WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1953

ENROLLED
Committee substitute for

HOUSE BILL No. 225
Originating in the Committee
(By Mr. on the Judiciary)

PASSED March 13, 1953

In Effect
ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 225

(Originating in the Committee on the Judiciary)

[Passed March 13, 1953; in effect ninety days from passage.]

AN ACT to amend and reenact sections three and five, of article one; section six, article two; section seven, article three; sections seven, ten, ten-b and sixteen, article five; sections one, four and ten, article six; sections one, three and eight, article nine, and sections seven and eight, article ten; and to add section seventeen-b to article five, section twenty-two to article six, and section thirty to article seven, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unemployment compensation."

Be it enacted by the Legislature of West Virginia:

That sections three and five, article one; section six, article two; section seven, article three; sections seven, ten, ten-b and sixteen, article five; sections one, four and ten, article six; sections one, three and eight, article nine, and sections seven
and eight, article ten, be amended and reenacted, and that section seventeen-b be added to article five, that section twenty-two be added to article six, and that section thirty be added to article seven, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to read as follows:


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

3 "Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

4 "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.

5 "Average annual payroll" means the average of the last three annual payrolls of an employer.

6 "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.

7 "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 for benefits under the provisions of this chapter.

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

"Board" means board of review.

"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.

“Computation date” means June thirty of the year im-
mediately preceding the January one on which an em-
ployer’s contribution rate becomes effective.

“Director” means the employment security director.

“Employing unit” means an individual, or type of or-
organization, including any partnership, association, trust,
estate, joint stock company, insurance company, corpora-
tion (domestic or foreign), or the receiver, trustee in
bankruptcy, trustee or successor thereof, or the legal rep-
resentative of a deceased person, which has on January
first, one thousand nine hundred thirty-five, or subsequent
thereo, had in its employ one or more individuals per-
forming 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 employ-
ment 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, or who or which has acquired the organization, trade or business, or substantially all the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to this 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 base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or
place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual’s residence is in this state.

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

(4) Service shall be deemed to be localized within a state, if: (a) The service is performed entirely within such state; or (b) the service is performed both within and without such state; 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
(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 operating office, from which 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 employers, employing units, individuals,
and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section one thousand six hundred three (c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the director 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 unemployment compensation is payable under the Railroad Un-Employment Insurance Act (52 Stat. 1094), and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The director may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who
have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreements shall become effective ten days after such publications as comply with the general rules of the department.

(5) Agricultural labor.

(6) Domestic service in a private home.

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

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

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

(10) Service as an officer or member of a crew of an 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 chapter.

"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 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 compensation law of such other state or states shall be included as a part of the remuneration equal to three thousand dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided however, That if the definition of the term “wages” as contained in section 1607(b) of the Internal Revenue Code is amended to include remuneration in excess of three thousand dollars paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this act or his predecessor with respect to employment
during any calendar year up to an amount equal to the
amount of remuneration taxable under the Federal Un-
employment Tax Act;

(2) The amount of any payment made after December
thirty-one, one thousand nine hundred fifty-two, (includ-
ing any amount paid by an employer for insurance or
annuities, or into a fund, to provide for any such pay-
ment) to, or on behalf of, an individual in its employ, or
any of his dependents, under a plan or system established
by an employer which makes provision for individuals
in its employ generally (or for such individuals and their
dependents), or for a class or classes of such individuals
(or for a class or classes of such individuals and their de-
pendents), on account of (A) retirement, or (B) sickness
or accident disability, or (C) medical or hospitalization
expenses in connection with sickness or accident disabil-
ity, or (D) death;

(3) Any payment made after December thirty-one,
one thousand nine hundred fifty-two, by an employer to
an individual in its employ (including any amount paid by
an employer for insurance or annuities, or into a fund, to
provide for any such payment) on account of retirement;

(4) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his beneficiary (A) from or to a trust exempt from tax under section 165 (a) of the Federal Internal Revenue Code at the time of such payment unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165 (a) (3), (4), (5), and (6) of the Federal Internal Revenue Code;
(6) 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 1400 of the Federal Internal Revenue Code;

(7) Remuneration paid by an employer after December thirty-one, one thousand nine hundred fifty-two, in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer after December thirty-one, one thousand nine hundred fifty-two, to an individual in its employ after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

(9) Dismissal payments made after December thirty-one, one thousand nine hundred fifty-two, which the employer is not legally required to make;

(10) 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
an 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 
medium other than cash shall be estimated and deter-
mined in accordance with rules prescribed by the di-
rector.

“Week” means a calendar week, ending at midnight 
Saturday, or the equivalent thereof, as determined in 
accordance with the regulations prescribed by the di-
rector.

“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 there-
of, as determined by the director.

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

Article 2. The Director of Employment Security.

Section 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 regulations 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
(6) Make reports in such form and containing such information as the United States department of labor may from time to time require, and comply with such provisions as the United States department of labor 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 standardize administration, expedite departmental business, assure the establishment of fair rules and regulations and promote the efficiency of the service.

Article 3. Advisory Council.

Section 7. Honorarium and Traveling Expenses.—Each member of the council shall receive an honorarium of

3 twenty-five dollars for each day actually served in attendance at meetings of the council and such traveling expenses as are incurred in the performance of his duties under the provisions of this chapter.

7 Requisition for traveling expenses shall be accompanied by a sworn and itemized statement which shall be filed with the auditor and permanently preserved as a public record.

11 Members shall not be compensated for more than thirty days' service in any year.

Article 5. Employer Coverage and Responsibility.

Section 7. Separate Accounts.—(1) The director shall maintain a separate account for each employer, and shall credit his account with all contributions heretofore and hereafter paid by him. He shall also credit to all active employers' accounts which have a credit balance on a computation date in an amount equal to all interest credited to the West Virginia unemployment trust fund deposited with the secretary of the treasury of the United States for all periods prior to the computation date of June thirty, one thousand nine hundred fifty-three, and
thereafter for the period that has intervened since the
last preceding computation date. The proportionate share
to be credited to each employer's account which has a
credit balance on the computation date shall be at a ratio
of his credit balance to the total of the credit balances of
all employers: Provided, That any adjustment made in
an employer's account after the computation date shall
not be used in the computation of the credit balance of
an employer until the next following computation date:
Provided further, That 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 calen-
dar years shall be terminated for all purposes.
(2) Benefits paid to an eligible individual for total un-
employment beginning after the effective date of this
act shall be charged to the account of the last employer
with whom he has had as much as three weeks of con-
tinuous employment: Provided, That no employer's ac-
count will be charged with benefits paid to any individual who has been separated from non-covered employment in which he was employed as much as three weeks: And provided further, That benefits paid to an eligible individual for partial unemployment beginning after the effective date of this act shall be charged to the account of the claimant's current employer.

Section 10. Experience Ratings; Decreased Rates.—On and after January one, one thousand nine hundred fifty-four, 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 the per cent of his average annual pay roll as shown in column B of table I. His rate shall be the amount appearing in column C of table
I on line with the percentage in column B.

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

### TABLE I

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<th>Col. B</th>
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<td>Class</td>
<td>Rate</td>
<td>Annual Pay Roll by Which Class Credits Exceed Charges</td>
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<td>Per Cent of Average</td>
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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 compu-
23 nation date, and shall decrease the employer's rate one
24 additional step if the fund is as much as ninety million
25 dollars on the computation date, and shall decrease the
26 employer's rate one additional step for each five million
27 dollars that the fund is above ninety million dollars up to
28 and including one hundred fifteen million dollars on the
29 computation date: Provided, That an employer's rate
30 shall not be reduced below 0.3 per cent until the credits
31 to his account for all past years exceed the benefits
32 charged to his account by an amount equal to at least
33 twelve per cent of his average annual pay roll: Provided
34 further, That all required contributions paid on or before
35 July thirty-one immediately following the computation
36 date shall be used in determining the amount in the trust
37 fund and clearing account as of the computation date.

Sec. 10-b. Transfer of Business.—If a subject em-
2 employer shall transfer his entire organization, trade or bus-
3 iness, or substantially all the assets thereof, to another
4 employer, the director shall combine the contribution
5 records and the benefit experience records of the trans-
6 ferring and acquiring employers. The acquiring em-
employer's contribution rate for the remainder of the cal-
endar 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 follow-
ing 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 em-
ployer'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 or-
ganization, trade or business, or substantially all the as-
sets 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. If a subject
employer shall transfer his entire organization, trade or
business, or substantially all the assets thereof, to two
or more employers or employing units apportionment of
the contribution records and benefit experience records
of the transferring employer shall be made between the
acquiring units in accordance with the ratio that the total assets acquired by each transferee bears to the total assets transferred by the transferring employer as of the date of the transfers. The current contribution rate of the transferring employer shall in such case continue as the rate of each transferee who or which is an employing unit until the next effective rate date; the current contribution rate of each transferee who or which is an employer shall continue as his or its rate until the next effective rate date. For the succeeding calendar year the rate of each transferee shall be determined as provided in section ten of this article. As to any transfers which occur prior to July thirty-first of the current calendar year such rate shall remain effective 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 balance of that calendar year and the rate for the succeeding 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 combined 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 acquiring 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. 16. Collection of Payments.—(1) The director in the name of the state shall commence a civil action against an employer who, after due notice, defaults in any payment or interest thereon. If judgment is against the employer he shall pay the costs of the action. Civil actions under this section shall be given preference on the calendar of the court over all other civil actions except petitions for judicial review under article seven of
this chapter and cases arising under the workmen's compensa-

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

(3) In addition to all other civil remedies prescribed herein the director may in the name of the state distrain upon any personal property, including intangibles, of any employer delinquent for any payment and interest thereon. If the director has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated he
may likewise distraint in the name of the state before such delinquency occurs. For such purpose the director may require the services of a sheriff of any county in the state in levying such distress in the county in which such sheriff is an officer and in which such personal property is situated. A sheriff so collecting any payments and interest thereon shall be entitled to such compensation as is provided by law for his services in the levy and enforcement of executions.

(4) In case a business subject to the payments and interest thereon imposed under this chapter shall be operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or decree in the cause, make provision, so far as the assets in administration will permit, for the regular payment of such payments as the same become due.

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

(6) In any case where an employer defaults in payments, or interest thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains delinquent after due notice, and the Director has been unable to collect such payments by any of the other civil remedies prescribed herein, the director may bring action in the circuit court of Kanawha county to enjoin such employer from continuing to carry on the business in which such liability was incurred: Provided, however, That the director may as an alternative to this action require such delinquent employer to file a bond in the form prescribed by the director with satisfactory surety in an amount not less than fifty per cent more than the tax due.
Section 17-b. Comity in Collection of Past-Due Payments.—The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The director in the name of this state is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties if any, due such state; in any such case the director of employment security of this state may through his legal assistant or assistants institute and conduct such suit for such other state.

Article 6. Employee Eligibility; Benefits.

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

1. He has registered for work at and thereafter con-...
Enr. Com. Sub. for H. B. No. 225] 34

5 tinues to report at an employment office in accordance
6 with the regulations of the director.
7 (2) He has made a claim for benefits in accordance
8 with the provisions of article seven of this chapter.
9 (3) He is able to work and is available for full time
10 work for which he is fitted by prior training or experi-
11 ence.
12 (4) He has been totally unemployed during his ben-
13 efit year for a waiting period of one week prior to the
14 week for which he claims benefits for total unemploy-
15 ment.
16 (5) He has within his base period earned wages for
17 employment equal to not less than five hundred dollars.

Sec. 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 work
5 voluntarily without good cause involving fault on the
6 part of the employer and the six weeks immediately
7 following such week. Such disqualification shall carry
8 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 em-
ployment 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 ben-

30 efit amount shall be reduced by an amount equal to his
31 weekly benefit rate times the number of weeks of dis-
32 qualification. However, if the claimant returns to work
33 in covered employment during his benefit year the max-
34 imum benefit amount shall be increased by the amount
35 of the decrease imposed under the disqualification.
36
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 (two)
43 did not belong to a grade or class of workers who were
44 participating, financing, or directly interested in the labor
45 dispute which resulted in the stoppage of work. No dis-
46 qualification under this subsection shall be imposed if
47 the employees are required to accept wages, hours or
48 conditions of employment substantially less favorable
49 than those prevailing for similar work in the locality, or
50 if employees are denied the right of collective bargaining
51 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 II 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 employed because of pregnancy, or has voluntarily quit employment to marry or to perform any martial, parental or family duty, or to attend to his or her personal busi-
ness or affairs, and until the individual returns to covered
employment and has been employed in covered employ-
ment at least thirty working days.

(7) For each week in which an individual is unem-
ployed because, having voluntarily left employment to
attend a school, college, university, or other educational
institution, he is attending such school, college, univer-
sity, or other educational institution, or is awaiting en-
trance thereto or is awaiting the starting of a new term
or session thereof, and until the individual returns to
covered employment.

(8) For each week in which he is unemployed because
of his request, or that of his duly authorized agent, for
a vacation period at a specified time that would leave the
employer no other alternative but to suspend operations.

(9) For each week in which he is receiving or has re-
ceived remuneration in the form of an annuity, pension,
or other retirement pay, from an employer or from any
trust or fund contributed to by an employer. But if such
remuneration for any week is less than the benefits which
would otherwise be due him for such week under this
chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: Provided further, That there shall be no disqualification if in the individual’s base period there are no wages which were paid by the employer paying such remuneration, or by a fund into which the employer has paid wages during said base period. Claimant may be required to certify as to whether or not he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay from an employer or from a trust fund contributed to by an employer.

(10) For each week in which he knowingly made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact in order to obtain or increase a benefit under this act. For each such week of disqualification he shall be disqualified an additional five weeks and his maximum benefit amount shall be reduced by an amount equal to five times his
114 weekly benefit rate. Such five weeks disqualification
115 periods are to run consecutively beginning with the first
116 week in which it is determined a fraudulent claim was
117 filed: Provided, That an individual shall not be disquali-
118 fied under this subsection for a period of more than fifty-
119 two consecutive weeks: Provided further, That disqualifi-
120 cation under this subsection shall not preclude prosecu-
121 tion under article ten, section seven.
122 (11) For the purposes of this section an employer's ac-
123 count shall not be charged under any of the following
124 conditions: (1) When benefits are paid without any dis-
125 qualification to an individual who has left his most re-
126 cent work for good cause not involving fault on the part
127 of the employer. (2) When benefits are paid for unem-
128 ployment immediately after the expiration of a period of
129 disqualification for (a) leaving work voluntarily with-
130 out good cause involving fault on the part of the em-
131 ployer, (b) discharge for misconduct, (c) failing without
132 good cause to apply for available suitable work, accept
133 suitable work when offered, or return to his customary
134 self-employment when directed to do so by the director.
Sec. 10. *Benefit Rate; Total Unemployment.*—Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in column (C) in table A in this paragraph, on the line on which in column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in column (B) in table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. 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 benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment. The provisions of this section shall apply to all benefit weeks occurring in benefit years beginning after the effective
22 date of this act; for benefit weeks occurring in benefit
23 years prior thereto the provisions then in effect shall
24 apply.

### TABLE A

<table>
<thead>
<tr>
<th>Wage Class (Col. A)</th>
<th>Wages in Base Period (Col. B)</th>
<th>Weekly Benefit Rate Ineligible Amount (Col. D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $ 500.00</td>
<td></td>
<td>$10.00 $240.00</td>
</tr>
<tr>
<td>1 $ 500.00- 599.99</td>
<td></td>
<td>$11.00 264.00</td>
</tr>
<tr>
<td>2 600.00- 699.99</td>
<td></td>
<td>$12.00 288.00</td>
</tr>
<tr>
<td>3 700.00- 799.99</td>
<td></td>
<td>$13.00 312.00</td>
</tr>
<tr>
<td>4 800.00- 899.99</td>
<td></td>
<td>$14.00 336.00</td>
</tr>
<tr>
<td>5 900.00- 999.99</td>
<td></td>
<td>$15.00 360.00</td>
</tr>
<tr>
<td>6 1000.00- 1149.99</td>
<td></td>
<td>$16.00 384.00</td>
</tr>
<tr>
<td>7 1150.00- 1299.99</td>
<td></td>
<td>$17.00 408.00</td>
</tr>
<tr>
<td>8 1300.00- 1449.99</td>
<td></td>
<td>$18.00 432.00</td>
</tr>
<tr>
<td>9 1450.00- 1599.99</td>
<td></td>
<td>$19.00 456.00</td>
</tr>
<tr>
<td>10 1600.00- 1749.99</td>
<td></td>
<td>$20.00 480.00</td>
</tr>
<tr>
<td>11 1750.00- 1899.99</td>
<td></td>
<td>$21.00 504.00</td>
</tr>
<tr>
<td>12 1900.00- 2049.99</td>
<td></td>
<td>$22.00 528.00</td>
</tr>
<tr>
<td>13 2050.00- 2199.99</td>
<td></td>
<td>$23.00 552.00</td>
</tr>
<tr>
<td>14 2200.00- 2349.99</td>
<td></td>
<td>$24.00 576.00</td>
</tr>
<tr>
<td>15 2350.00- 2499.99</td>
<td></td>
<td>$25.00 600.00</td>
</tr>
<tr>
<td>16 2500.00- 2599.99</td>
<td></td>
<td>$26.00 624.00</td>
</tr>
<tr>
<td>17 2600.00- 2699.99</td>
<td></td>
<td>$27.00 648.00</td>
</tr>
<tr>
<td>18 2700.00- 2799.99</td>
<td></td>
<td>$28.00 672.00</td>
</tr>
<tr>
<td>19 2800.00- 2899.99</td>
<td></td>
<td>$29.00 696.00</td>
</tr>
<tr>
<td>20 2900.00- 2999.99</td>
<td></td>
<td>$30.00 720.00</td>
</tr>
<tr>
<td>21 3000.00 and over</td>
<td></td>
<td>$30.00 720.00</td>
</tr>
</tbody>
</table>
Sec. 22. Payment of Benefits Upon Decease of Claimant.—Accrued benefits due and unpaid on claims filed prior to decease of a claimant may, in the discretion of the Director, be paid, without letters of administration, to the surviving spouse, children, or parents of the deceased, in the order of priority enumerated.

Article 7. Claim Procedure.

Section 30. Appeals from Administrative Decisions Relative to Chargeability of Benefits.—Appeals shall lie to the board of review, in the manner as provided in this article relating to appeal from an examiner's decision, and under such rules, regulations, and procedure as may be prescribed by the board, from an administrative decision of the director relating to chargeability of benefits. Appeals shall lie from a final decision of the board of review in such case to the circuit court of Kanawha county and thence to the supreme court of appeals of West Virginia within the times and in the manner as provided in section thirty-one of this article.

Article 9. Employment Security Administration Funds.

Section 1. Administration Fund.—There is hereby cre-
ated 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 govern-
ment 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 secretary of labor
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, for the administration of this act.

(3) Moneys received from any other source.

Sec. 8. Reimbursement of Fund.—If any moneys re-
ceived after June thirty, one thousand nine hundred
forty-one, pursuant to 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 provisions of the Wagner-Peyser Act, are found by the secretary of labor, 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 secretary of labor 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 secretary of labor, 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 7. False Representation.—A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or increase a benefit, either for himself or another, under this chapter, or under an employment security law of any other state or of the federal government for either of which jurisdictions this state is acting as an agent, shall be guilty of a misdemeanor and upon conviction punished by a fine of not less than twenty dollars nor more than fifty dollars, or by imprisonment for not longer than thirty days, or both. Each false statement or representation, or failure to disclose a material fact, shall constitute a separate offense.

Sec. 8. Misrepresentation.—A person who, by reason of non-disclosure or misrepresentation, either by himself or another (irrespective of whether such non-disclosure or misrepresentation was known or fraudulent) has received a sum as a benefit under this chapter, shall either have such sum deducted from a future benefit payable to him or shall repay to the director the amount which he has
received. Collection shall be made in the same manner as collection of past due payment; *Provided, however, That* such collection or deduction of benefits shall be barred after the expiration of five years, except for known or fraudulent non-disclosure or misrepresentation which shall be barred after the expiration of ten years, from the date of the filing of the claim in connection with which such non-disclosure or misrepresentation occurred.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 20th day of March, 1953.

Governor