrease imposed under the disquali-
36 fication.

37 (4) For a week in which his total or partial unemploy-
38 ment is due to a stoppage of work which exists because
39 of a labor dispute at the factory, establishment, or other
40 premises at which he was last employed, unless the di-
41 rector is satisfied that he was not (one) participating,
42 financing, or directly interested in such dispute, and
43 (two) did not belong to a grade or class of workers
44 who were participating, financing, or directly interested
45 in the labor dispute which resulted in the stoppage of
46 work. No disqualification under this sub-section shall
47 be imposed if the employees are required to accept
48 wages, hours or conditions of employment substantially

49 less favorable than those prevailing for similar work
50 in the locality, or if employees are denied the right of
51 collective bargaining under generally prevailing con-
52 ditions, or if an employer shuts down his plant or opera-
53 tion or dismisses his employees in order to force wage
54 reduction, changes in hours or working conditions.

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

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

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

62 (c) Remuneration in the form of a primary insurance
63 benefit under title two of the social security act, as
64 amended, or similar payments under any act of congress,
65 from and after receipt by him of his first payment for
66 such benefits.

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

69 (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

91 conditions: (1) When benefits are paid without any
92 disqualification to an individual who has left his most
93 recent work for good cause not involving fault on the
94 part of the employer. (2) When benefits are paid for
95 unemployment immediately after the expiration of a
96 period of disqualification for (a) leaving work volun-
97 tarily without good cause involving fault on the part of
98 the employer, (b) discharge for misconduct, (c) failing
99 without good cause to apply for available suitable work,
100 accept suitable work when offered, or return to his cus-
101 tomary self-employment when directed to do so by the
102 director.

Sec. 9. *Place of Payment.*—Benefits shall be paid
2 through employment offices or, if the director by rules so
3 prescribes, through employment security offices, in ac-
4 cordance with such regulations as the director shall pre-
5 scribe.

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 un-
8 employment" 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
12 be prejudiced nor the amount thereof be diminished by
13 reason 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
16 earns in excess of six dollars as a result of odd job or
17 subsidiary work in any benefit week shall be paid bene-
18 fits for such week in accordance with the provisions of
19 this chapter pertaining to benefits for partial unemploy-
20 ment. The provisions of sections ten and eleven of this
21 article shall apply to all benefit weeks occurring in
22 benefit years beginning after the effective date of this
23 act; for benefit weeks occurring in benefit years prior
24 thereto the provisions then in effect shall apply.

25

26				Maximum
27				Benefit
28				in Benefit
29				Year for
30		Wages	Weekly	Total and/or
31	Wage	in Base	Benefit	Partial
32	Class	Period	Rate	Unemployment
33	(Col. A)	(Col. B)	(Col. C)	(Col. D)
34		Under \$ 300.00	Ineligible	Amount
35	1	\$ 300.00-\$ 399.99	\$ 8.00	\$184.00
36	2	400.00- 499.99	9.00	207.00
37	3	500.00- 599.99	10.00	230.00
38	4	600.00- 699.99	11.00	253.00
39	5	700.00- 799.99	12.00	276.00
40	6	800.00- 899.99	13.00	299.00
41	7	900.00- 999.99	14.00	322.00
42	8	1000.00- 1149.99	15.00	345.00
43	9	1150.00- 1299.99	16.00	368.00
44	10	1300.00- 1449.99	17.00	391.00
45	11	1450.00- 1599.99	18.00	414.00

46	12	1600.00- 1749.99	19.00	437.00
47	13	1750.00- 1899.99	20.00	460.00
48	14	1900.00- 2049.99	21.00	483.00
49	15	2050.00- 2199.99	22.00	506.00
50	16	2200.00- 2349.99	23.00	529.00
51	17	2350.00- 2499.99	24.00	552.00
52	18	2500.00 and over	25.00	575.00

Sec. 11. *Benefit Rate; Partial Unemployment.*—An
2 eligible individual who is partially unemployed in any
3 week shall upon claim therefor filed within such time and
4 in such manner as the director may by regulation pre-
5 scribe, be paid benefits for such partial unemployment
6 in an amount equal to his weekly benefit rate, as deter-
7 mined in accordance with section ten of this article, less
8 that part of wages from any source payable to him with
9 respect to such week which is in excess of six dollars:
10 *Provided*, That such amount of benefits if not a multiple
11 of one dollar shall be computed to the next higher multi-
12 ple of one dollar. Such partial benefits shall be paid to
13 such individual for the week for which he is claiming
14 benefits without regard to the provisions of subsections
15 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
22 shall make a decision within twenty-one days after the
23 date of the hearing and shall notify the claimant, last
24 employer, and the director of its findings and decision.

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

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

- 4 (1) On its own motion affirm, modify, or set aside a
5 decision of an appeal tribunal;
- 6 (2) Direct the taking of additional evidence in a dis-
7 puted claim;

8 (3) Permit parties to the decision of an appeal tri-
9 bunal to initiate further appeals before it;

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

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

Article 8. Unemployment Compensation Fund.

Section 1. *Establishment.*—There is hereby established

2 as a special fund, separate and apart from all public
3 moneys or funds of the state, an unemployment com-
4 pensation fund. The fund shall consist of:

5 (1) All payments collected under this chapter.

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

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

9 (4) Earnings of such property or securities.

10 (5) Amounts transferred from the employment se-
11 curity special administration fund.

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

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

Sec. 5. *Clearing Account.*—Upon the receipt of pay-

2 ments and other moneys payable into the fund under
3 this chapter, the director shall immediately deposit them
4 in the clearing account. Refunds payable under section

5 nineteen, article five, of payments erroneously collected,
6 shall be made from the clearing account. Such refunds
7 shall be made upon warrants issued by the director. In-
8 terest collected on delinquent payments shall be paid out
9 of the clearing account, upon warrants issued by the
10 director, into the state treasury to be credited to the em-
11 ployment security special administration fund.

Article 9. Employment Security Administration Funds.

Section 1. *Administration Fund.*—There is hereby cre-
2 ated in the state treasury a special fund to be known
3 as the employment security administration fund. All
4 moneys in this fund which are received from the federal
5 government or any agency thereof or which are appro-
6 priated by this state for the purposes described in section
7 seven of this article shall be expended solely for the
8 purposes and in the amounts found necessary by the
9 Social Security Administration for the proper and ef-
10 ficient administration of this chapter.

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

- 2 (1) Moneys appropriated by the state.
- 3 (2) Moneys received from the United States or any

4 agency thereof, including the Social Security Adminis-
5 tration and the United States Employment Service.

6 (3) Moneys received from any other source.

Sec. 5-a. *Special Administration Fund.*—There is here-
2 by created in the state treasury a fund to be known as
3 the employment security special administration fund,
4 which shall consist of interest collected on delinquent
5 payments pursuant to section seventeen of article five
6 of this chapter. The moneys deposited with this fund
7 are hereby appropriated and made available to the or-
8 der of the director for the purpose of (a) replacements
9 in the employment security administration fund as pro-
10 vided in section eight of this article, (b) to meet special,
11 extraordinary, and contingent expenses not provided for
12 in the employment security administration fund, and
13 (c) refunds pursuant to section nineteen of article five,
14 of interest erroneously collected. This fund shall be ad-
15 ministered and disbursed in the same manner and under
16 the same conditions as other special funds of the state
17 treasury. Balances to the credit of the special admin-
18 istration fund shall not lapse at any time but shall be

19 continuously available to the director for expenditures
20 consistent with this chapter: *Provided*, (1) That not
21 more than twelve thousand five hundred dollars shall be
22 expended from said fund in any fiscal year for purposes
23 (a) and (b); (2) that at the beginning of each calendar
24 quarter the director shall estimate the amount that may
25 be required in that quarter for refunds of interest er-
26 roneously collected; (3) that thereupon the excess, if
27 any, over the amounts provided to be expended under
28 this section shall be paid into the unemployment com-
29 pensation trust fund.

Sec. 8. *Reimbursement of Fund.*—If any moneys re-
2 ceived after June thirty, one thousand nine hundred
3 forty-one, from the social security administration under
4 title three of the social security act, or any unemcum-
5 bered balances in the employment security administra-
6 tion fund as of that date, or any moneys granted after
7 that date to this state pursuant to the provisions of the
8 Wagner-Peyser Act, or any moneys made available by
9 this state or its political subdivisions and matched by
10 such moneys granted to this state pursuant to the pro-

11 visions of the Wagner-Peyser Act, are found by the
12 social security administration, because of any action or
13 contingency, to have been lost or been expended for
14 purposes other than, or in amounts in excess of, those
15 found necessary by the social security administration for
16 the proper administration of this law, it is the policy of
17 this state that such moneys shall be replaced by moneys
18 appropriated for such purpose from the general funds
19 of this state to the employment security administration
20 fund for expenditure as provided by the unemployment
21 compensation law. Upon receipt of notice of such a finding
22 by the social security administration, the director shall
23 promptly report the amount required for such replace-
24 ment to the governor and the governor shall, at the
25 earliest opportunity, submit to the Legislature a request
26 for the appropriation of such amount. This article shall
27 not be construed to relieve this state of its obligation with
28 respect to funds received prior to July one, one thousand
29 nine hundred forty-one, pursuant to the provisions of
30 title three of the Social Security Act.

Article 10. General Provisions.

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 Hantbert
Chairman Senate Committee

H. Matthews
Chairman House Committee

Originated in the Senate.

Takes effect June 30, 1949 passage.

Howard Myers
Clerk of the Senate

J. Schiff
Clerk of the House of Delegates

Franklin D. Hunter
President of the Senate

W. E. Plummer
Speaker House of Delegates

The within APPROVED this the 1ST
day of MARCH, 1949.

Okey L. Patton
Governor.



of West Virginia

MAR 2 1949

D. PITT O'BRIEN,

SECRETARY OF STATE