

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 *immediately upon* Passage



27

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:

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

15 the base period for any benefit year paid wages to an
16 individual who filed claim for unemployment compensa-
17 tion 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 rep-
48 resentative of a deceased person, which has on January
49 first, one thousand nine hundred thirty-five, or subsequent
50 thereto, had in its employ one or more individuals per-
51 forming 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
55 not be consecutive, within either the current calendar
56 year, or the preceding calendar year, has had in employ-

57 ment eight or more individuals irrespective of whether
58 the same individuals were or were not employed on each
59 of such days, or who or which is or becomes a liable em-
60 ployer under any federal unemployment tax act, or who
61 or which has acquired the organization, trade or business,
62 or substantially all the assets thereof, of an employing
63 unit which at the time of such acquisition was an em-
64 ployer subject to this act.

65 "Employment," subject to the other provisions of this
66 section, means:

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

70 (2) The term "employment" shall include an individu-
71 al's entire service, performed within or both within and
72 without this state if: (a) The service is localized in this
73 state; or (b) the service is not localized in any state but
74 some of the service is performed in this state and (i) the
75 base of operations, or, if there is no base of operations,
76 then the place from which such service is directed or con-
77 trolled, is in this state; or (ii) the base of operations or

78 place from which such service is directed or controlled is
79 not in any state in which some part of the service is per-
80 formed but the individual's residence is in this state.

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

92 (4) Service shall be deemed to be localized within a
93 state, if: (a) The service is performed entirely within
94 such state; or (b) the service is performed both within
95 and without such state; or (c) the service is performed
96 both within or without such state, but the service per-
97 formed without such state is incidental to the individual's
98 service within this state. For example, is temporary or

99 transitory in nature or consists of isolated transactions.

100 (5) Services performed by an individual for wages
101 shall be deemed to be employment subject to this chapter
102 unless and until it is shown to the satisfaction of the
103 Director that: (a) Such individual has been and will
104 continue to be free from control or direction over the
105 performance of such services, both under his contract of
106 service and in fact; and (b) such service is either outside
107 the usual course of the business for which such service is
108 performed or that such service is performed outside of
109 all the places of business of the enterprise for which such
110 service is performed; and (c) such individual is custom-
111 arily engaged in an independently established trade, oc-
112 cupation, profession or business.

113 (6) All service performed by an officer or member of
114 the crew of an American vessel (as defined in section
115 three hundred five of an act of Congress entitled "Social
116 Security Act Amendment of 1946," approved August
117 tenth, one thousand nine hundred forty-six) on or in
118 connection with such vessel, provided that the operating
119 office, from which the operations of such vessel operating

120 on navigable waters within or within and without the
121 United States is ordinarily and regularly supervised,
122 managed, directed and controlled, is within this state.

123 The term "employment" shall not include:

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

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

129 (3) Service performed in the employ of the United
130 States or an instrumentality of the United States exempt
131 under the Constitution of the United States from the pay-
132 ments imposed by this law, except that to the extent that
133 the Congress of the United States shall permit states to
134 require any instrumentalities of the United States to
135 make payments into an unemployment fund under a state
136 unemployment compensation law, all of the provisions of
137 this law shall be applicable to such instrumentalities, and
138 to service performed for such instrumentalities, in the
139 same manner, to the same extent and on the same terms
140 as to all other employers, employing units, individuals,

141 and services: *Provided*, That if this state shall not be
142 certified for any year by the secretary of labor under
143 section one thousand six hundred three (c) of the Fed-
144 eral Internal Revenue Code, the payments required of
145 such instrumentalities with respect to such year shall be
146 refunded by the director from the fund in the same man-
147 ner and within the same period as is provided in section
148 nineteen of article five of this chapter with respect to
149 payments erroneously collected.

150 (4) Service performed after June thirty, one thousand
151 nine hundred thirty-nine, with respect to which unem-
152 ployment compensation is payable under the Railroad
153 Un-Employment Insurance Act (52 Stat. 1094), and
154 service with respect to which unemployment benefits
155 are payable under an unemployment compensation sys-
156 tem for maritime employees established by an act of
157 Congress. The director may enter into agreements with
157 the proper agency established under such an act of
159 Congress to provide reciprocal treatment to individu-
160 als who, after acquiring potential rights to unemploy-
161 ment compensation under an act of Congress, or who

162 have, after acquiring potential rights to unemploy-
163 ment compensation under an act of Congress, acquired
164 rights to benefit under this chapter. Such agreements
165 shall become effective ten days after such publica-
166 tions as comply with the general rules of the depart-
167 ment.

168 (5) Agricultural labor.

169 (6) Domestic service in a private home.

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

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

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

180 (10) Service as an officer or member of a crew of an
181 American vessel performed on or in connection with such
182 vessel, if the operating office, from which the operations

183 of the vessel operating on navigable water within or
184 without the United States are ordinarily and regularly
185 supervised, managed, directed and controlled, is without
186 this state.

187 Notwithstanding the foregoing exclusions from the
188 definition of "employment," services, except agricultural
189 labor and domestic service in a private home, shall be
190 deemed to be in employment if with respect to such serv-
191 ices a tax is required to be paid under any federal law
192 imposing a tax against which credit may be taken for
193 contributions required to be paid into a state unemploy-
194 ment compensation fund.

195 "Employment office" means a free employment office
196 or branch thereof, operated by this state, or any free pub-
197 lic employment office maintained as a part of a state con-
198 trolled system of public employment offices in any other
199 state.

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

202 "Payments" means the money required to be paid or
203 that may be voluntarily paid into the state unemployment

204 compensation fund as provided in article five of this
205 chapter.

206 "Separated from employment" means, for the purposes
207 of this chapter, the total severance whether by quitting,
208 discharge, or otherwise, of the employer-employee re-
209 lationship.

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

212 "Total and partial unemployment":

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

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

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

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

246 credited to the individual and included in his computa-
247 tion of base period wages; and *Provided*, That the re-
248 munerated paid to an individual by an employer with
249 respect to employment in another state or other states
250 upon which contributions were required of and paid by
251 such employer under an unemployment compensation
252 law of such other state or states shall be included as a
253 part of the remuneration equal to three thousand dollars
254 herein referred to. In applying such limitation on the
255 amount of remuneration that is taxable an employer
256 shall be accorded the benefit of all or any portion of such
257 amount which may have been paid by its predecessor or
258 predecessors: *Provided however*, That if the definition of
259 the term "wages" as contained in section 1607 (b) of the
260 Internal Revenue Code is amended to include remunera-
261 tion in excess of three thousand dollars paid to an indi-
262 vidual by an employer under the Federal Unemployment
263 Tax Act during any calendar year, wages for the purposes
264 of this definition shall include remuneration paid in a
265 calendar year to an individual by an employer subject to
266 this act or his predecessor with respect to employment

267 during any calendar year up to an amount equal to the
268 amount of remuneration taxable under the Federal Un-
269 employment Tax Act;

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

284 (3) Any payment made after December thirty-one,
285 one thousand nine hundred fifty-two, by an employer to
286 an individual in its employ (including any amount paid by
287 an employer for insurance or annuities, or into a fund, to

288 provide for any such payment) on account of retirement;

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

297 (5) Any payment made after December thirty-one,
298 one thousand nine hundred fifty-two, by an employer to,
299 or on behalf of, an individual in its employ or his benefi-
300 ciary (A) from or to a trust exempt from tax under sec-
301 tion 165 (a) of the Federal Internal Revenue Code at the
302 time of such payment unless such payment is made to
303 such individual as an employee of the trust as remunera-
304 tion for services rendered by such individual and not as
305 a beneficiary of the trust, or (B) under or to an annuity
306 plan which, at the time of such payment, meets the re-
307 quirements of section 165 (a) (3), (4), (5), and (6) of
308 the Federal Internal Revenue Code;

309 (6) The payment by an employer (without deduction
310 from the remuneration of the individual in its employ)
311 of the tax imposed upon an individual in its employ under
312 section 1400 of the Federal Internal Revenue Code;

313 (7) Remuneration paid by an employer after Decem-
314 ber thirty-one, one thousand nine hundred fifty-two, in
315 any medium other than cash to an individual in its em-
316 ploy for service not in the course of the employer's trade
317 or business;

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

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

327 (10) Payments, not required under any contract of hire,
328 made to an individual with respect to his period of train-
329 ing or service in the armed forces of the United States by

330 an employer by which such individual was formerly
331 employed.

332 Gratuities customarily received by an individual in the
333 course of his employment from persons other than his
334 employing unit shall be treated as wages paid by his em-
335 ploying unit, if accounted for and reported to such em-
336 ploying unit.

337 The reasonable cash value of remuneration in any
338 medium other than cash shall be estimated and deter-
339 mined in accordance with rules prescribed by the di-
340 rector.

341 "Week" means a calendar week, ending at midnight
342 Saturday, or the equivalent thereof, as determined in
343 accordance with the regulations prescribed by the di-
344 rector.

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

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

Sec. 5. *Federal-State Cooperation.*—The department

2 shall cooperate with the United States department of
3 labor, similar agencies of the several states, and such
4 other agencies as are concerned with the problem of em-
5 ployment security and public assistance and relief.

Article 2. The Director of Employment Security.

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

4 (1) Exercise general supervision of and make regula-
5 tions for the government of the department.

6 (2) Prescribe uniform rules pertaining to investiga-
7 tions, departmental hearings, and promulgate rules and
8 regulations.

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 employees
13 of the department, subject to the provisions of section
14 ten, article four of this chapter, relating to the board of
15 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
21 information as the United States department of labor
22 may from time to time require, and comply with such
23 provisions as the United States department of labor may
24 from time to time find necessary to assure the correct-
25 ness 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,
29 the 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 chap-
51 ter.

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

Article 3. Advisory Council.

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

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

7 Requisition for traveling expenses shall be accompa-
8 nied by a sworn and itemized statement which shall be
9 filed with the auditor and permanently preserved as a
10 public record.

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

Article 5. Employer Coverage and Responsibility.

Section 7. *Separate Accounts.*—(1) The director shall
2 maintain a separate account for each employer, and shall
3 credit his account with all contributions heretofore and
4 hereafter paid by him. He shall also credit to all active
5 employers' accounts which have a credit balance on a com-
6 putation date in an amount equal to all interest credited
7 to the West Virginia unemployment trust fund depos-
8 ited with the secretary of the treasury of the United
9 States for all periods prior to the computation date of
10 June thirty, one thousand nine hundred fifty-three, and

11 thereafter for the period that has intervened since the
12 last preceding computation date. The proportionate share
13 to be credited to each employer's account which has a
14 credit balance on the computation date shall be at a ratio
15 of his credit balance to the total of the credit balances of
16 all employers: *Provided*, That any adjustment made in
17 an employer's account after the computation date shall
18 not be used in the computation of the credit balance of
19 an employer until the next following computation date:
20 *Provided further*, That nothing in this chapter shall be
21 construed to grant any employer or individual in his
22 service prior claims or rights to the amounts paid by him
23 into the fund, either on his own behalf or on behalf of
24 such individuals. The account of any employer which
25 has been inactive for a period of four consecutive calen-
26 dar years shall be terminated for all purposes.

27 (2) Benefits paid to an eligible individual for total un-
28 employment beginning after the effective date of this
29 act shall be charged to the account of the last employer
30 with whom he has had as much as three weeks of con-
31 tinuous employment: *Provided*, That no employer's ac-

32 count will be charged with benefits paid to any individual
33 who has been separated from non-covered employment
34 in which he was employed as much as three weeks: *And*
35 *provided further*, That benefits paid to an eligible in-
36 dividual for partial unemployment beginning after the
37 effective date of this act shall be charged to the account
38 of the claimant's current employer.

Section 10. *Experience Ratings; Decreased Rates.*—On
2 and after January one, one thousand nine hundred fifty-
3 four, 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:

6 (1) There have elapsed thirty-six consecutive months
7 immediately preceding the computation date throughout
8 which an employer's account was chargeable with bene-
9 fits.

10 (2) His payments credited to his account for all past
11 years exceed the benefits charged to his account by an
12 amount equal to at least the per cent of his average
13 annual pay roll as shown in column B of table I. His
14 rate shall be the amount appearing in column C of table

15 I on line with the percentage in column B.

16 The director shall determine an employer's compliance

17 with these requirements.

TABLE I

Col. A	Col. B	Col. C
	Per Cent of Average	
Rate	Annual Pay Roll by Which	Employer's
Class	Credits Exceed Charges	Rate
(1)	5.5	2.5
(2)	6.5	2.3
(3)	7.0	2.1
(4)	7.5	1.9
(5)	8.0	1.7
(6)	8.5	1.5
(7)	9.0	1.3
(8)	9.5	1.1
(9)	10.0	0.9
(10)	10.5	0.7
(11)	11.0	0.5
(12)	11.5	0.3
(13)	12 and over	0

18 After the director is satisfied that an employer has

19 complied with these requirements he shall decrease the

20 employer's rate to the next lower rate if the fund, in-

21 cluding the trust fund, clearing account, and benefit ac-

22 count, is as much as eighty million dollars on the compu-

23 tation 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 ployer 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-

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 follow-
11 ing December thirty-first. If a subject employer shall
12 make such transfer to an employing unit which is not an
13 employer on the date of the transfer, such subject em-
14 ployer's rate shall continue as the rate of the acquiring
15 employing unit until the next effective rate date. If an
16 employing unit acquires simultaneously the entire or-
17 ganization, trade or business, or substantially all the as-
18 sets thereof, of two or more covered employers, the
19 successor shall be assigned as a contribution rate the then
20 current rate of the transferring employer which had, in
21 the calendar quarter immediately preceding the date of
22 the transfer, the higher or highest pay roll. If a subject
23 employer shall transfer his entire organization, trade or
24 business, or substantially all the assets thereof, to two
25 or more employers or employing units apportionment of
26 the contribution records and benefit experience records
27 of the transferring employer shall be made between the

28 acquiring units in accordance with the ratio that the
29 total assets acquired by each transferee bears to the total
30 assets transferred by the transferring employer as of the
31 date of the transfers. The current contribution rate of the
32 transferring employer shall in such case continue as the
33 rate of each transferee who or which is an employing unit
34 until the next effective rate date; the current contribu-
35 tion rate of each transferee who or which is an employer
36 shall continue as his or its rate until the next effective
37 rate date. For the succeeding calendar year the rate of
38 each transferee shall be determined as provided in sec-
39 tion ten of this article. As to any transfers which occur
40 prior to July thirty-first of the current calendar year such
41 rate shall remain effective for the balance of that calen-
42 dar year: *Provided, however,* That if the transfers occur
43 subsequent to July thirty-first such rate shall remain ef-
44 fective for the balance of that calendar year and the rate
45 for the succeeding calendar year shall, notwithstanding
46 anything to the contrary provided in section seven of
47 article five of this chapter, be recomputed on the basis
48 of the combined experience of the transferring employers

49 as of July thirty-first of the year in which the transfers
50 occur. In case the transferring employer is delinquent
51 in the payment of contributions or interest thereon the
52 acquiring employer shall not be entitled to any benefit
53 of the contribution record of the transferring employer
54 unless payment of such delinquent contributions and in-
55 terest thereon is assumed by the acquiring employer. The
56 director shall upon joint request of the transferor and
57 transferee furnish the transferee a statement of the
58 amount of any contribution and interest due and unpaid
59 by the transferor. A statement so furnished shall be
60 controlling for the purposes of the foregoing proviso.

Sec. 16. *Collection of Payments.*—(1) The director
2 in the name of the state shall commence a civil action
3 against an employer who, after due notice, defaults in
4 any payment or interest thereon. If judgment is against
5 the employer he shall pay the costs of the action. Civil
6 actions under this section shall be given preference on
7 the calendar of the court over all other civil actions ex-
8 cept petitions for judicial review under article seven of

9 this chapter and cases arising under the workmen's com-
10 pensation law.

11 (2) A payment and interest thereon due and unpaid
12 under this chapter shall be a debt due the state in favor
13 of the director. It shall be a personal obligation of the
14 employer and shall, in addition thereto, be a lien, en-
15 forceable by suit in equity, upon all the property of the
16 employer: *Provided, however,* That no such lien shall be
17 enforceable as against a purchaser (including lien cred-
18 itor) of real estate or personal property for a valuable
19 consideration, without notice, unless docketed as pro-
20 vided in chapter ninety-nine of the acts of the Legisla-
21 ture, regular session, one thousand nine hundred forty-
22 three.

23 (3) In addition to all other civil remedies prescribed
24 herein the director may in the name of the state distrain
25 upon any personal property, including intangibles, of any
26 employer delinquent for any payment and interest
27 thereon. If the director has good reason to believe that
28 such property or a substantial portion thereof is about
29 to be removed from the county in which it is situated he

30 may likewise distrain in the name of the state before
31 such delinquency occurs. For such purpose the director
32 may require the services of a sheriff of any county in the
33 state in levying such distress in the county in which such
34 sheriff is an officer and in which such personal property
35 is situated. A sheriff so collecting any payments and
36 interest thereon shall be entitled to such compensation
37 as is provided by law for his services in the levy
38 and enforcement of executions.

39 (4) In case a business subject to the payments and in-
40 terest thereon imposed under this chapter shall be oper-
41 ated in connection with a receivership or insolvency pro-
42 ceeding in any state court in this state, the court under
43 whose direction such business is operated shall, by the
44 entry of a proper order or decree in the cause, make pro-
45 vision, so far as the assets in administration will permit,
46 for the regular payment of such payments as the same
47 become due.

48 (5) The secretary of state of this state shall withhold
49 the issuance of any certificate of dissolution or with-
50 drawal in the case of any corporation organized under

51 the laws of this state, or organized under the laws of an-
52 other state and admitted to do business in this state,
53 until notified by the director that all payments and in-
54 terest thereon against any such corporation which is an
55 employer under this chapter have been paid or that pro-
56 vision satisfactory to the director has been made for pay-
57 ment.

58 (6) In any case where an employer defaults in pay-
59 ments, or interest thereon, for as many as two calendar
60 quarters, which quarters need not be consecutive, and
61 remains delinquent after due notice, and the Director
62 has been unable to collect such payments by any of the
63 other civil remedies prescribed herein, the director may
64 bring action in the circuit court of Kanawha county to
65 enjoin such employer from continuing to carry on the
66 business in which such liability was incurred: *Provided,*
67 *however,* That the director may as an alternative to this
68 action require such delinquent employer to file a bond
69 in the form prescribed by the director with satisfactory
70 surety in an amount not less than fifty per cent more
71 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-

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

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

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

23 (3) For the week in which he failed without good
24 cause to apply for available suitable work, accept suitable
25 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 such
28 an additional period as any offer of suitable work shall
29 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 (4) For a week in which his total or partial unemploy-
37 ment is due to a stoppage of work which exists because
38 of a labor dispute at the factory, establishment, or other
39 premises at which he was last employed, unless the di-
40 rector is satisfied that he was not (one) participating,
41 financing, or directly interested in such dispute, and (two)
42 did not belong to a grade or class of workers who were
43 participating, financing, or directly interested in the labor
44 dispute which resulted in the stoppage of work. No dis-
45 qualification under this subsection shall be imposed if
46 the employees are required to accept wages, hours or
47 conditions of employment substantially less favorable
48 than those prevailing for similar work in the locality, or
49 if employees are denied the right of collective bargaining
50 under generally prevailing conditions, or if an employer

51 shuts down his plant or operation or dismisses his em-
52 ployees in order to force wage reduction, changes in hours
53 or working conditions.

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

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

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

61 (c) Remuneration in the form of a primary insurance
62 benefit under Title II of the Social Security Act, as
63 amended, or similar payments under any act of Congress,
64 from and after receipt by him of his first payment for such
65 benefits.

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

68 (6) For the week in which an individual is not em-
69 ployed because of pregnancy, or has voluntarily quit em-
70 ployment to marry or to perform any martial, parental
71 or family duty, or to attend to his or her personal busi-

72 ness or affairs, and until the individual returns to covered
73 employment and has been employed in covered employ-
74 ment at least thirty working days.

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

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

87 (9) For each week in which he is receiving or has re-
88 ceived remuneration in the form of an annuity, pension,
89 or other retirement pay, from an employer or from any
90 trust or fund contributed to by an employer. But if such
91 remuneration for any week is less than the benefits which
92 would otherwise be due him for such week under this

93 chapter, he shall be entitled to receive for such week,
94 if otherwise eligible, benefits reduced by the amount of
95 such remuneration: *Provided*, That if such amount of
96 benefits is not a multiple of one dollar, it shall be com-
97 puted to the next higher multiple of one dollar: *Provided*
98 *further*, That there shall be no disqualification if in the
99 individual's base period there are no wages which were
100 paid by the employer paying such remuneration, or by
101 a fund into which the employer has paid wages during
102 said base period. Claimant may be required to certify
103 as to whether or not he is receiving or has received re-
104 muneration in the form of an annuity, pension, or other
105 retirement pay from an employer or from a trust fund
106 contributed to by an employer.

107 (10) For each week in which he knowingly made a
108 false statement or representation knowing it to be false
109 or knowingly failed to disclose a material fact in order
110 to obtain or increase a benefit under this act. For each
111 such week of disqualification he shall be disqualified an
112 additional five weeks and his maximum benefit amount
113 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
2 eligible individual who is totally unemployed in any week
3 shall be paid benefits with respect to that week at the
4 weekly rate appearing in column (C) in table A in this
5 paragraph, on the line on which in column (A) there is
6 indicated the employee's wage class, except as otherwise
7 provided under the term "total and partial unemploy-
8 ment" in section three, article one of this chapter. The
9 employee's wage class shall be determined by his base
10 period wages as shown in column (B) in table A. The
11 right of an employee to receive benefits shall not be pre-
12 judiced nor the amount thereof be diminished by reason
13 of failure by an employer to pay either the wages earned
14 by the employee or the contribution due on such wages.
15 An individual who is totally unemployed but earns in
16 excess of six dollars as a result of odd-job or subsidiary
17 work in any benefit week shall be paid benefits for such
18 week in accordance with the provisions of this chapter
19 pertaining to benefits for partial unemployment. The pro-
20 visions of this section shall apply to all benefit weeks
21 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

Wage Class (Col. A)	Wages in Base Period (Col. B)	Weekly Benefit Rate (Col. C)	Maximum Benefit in Benefit Year for Total and/or Partial Unempl. (Col. D)
	Under \$ 500.00	Ineligible	Amount
1	\$ 500.00- 599.99	\$10.00	\$240.00
2	600.00- 699.99	11.00	264.00
3	700.00- 799.99	12.00	288.00
4	800.00- 899.99	13.00	312.00
5	900.00- 999.99	14.00	336.00
6	1000.00- 1149.99	15.00	360.00
7	1150.00- 1299.99	16.00	384.00
8	1300.00- 1449.99	17.00	408.00
9	1450.00- 1599.99	18.00	432.00
10	1600.00- 1749.99	19.00	456.00
11	1750.00- 1899.99	20.00	480.00
12	1900.00- 2049.99	21.00	504.00
13	2050.00- 2199.99	22.00	528.00
14	2200.00- 2349.99	23.00	552.00
15	2350.00- 2499.99	24.00	576.00
16	2500.00- 2599.99	25.00	600.00
17	2600.00- 2699.99	26.00	624.00
18	2700.00- 2799.99	27.00	648.00
19	2800.00- 2899.99	28.00	672.00
20	2900.00- 2999.99	29.00	696.00
21	3000.00 and over	30.00	720.00

Sec. 22. *Payment of Benefits Upon Decease of Claim-*
2 *ant.*—Accrued benefits due and unpaid on claims filed
3 prior to decease of a claimant may, in the discretion
4 of the Director, be paid, without letters of administration,
5 to the surviving spouse, children, or parents of the de-
6 ceased, in the order of priority enumerated.

Article 7. Claim Procedure.

Section 30. *Appeals from Administrative Decisions Rela-*
2 *tive to Chargeability of Benefits.*—Appeals shall lie to the
3 board of review, in the manner as provided in this article
4 relating to appeal from an examiner's decision, and under
5 such rules, regulations, and procedure as may be pre-
6 scribed by the board, from an administrative decision of
7 the director relating to chargeability of benefits. Appeals
8 shall lie from a final decision of the board of review in
9 such case to the circuit court of Kanawha county and
10 thence to the supreme court of appeals of West Virginia
11 within the times and in the manner as provided in section
12 thirty-one of this article.

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 as
3 the employment security administration fund. All moneys
4 in this fund which are received from the federal govern-
5 ment or any agency thereof or which are appropriated by
6 this state for the purposes described in section seven of
7 this article shall be expended solely for the purposes and
8 in the amounts found necessary by the secretary of labor
9 for the proper and efficient 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, for the administration of this act.
- 5 (3) Moneys received from any other source.

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

9 and matched by such moneys granted to this state pur-
10 suant to the provisions of the Wagner-Peyser Act, are
11 found by the secretary of labor, because of any action
12 or contingency, to have been lost or been expended for
13 purposes other than, or in amounts in excess of, those
14 found necessary by the secretary of labor for the proper
15 administration of this law, it is the policy of this state
16 that such moneys shall be replaced by moneys appropri-
17 ated for such purpose from the general funds of this state
18 to the employment security administration fund for ex-
19 penditure as provided by the unemployment compensa-
20 tion law. Upon receipt of notice of such a finding by
21 the secretary of labor, the director shall promptly re-
22 port the amount required for such replacement to the
23 governor and the governor shall, at the earliest oppor-
24 tunity, submit to the Legislature a request for the appro-
25 priation of such amount. This article shall not be con-
26 strued to relieve this state of its obligation with respect
27 to funds received prior to July one, one thousand nine
28 hundred forty-one, pursuant to the provisions of title
29 three of the Social Security Act.

Article 10. General Provisions.

Section 7. *False Representation.*—A person who makes
2 a false statement or representation knowing it to be false
3 or who knowingly fails to disclose a material fact in order
4 to obtain or increase a benefit, either for himself or anothe-
5 er, under this chapter, or under an employment security
6 law of any other state or of the federal government for
7 either of which jurisdictions this state is acting as an
8 agent, shall be guilty of a misdemeanor and upon con-
9 viction punished by a fine of not less than twenty dollars
10 nor more than fifty dollars, or by imprisonment for not
11 longer than thirty days, or both. Each false statement or
12 representation, or failure to disclose a material fact, shall
13 constitute a separate offense.

Sec. 8. *Misrepresentation.*—A person who, by reason of
2 non-disclosure or misrepresentation, either by himself or
3 another (irrespective of whether such non-disclosure or
4 misrepresentation was known or fraudulent) has received
5 a sum as a benefit under this chapter, shall either have
6 such sum deducted from a future benefit payable to him
7 or shall repay to the director the amount which he has

8 received. Collection shall be made in the same manner as
9 collection of past due payment; *Provided, however,* That
10 such collection or deduction of benefits shall be barred
11 after the expiration of five years, except for known or
12 fraudulent non-disclosure or misrepresentation which
13 shall be barred after the expiration of ten years, from the
14 date of the filing of the claim in connection with which
15 such non-disclosure or misrepresentation occurred.

[Handwritten signature]

MAR 30 1973
D. J. O'BRIEN

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

H. M. Kinley
Chairman Senate Committee

C. H. Mumber
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Howard Nuzey
Clerk of the Senate

Staff
Clerk of the House of Delegates

Ralph Bean
President of the Senate

W. E. Hannery
Speaker House of Delegates

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

William C. Marland
Governor



FILED IN THE OFFICE OF THE SECRETARY OF STATE
of West Virginia
MAR 20 1953

D. PITT O'BRIEN,
SECRETARY OF STATE