

List to each
broker.

public, and he shall mail one (1) to each licensed broker.

Partial
invalidity.

SEC. 28. If any section, sub-division, sentence or clause in this act shall be held invalid or unconstitutional, such fact shall not affect the validity of the remaining portions of this act.

Statutes
repealed.

SEC. 29. Chapter 129, Laws of 1925, Extraordinary Session (sections 8340-1 to 8340-23, inclusive, Remington's Revised Statutes) are hereby repealed.

Passed the Senate March 1, 1941.

Passed the House March 10, 1941.

Approved by the Governor March 25, 1941.

CHAPTER 253.

[S. S. B. 275.]

UNEMPLOYMENT COMPENSATION.

AN ACT relating to unemployment compensation, amending chapter 162 of the Laws of 1937, as amended by chapter 214 of the Laws of 1939, repealing sections 19, 22 and 23 of chapter 162 of the Laws of 1937 and section 17 of chapter 214 of the Laws of 1939, establishing liens and providing for the enforcement thereof.

Be it enacted by the Legislature of the State of Washington:

Amend-
ments.

SECTION 1. Section 3 of chapter 162 of the Laws of 1937, as amended by section 1 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Benefits
payable.
Time.

Section 3. (a) PAYMENT OF BENEFITS. Twenty-four months after the date when contributions first accrue under this act, benefits shall become payable from the fund: *Provided*, That wages earned for services defined in section 19(g) (6) (viii) of this act, irrespective of when performed, shall not be included for the purpose of determining eligibility under section 4(e) or the weekly benefit amount

Exception.

under section 3(b) for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on or after July 1, 1939, be payable under section 3(d) on the basis of such wages. All benefits shall be paid through employment offices in accordance with such regulations as the Commissioner may prescribe.

Benefit payments.

Exceptions.

Section 3. (b) WEEKLY BENEFIT AMOUNT. (1) An individual's "weekly benefit amount" shall be an amount equal to one-twentieth (1/20) of his total wages during that quarter of his base year in which such total wages were highest, except that if such amount is more than fifteen dollars (\$15.00) the weekly benefit amount shall be deemed to be fifteen dollars (\$15.00), or if less than seven dollars (\$7.00), shall be deemed to be seven dollars (\$7.00), and if not a multiple of fifty cents, shall be computed to the next higher multiple of fifty cents.

Weekly benefits.

Maximum.

Minimum.

If an eligible individual is available for work for less than a full week, he shall be paid one-sixth of his weekly benefit amount for each day he is available, but if he is unavailable for three days or more of a week, he shall be considered unavailable for the entire week.

Partial week.

(b) (2) WEEKLY BENEFIT FOR UNEMPLOYMENT. Each eligible individual who is unemployed in any week shall be paid with respect to such a week a benefit in an amount equal to his weekly benefit amount less that part of the remuneration (if any) payable to him with respect to such week which is in excess of three dollars (\$3.00). Such benefit, if not a multiple of fifty cents, shall be computed to the next higher multiple of fifty cents.

Computation for partial week.

Deduction for wages.

Section 3 (c) BENEFIT IN SEASONAL EMPLOYMENT.

Definition: Seasonal employer.

(1) As used in this section, the term "seasonal employer" means an employer or operating unit of an employer which because of the seasonal nature

Definition:
Seasonal
employer.

of its operations customarily reduces employment each year during approximately the same period or periods to such an extent that the total pay roll for any continuous period of two calendar months is less than fifty per cent of the total pay roll for the consecutive two calendar months period of greatest employment during the preceding ten months. No employer or operating unit shall be deemed seasonal unless and until so found by the Commissioner after investigation and hearing, except that a successor in interest of a seasonal employer or operating unit shall be deemed seasonal upon the same basis as the predecessor unless determined otherwise by the Commissioner.

**Determina-
tion.**

**Commis-
sioner to
designate.**

The Commissioner shall specify in his determination the period or periods of seasonal operations of any employer or operating unit held to be seasonal, or in lieu thereof may provide some other appropriate means for identifying the seasonal employment as distinct from the non-seasonal employment of the employers or operating units determined as seasonal.

**Period of de-
termination.**

Any determination once made shall remain in effect during a period of two years from the date when the determination becomes effective, but the Commissioner on his own motion may make a re-determination after investigation and a hearing prior to the expiration of such period.

**Redeter-
mination.**

Definition:
Seasonal
worker.

(2) The term "seasonal worker" means an individual who has base year wage credits of which at least eighty per cent have been earned in seasonal employment for one seasonal employer or one group of seasonal employers combined in accordance with section 3 (c) (4).

Definition:
Operating
unit.

(3) For the purposes of this section, an operating unit is any unit of an employer's business which can be, and frequently is, conducted as a separate and independent business.

(4) The Commissioner may classify or join

employers or their operating units into groups consisting of seasonal employment of like yearly experience.

Classification.

(5) When the Commissioner has designated the operations of an employer, an operating unit or a group of employers or operating units as seasonal, then benefits shall be payable to seasonal workers employed thereby only on account of unemployment occurring during the regular period or periods of such seasonal employment.

Benefits seasonal.

Section 3. (d) DURATION OF BENEFITS. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed whichever is the lesser of

Maximum annual benefits.

(1) 16 times his weekly benefit amount, and

Computation.

(2) one-third ($\frac{1}{3}$) of the wages earned by him for employment by employers during his base year: *Provided*, That such maximum total amount of benefits, if not a multiple of fifty cents (50¢), shall be computed to the next higher multiple of fifty cents (50¢). For the purposes of this section wages shall be counted as "wages for employment by employers" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer from whom such wages were earned has satisfied the conditions of section 8(c) or section 19(f) with respect to becoming an employer.

Section 3. (e) PART TIME WORKERS.

(1) As used in this section, the term "part time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full time hours prevailing in the establishment in which he is employed or who, owing to personal circumstances, does not customarily work the customary scheduled full time hours prevailing in the establishment in which he is employed.

Definition: Part time worker.

Commis-
sioner to
make rules.

(2) The Commissioner shall prescribe fair and reasonable general rules applicable to part time workers for determining their weekly benefit amounts and the total wages for employment by employers required to qualify such workers for benefits. Such rules shall, with respect to such workers, supersede any inconsistent provisions of this act, but, so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of this act.

Rule
authority.

Amend-
ments.

SEC. 2. Section 4 of chapter 162 of the Laws of 1937, as amended by section 2 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Eligibility.

Section 4. BENEFIT ELIGIBILITY CONDITIONS. An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commissioner finds that:

Conditions.

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the Commissioner may prescribe, except that the Commissioner may by regulation, waive or alter either or both of the requirements of this sub-section as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act: *Provided*, That no such regulation shall conflict with section 3(a) of this act.

Proviso.

(b) He has made a claim for benefits in accordance with the provisions of section 6 (a) of this act;

(c) He is able to work, and is available for work: *Provided*, That the word "available" shall not be construed to exclude one who, though otherwise eligible, may be pursuing in any institution of learning or training a course of study which he may

optionally discontinue at any stage for an indefinite period, with refund or prepaid tuition, and which he may at any time thereafter optionally resume at the previously discontinued stage. To be available for work an individual must be ready, able and willing immediately to accept any suitable work which may be offered to him and must be actively seeking work.

Eligibility conditions.

An individual who voluntarily quits work for personal reasons not directly connected with or related to the employment in which he or she is engaged at the time of such voluntary quitting, such as voluntarily quitting to get married, quitting or being required to terminate the employment because of pregnancy, or voluntarily quitting to remove to another location, town, community or locality too remote or distant to commute to and from the employment, shall be deemed to be unavailable for work until such individual has subsequent to so terminating his employment earned wages in employment subject to this act or subject to an unemployment compensation law of another state or of the United States of at least fifty dollars (\$50.00) and been employed in four separate calendar weeks. In no case shall an individual be deemed able and available for work within the meaning of this sub-section unless such individual is able and available for work in his usual trade or occupation, including such individual's most recent employment;

Unavailable for work.

Termination.

Availability.

(d) He has been unemployed for a waiting period of two (2) weeks. Such weeks of unemployment need not be consecutive. No week shall be counted as a week of unemployment for the purpose of this sub-section:

Requirements.

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was otherwise eligible for benefits with respect thereto;

Availability
requirements.

(3) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(4) In the case of a seasonal worker, unless it falls within the operating season.

Computation:

(e) He has within his base year earned wages of not less than two hundred dollars (\$200.00). For the purpose of this section wages shall be counted for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer from whom such wages were earned has satisfied the conditions of section 8(c) or section, 19(f) with respect to becoming an employer.

Amend-
ments.

SEC. 3. Section 5 of chapter 162 of the Laws of 1937, as amended by section 3 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Disqualifica-
tion.

Section 5. DISQUALIFICATION FOR BENEFITS. An individual shall be disqualified for benefits:

Conditions.

(a) For the calendar week in which he has left work voluntarily without good cause, if so found by the Commissioner, and for a period ensuing immediately thereafter of not less than two, nor more than five, weeks as the Commissioner shall determine (in addition to the waiting period).

(b) For the calendar week in which he has been discharged or suspended for misconduct connected with his work, if so found by the Commissioner, and for not less than the two nor more than the five weeks which immediately follow such week (in addition to the waiting period), as determined by the Commissioner in each case according to the seriousness of the misconduct.

(c) For the calendar week in which he has wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any benefits under the provisions of this act and for not more than the twenty-six next following weeks as

determined by the Commissioner according to the circumstances in each case.

(d) If the Commissioner finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commissioner, or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commissioner. Such disqualification shall continue for the calendar week in which such failure occurred and for not less than the one nor more than the five weeks which immediately follow such week (in addition to the waiting period) as determined by the Commissioner according to the circumstances in each case.

Disqualifica-
tion
conditions.

(1) In determining whether or not any such work is suitable for an individual, the Commissioner shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Determina-
tion of
conditions.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

Suitable
work.

(a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

Conditions.

(c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Suitable
work
conditions.

(e) [d] For any week with respect to which the Commissioner finds that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed: *Provided*, That this sub-section shall not apply if it is shown to the satisfaction of the Commissioner that:

Exceptions.

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work, and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: *Provided*, That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this sub-section, be deemed to be a separate factory, establishment, or other premises.

Amend-
ments.

SEC. 4. Section 6 of chapter 162 of the Laws of 1937, as amended by section 4 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Filing
claims.

Section 6. (a) FILING. Claims for benefits shall be made in accordance with such regulations as the Commissioner may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations and such notices, instructions and other material as the Commissioner may by regulation prescribe. Such printed material shall be supplied by the Commissioner to each employer without cost to him.

Regulations.

Posted by
employer.

Section 6. (b) INITIAL DETERMINATION. A representative designated by the Commissioner shall take the claim. The unemployment compensation division shall promptly make an initial determination thereon which shall be a determination with respect to whether or not benefits are potentially payable, the weekly benefit amount payable and the maximum amount of benefits potentially payable. The claimant, his most recent employing unit, and any other interested party which the Commissioner by regulation prescribes shall be notified promptly by the delivery of written notice of the initial determination. The initial determination shall fix the general conditions under which benefits shall be paid during any period of unemployment occurring within the ensuing benefit year. An individual who has received an initial determination finding that benefits are potentially payable to him, shall during his benefit year receive benefits in accordance with such initial determination with respect to any week as to which the conditions of section 4 of this act are met unless the individual is disqualified by the provisions of section 5 hereof. The claimant, his most recent employing unit, or any such interested party to the initial determination may file an appeal from such determination with the Commissioner within seven calendar days after the date of notification or mailing, whichever is earlier, of such initial determination to his last known address. If, upon such initial determination, benefits are allowed, but an appeal is filed relative to the maximum amount of benefits potentially payable or the weekly benefit amount, benefits may, nevertheless, be paid to the extent of the minimum potential benefit amount or weekly benefit amount which the Division of Unemployment Compensation or any party to the appeal shall assert is due the claimant. If the payment of benefits shall be denied to any individual for any

Initial determination.

Findings.

Claimant notified.

Conditions.

Exception.

Appeal to Commissioner.

Minimum payments pending appeal.

Notice of denial.

Appeal.

Effect of notice.

Notice when denial cause removed.

Appeal by others.

Determination final if no appeal.

Exception.

Commissioner may reconsider initial determination.

week within a benefit year covered by an initial determination, the claimant shall be promptly notified of the denial and the reasons therefor, and may appeal therefrom in accordance with the procedure herein described for appeals from initial determinations. A notice that benefits have been denied, delivered to the claimant in accordance with the foregoing section, shall suffice for all subsequent weeks of unemployment during which the condition upon which the denial was based shall continue and an appeal taken from such notice of denial shall be deemed to be an appeal as to such subsequent weeks. When the Commissioner shall determine that the cause for any denial of benefits has been removed, he shall inform the claimant, his most recent employing unit, and any other interested party, of his decision together with the date of the removal of such cause of denial, and the claimant, his most recent employing unit, or such other interested party, may appeal therefrom within seven days after communication or mailing of such notice, whichever is the earlier. In the absence of an appeal therefrom, a determination by the Commissioner that the cause for denial of benefits has been removed shall make any pending appeal inapplicable to any period subsequent to the date so determined by the Commissioner, and benefits may be paid for such subsequent period if the claimant is otherwise eligible. Except as herein specifically provided, if an appeal is taken with respect to any claim, benefits shall not be paid to the claimant prior to the final determination of such appeal.

The Commissioner may on his own motion reconsider an initial determination prior to an appeal therefrom to the appeal tribunal whenever he finds that there has been an error in computation, or an error of similar character in connection therewith, or that wages of the claimant pertinent to such initial

determination but not considered in connection therewith have been newly discovered; however, benefits may only be recovered in accordance with the provisions of section 16 (d) of this act.

Reconsideration.

Section 6. (c) APPEALS. When an appeal is taken, as provided in the foregoing section, unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the unemployment compensation division. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision on the claim, unless within ten days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is initiated pursuant to section 6 (e).

Appeal procedure.

Order.

Notification.

Further appeal.

Section 6. (d) APPEAL TRIBUNALS. The Commissioner shall establish one or more impartial appeal tribunals each of which shall be presided over by a salaried Examiner who shall decide the issues submitted to the tribunal. No Examiner shall hear or decide any disputed claim in any case in which he is an interested party.

Trial tribunal.

Examiner.

Restriction.

Section 6. (e) REVIEW. The Commissioner may on his own motion, or upon the petition of any interested party, shall, affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence. The Commissioner may transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal.

Review by Commissioner.

Authority.

Section 6. (f) PROCEDURE. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with regulations prescribed by

Procedure on disputed claims.

Procedure.

the Commissioner for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

Record of proceedings.

Witness fees.

Section 6. (g) WITNESS FEES. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Commissioner. Such fees and all expenses of proceedings involving disputed claims excepting charges for services rendered by counsel or other agent representing the claimant, employer or other interested party shall be deemed a part of the expenses of administering this act.

Expenses of proceeding.

Decision of Commissioner final in 30 days.

Section 6. (h) APPEAL TO COURTS. Any decision of the Commissioner in the absence of an appeal therefrom as herein provided shall become final thirty days after the date of mailing written notification thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies as provided in sections 6 (c), 6 (d), and 6 (e). The Commissioner shall be deemed to be a party to any judicial action involving any such decision, and shall be represented in any such judicial action by the Attorney General.

Commissioner party to action on appeal.

Appeal.

Section 6. (i) COURT REVIEW. Within thirty days after final decision has been communicated to any interested party, such interested party may appeal to the Superior Court of the county of his residence, and such appeal shall be heard as a case in equity but upon such appeal only such issues of law may be raised as were properly included in his application before the appeal tribunal. The proceedings of every such appeal shall be informal and summary, but full opportunity to be heard upon the issues of

In equity.

Proceedings summary.

law shall be had before judgment is pronounced. Such appeal shall be perfected by filing with the Clerk of the Court a notice of appeal and by serving a copy thereof by mail or personally on the Commissioner, and the filing and service of said notice of appeal within thirty days shall be jurisdictional. The Commissioner shall within twenty days after receipt of such notice of appeal serve and file his notice of appearance upon appellant or his attorney of record, and such appeal shall thereupon be deemed at issue. No bond shall be required on such appeal or on appeals to the Superior or the Supreme Courts. When a notice of final decision has been placed in the United States mail properly addressed, it shall be considered prima facie evidence of communication to the appellant and his attorney, if of record.

Notice of appeal.

Filing and service.

Answer in twenty days.

No bond.

Mailing notice of decision.

The Commissioner shall serve upon the appellant and file with the Clerk of the Court before trial a certified copy of his complete record of the claim which shall upon being so filed become the record in such case. No fee of any kind shall be charged the Commissioner for filing his appearance or for any other services performed by the Clerk of either the Superior or the Supreme Court.

Commissioner to serve and file complete record.

No filing fee for Commissioner.

If the Court shall determine that the Commissioner has acted within his power and has correctly construed the law, the decision of the Commissioner shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the Superior Court shall refer the same to the Commissioner with an order directing him to proceed in accordance with the findings of the Court: *Provided*, That any award shall be in accordance with the schedule of unemployment benefits set forth in this act.

Decision of court.

Contents.

Proviso.

It shall be unlawful for any attorney engaged in any such appeal to the Courts as provided herein to

Unlawful for attorney to charge greater fee than fixed by court.

Costs payable from fund.

Appeal to Supreme Court.

Burden of proof.

Commissioners costs paid from fund.

Amendments.

Payment of contributions.

Paid by employer.

charge or receive any fee therein in excess of a reasonable fee to be fixed by the Courts in the case, and if the decision of the Commissioner shall be reversed or modified, such fee and the fees of witnesses and the costs shall be payable out of the Unemployment Compensation Administration Fund. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the Superior Court to the Supreme Court as in other civil cases. In all Court proceedings under or pursuant to this act the decision of the Commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

Whenever any appeal is taken from any decision of the Commissioner to any Court, all expenses and costs incurred therein by said Commissioner including court reporter costs and attorney's fees and all costs taxed against such Commissioner shall be paid out of the Unemployment Compensation Administration Fund.

SEC. 5. Section 7 of chapter 162 of the Laws of 1937, as amended by section 5 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Section 7. (a) PAYMENT.

(1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in section 19 (g) occurring during such calendar year, such contributions shall become due and be paid by each employer to the treasurer for the fund in accordance with such regulation as the Commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ;

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

Section 7. (b) **RATE OF CONTRIBUTION.** Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

Contribution rate.

(1) One and eight-tenths (1.8%) per centum with respect to employment during the calendar year 1937;

(2) Two and seven-tenths (2.7%) per centum with respect to employment during the calendar years thereafter.

Section 7. (c) **FUTURE RATES BASED ON EXPERIENCE.**

Future rates.

(1) The Commissioner shall investigate, study and report to the Governor and Legislature of this state not later than January 31, 1943, the operations of this act and the actual experience hereunder with a view to establishing an experience rating system which would equitably rate the unemployment risk and fix the contribution to the fund of each employer subject to this act. The Commissioner, in the conduct of this study, shall consider methods for the classification of employers, industries, or occupations with respect to the unemployment hazard in each. In making provision for such classification, the Commissioner shall take into account the degree of unemployment hazard in each, and any other measurable factors (such as fluctuation of pay rolls, or pay roll indices, compensable separations from employment, and experience in the payment of benefits) which the Commissioner finds bear a reasonable relation to the purposes of this sub-section. The general basis of classification proposed to be used for any period shall be subject to fair notice, opportunity for hearing, and publication.

Investigation and report.

Basis of experience.

Classification.

Section 7. (c) (2) For the purpose of enabling the Commissioner to render the report provided for in section 7 (c) (1) of this act the Commissioner shall immediately classify, and shall continue at all

Purpose.

To classify.

times hereafter to classify, each employer or operating unit of an employer in accordance with its actual experience with regard to contributions paid by it in its own behalf and the benefits which the unemployment fund has paid to its employees, or to employees whose benefits are properly chargeable against such employer or operating unit. The Commissioner shall set up and maintain separate records for each employer or operating unit of the amounts paid in to the fund by it in its own behalf since January 1, 1941, and of all benefit payments made and properly chargeable to such employer annually (excluding, however, benefit payments to seasonal workers for unemployed time not within the period of seasonal operations, such exclusion to be applied retroactively) commencing January 1, 1942. Benefits paid to an unemployed individual during any benefit year shall be charged against the account of his employer during his base period: *Provided*, That if such individual performed services in employment for more than one employer during his base period, benefits paid to such individual shall be charged against the respective accounts of such employers in the proportion that the total wages earned by such individual in employment for each such employer bears to the total wages earned by such individual in employment for all such employers during the base period. In charging employers' accounts, proper consideration shall be given to limitations set out in this section, with respect to benefit payments properly chargeable against the employer's account.

Employer records.

Record of payments.

Payments charged against employer account.

Joint accounts.

Section 7 (d) JOINT ACCOUNT. The Commissioner shall prescribe regulations for the establishment, maintenance and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such account, or to

merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

SEC. 6. Section 8 of chapter 162 of the Laws of 1937, as amended by section 6 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Amend-
ments.

Section 8. (a) Any employing unit which is or becomes an employer subject to this act within any calendar year shall be subject to this act during the whole or [of] such calendar year.

Employer
subject
entire year.

Section 8. (b) An individual or organization shall cease to be an employer subject to this act only as of the first day of January of any calendar year, if it files with the Commissioner prior to the fifteenth day of January of such year a written application for termination of coverage, and he finds that such individual or organization had no person in employment for it within the preceding calendar year.

Employer
termination.

Application.

Section 8. (c) Any employer for which services that do not constitute employment as defined in this act are performed, may file with the Commissioner a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than two calendar years. Upon the written approval of such election by the Commissioner, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if such employer files with the Commissioner prior to the 15th day of January of such year a written application for termination of the coverage of such services.

Election.

Approval.

Termination.

SEC. 7. Section 9 of chapter 162 of the Laws of 1937, as amended by section 7 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Amend-
ments.

Unemployment compensation fund.

Separate from all other state funds.

Contents of fund.

Section 9 (a) UNEMPLOYMENT COMPENSATION FUND. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the Commissioner exclusively for the purposes of this act, and to which section 5501 of Remington's Revised Statutes shall not be applicable. This fund shall consist of

- (1) All contributions collected under this act;
 - (2) All interest collected pursuant to the provisions of this act;
 - (3) Interest earned upon any moneys in the fund;
 - (4) Any property or securities acquired through the use of moneys belonging to the fund; and
 - (5) All earnings of such property or securities.
- All money in the fund shall be mingled and undivided.

Commissioner to designate treasurer.

Duties.

Three separate accounts.

Section 9 (b) ACCOUNTS AND DEPOSIT. The Commissioner shall designate a treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the Commissioner and shall issue his warrants upon it in accordance with such regulations as the Commissioner shall prescribe. He shall maintain within the fund three separate accounts:

- (1) A clearing account,
- (2) An unemployment trust fund account, and
- (3) A benefit account.

Function of clearing account.

All moneys payable to the fund, upon receipt thereof by the Commissioner, shall be forwarded to the Treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 14 of this act may be paid from the clearing account upon warrants issued by the Treasurer under the direction of the Commissioner. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary

of the Treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be deposited by the Treasurer, under the direction of the Commissioner, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Such moneys shall be secured by said bank or public depository to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account. The Treasurer shall give a bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the State Administrative Board and in a form prescribed by law or approved by the Attorney General. Premiums for said bond shall be paid from the administration fund. All sums recovered on official bonds for losses sustained by the unemployment compensation fund shall be deposited in such fund.

Deposit in U. S. Treasury.

Benefit account.

Clearing and benefit accounts not to be commingled.

Deposit.

Security.

Bond of Treasurer.

Section 9 (c) WITHDRAWALS. Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the Commissioner. The Commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he deems necessary

Withdrawals from State account.

Purpose.

Withdrawals
for benefits.

Deposit.

Expenditures.

Act not
applicable.

Form of
warrants.

Application
of balances.

Fund
operative.

Period.

for the payment of benefits for a reasonable future period. Upon receipt thereof the Treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and section 5501 of Remington's Revised Statutes shall not apply. All warrants issued by the Treasurer for the payment of benefits and refunds shall bear the signature of the Treasurer and the counter-signature of the Commissioner or his duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Commissioner, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in section 9 (b).

Section 9 (d) MANAGEMENT OF FUNDS UPON DISCONTINUANCE OF UNEMPLOYMENT TRUST FUND. The provisions of sections 9 (a), 9 (b), and 9 (c) to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein for this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state

is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the Treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Commissioner, in accordance with the provisions of this act: *Provided*, That such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest bearing obligations of the United States of America: *And provided further*, That such investment shall at all times be made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The Treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the Commissioner.

Upon cessation trust fund transferred to compensation fund.

Investment of funds.

Restrictions.

Section 9 (e) Notwithstanding any requirements of the foregoing sections, the Commissioner shall, prior to July 1, 1939, authorize and direct the Secretary of the Treasury of the United States to transfer from this state's account in the unemployment trust fund established and maintained pursuant to section 904 of the Social Security Act as amended, to the railroad unemployment insurance account, established and maintained pursuant to section 10 of the Railroad Unemployment Insurance Act, an amount hereinafter referred to as the preliminary amount; and shall, prior to January 1, 1941, authorize and direct the Secretary of the Treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account, an additional amount hereinafter referred to as the liquidating amount. The

Transfer of funds to railroad account.

Preliminary amount.

Determina-
tion of
amount of
accounts.

Commissioner shall determine both such amounts after consultation with the Railroad Retirement Board and the Social Security Board. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term employer is defined in section 1 (a) of the Railroad Unemployment Insurance Act) and credited to the unemployment compensation fund bears to all contributions theretofore collected under this act and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" (as the term employer is defined in section 1 (a) of the Railroad Unemployment Insurance Act) pursuant to the provisions of this act during the period July 1, 1939, to December 31, 1939, inclusive.

Liquidating
amount.

Amend-
ments.

SEC. 8. Section 11 of chapter 162 of the Laws of 1937, as amended by section 9 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Duties and
powers of
Commis-
sioner.

Section 11 (a) DUTIES AND POWERS OF COMMISSIONER. It shall be the duty of the Commissioner to administer this act; and he shall have the power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and to take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the Commissioner shall prescribe. The Commissioner, in accordance with the provisions of this act, shall determine the organization and methods of procedure of the divisions referred to in section 10 of this act, and shall have an official seal which shall be judicially noticed. Not later than the 1st day of February of each year, he shall submit to

Make rules.

Publication
of rules.

Organization.

Official seal.

the Governor a report covering the administration and operation of this act during the preceding calendar year and shall make such recommendations for amendments to this act as he deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the Governor and the Legislature and make recommendations with respect thereto.

Annual report to Governor.

Contents.

Make recommendations.

Section 11 (b) RECIPROCAL STATE ARRANGEMENTS. The Commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states, foreign governments or the Federal government whereby individuals performing services in this and other states or countries for a single employing unit under circumstances not specifically provided for in section 19 (g) of this act, or under similar provisions in the unemployment compensation laws of such other states or countries, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states or countries, and whereby potential rights to benefits accumulated under the unemployment compensation laws of one or more states or countries, or under such a law of the Federal government, or all of them, may constitute the basis for the payment of benefits through a single appropriate agency under terms which he finds will be fair and reasonable as to all affected interests and will not result in any sub-

Reciprocal state arrangements.

Commissioner authorized.

Contents and conditions.

Other ar-
rangements.

stantial loss to the fund. The Commissioner is also authorized to enter into arrangements with the appropriate agencies of other states, foreign countries or the Federal government,

Contents and
conditions.

(1) whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state, country or of the Federal government, shall be deemed to be wages for employment by employers for the purposes of section 3 and section 4 (e) of this act, if such other state agency, agency of a foreign government or agency of the Federal government has agreed to reimburse the fund for such portion of benefits paid under this act upon the basis of such wages or services as the Commissioner finds will be fair and reasonable as to all affected interests, and

Restrictions.

Reimburse
other agency.

(2) whereby the Commissioner will reimburse other state, foreign or Federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits paid under the law of any such other states, foreign government or of the Federal government upon the basis of employment or wages for employment by employers as the Commissioner finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of section 3 (d) and 9 of this act. The Commissioner is hereby authorized to make to other state, foreign or Federal agencies and receive from such other state, foreign or Federal agencies reimbursements from or to the fund, in accordance with arrangements pursuant to this section, and

Services in
more than
one state.

(3) whereby services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (i) in which any part

of such individual's service is performed or (ii) in which such individual has his residence or (iii) in which the employing unit maintains a place of business, provided there is in effect, as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state.

Jurisdiction.

Section 11 (c) REGULATIONS AND GENERAL AND SPECIAL RULES. General and special rules may be adopted, amended, or rescinded by the Commissioner only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the Secretary of State and publication in one or more newspapers of general circulation in the state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commissioner and shall become effective in the manner and at the time prescribed by him.

Regulations and rules.

Hearing on rules.

Publication.

Effective date.

Regulations within power of Commissioner.

Section 11 (d) PUBLICATION. The Commissioner shall cause to be printed for distribution to the public the text of this act, the regulations and general rules, his annual reports to the Governor, and any other material which he deems relevant and suitable and shall furnish the same to any person upon application therefor.

Publication of text of act and rules and regulations.

To distribute.

Section 11 (e) PERSONNEL. Subject to other provisions of this act, the Commissioner is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, experts, and other persons as may be necessary to carry out this act. The Commissioner may delegate to any such person so appointed such power and authority

Appoint and fix compensation of personnel.

Powers of
Commissioner.

as he deems reasonable and proper for the effective administration of this act including the right to decide matters placed in his discretion under this act, and may in his discretion bond any person handling moneys or signing checks hereunder.

Personnel
Board ap-
pointed by
Governor.

For the purpose of insuring the impartial selection of personnel on the basis of merit, the Governor shall appoint a personnel board of three members who are known to be interested in the selection of efficient government personnel, and who are not officers or employees of any department or office of the State of Washington, or elected public officials. All appointments shall be for a term of six years, except that the terms of the members first taking office shall be two, four and six years, respectively. All personnel of the Office of Unemployment Compensation and Placement, and such other departments or offices of the State of Washington as the Governor may designate or as provided by law, shall be selected from registers established by the personnel board. The Commissioner is authorized to adopt such regulations as may be necessary to meet personnel standards promulgated by the Social Security Board pursuant to the Social Security Act, as amended, and the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the state in promotion of such system, and for other purposes," as approved June 6, 1933, as amended, and to provide for the maintenance of the merit system required under this section in conjunction with any merit system applicable to any other state agency, or agencies, which meets the personnel standards promulgated by the Social Security Board and the personnel board in making up registers for the Office of Unemployment Compensation and Placement shall be governed by such regulations.

Qualifica-
tion and
terms of
office.

Personnel to
be chosen
from register.

Register
established
by Board.

Regulation
for standards
of personnel.

Conform
to Act of
Congress.

Merit system.

Restriction.

The Commissioner shall not appoint or employ any person who is an officer or committee member

of any political party organization or who holds or is a candidate for any elective public office.

No public official.

Section 11 (f) **EMPLOYMENT STABILIZATION.** The Commissioner shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry and publish the results of investigations and research studies.

Employment stabilization.

Methods.

Section 11 (g) **RECORDS AND REPORTS.** Each employing unit shall keep true and accurate work records, containing such information as the Commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the Commissioner or his authorized representatives at any reasonable time and as often as may be necessary. The records of an employer maintained in this state pertaining to employment of persons in another state shall be open to representatives of the Commissioner to permit cooperation with other state unemployment compensation agencies in ascertaining information necessary to administer the unemployment compensation acts of such other states. The Commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he deems necessary for the effective administration of this act. Each employer shall make periodic reports at such intervals as the Commissioner may, by regulation, prescribe setting forth the remuneration payable for employment to workers in its employ, the names of all such

Employer to keep records prescribed by Commissioner.

Records open to Commissioner.

Reports on employees.

Reports to Commissioner.

workers and such other information as the Commissioner may, by regulation, prescribe. Information thus obtained or obtained from any individual pursuant to the administration of this act shall be deemed confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties and then only at the discretion of and in accordance with regulations prescribed by the Commissioner) in any manner revealing an individual's or employing unit's identity, but any claimant at a hearing before an appeal tribunal or the Commissioner shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the Office of Unemployment Compensation and Placement who violates any provision of this section shall be fined not less than \$20.00 nor more than \$200.00, or imprisoned for not longer than ninety days, or both.

Information confidential.

Claimant entitled to records.

Penalty for violation.

Officials to administer oaths, etc.

Power of subpoena.

Section 11 (h) OATHS AND WITNESSES. In the discharge of the duties imposed by this act, the chairman of an appeal tribunal and any duly authorized representative of the Commissioner shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this act.

Penalty for refusal to obey subpoena.

Section 11 (i) SUBPOENAS. In case of contumacy by, or refusal to obey subpoenas issued to any person, any Court of the state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by any duly authorized representative of the Commissioner or the chairman of an

appeal tribunal, shall have jurisdiction to issue to such person an order requiring such person to appear before such chairman, or representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the Court may be punished by said Court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the Commissioner or his authorized representative shall be punished by a fine of not less than \$200.00 or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

Court may order witness to comply with subpoena.

Failure to obey is contempt.

Penalty for contempt.

Section 11 (j) PROTECTION AGAINST SELF-INCRIMINATION. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before any duly authorized representative of the Commissioner or any appeal tribunal in obedience to the subpoena of such representative of the Commissioner or the chairman of such appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Every person shall testify.

Shall not be prosecuted for self-incrimination.

Perjury excepted.

Commissioner to cooperate with Board.

Make reports and comply with rules.

Purpose.

Commissioner to cooperate with U. S. agencies.

State's records available to Railroad Board.

Amendments.

Section 11 (k) STATE-FEDERAL COOPERATION. In the administration of this act, the Commissioner shall cooperate to the fullest extent consistent with the provisions of this act, with the Social Security Board, created by the Social Security Act, approved August 14, 1935, as amended; shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this state under title III of the Social Security Act for the purpose of assisting in the administration of this act.

Upon request therefor the Commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

The Commissioner may make the state's records relating to the administration of this act available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the expense of such board, such copies thereof as the Railroad Retirement Board deems necessary for its purposes. The Commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

SEC. 9. Section 12 of chapter 162 of the Laws of 1937, as amended by section 10 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Section 12 (a) The Washington State Employ-

ment Service Division is hereby set up in the Office of Unemployment Compensation and Placement as a division thereof. The Commissioner through such division shall establish and maintain free public employment offices in such number and such places as may be necessary for the proper administration of this act and for the purpose of performing such duties as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes," approved June 6, 1933 (48 Stat. 113; U. S. C., title 29, sec. 49 (c), as amended). The Commissioner shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said Act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said Act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said Act of Congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The Office of Unemployment Compensation and Placement is hereby designated and constituted the agency of this state for the purpose of said act. The Commissioner may cooperate with or enter into agreements with the Railroad Retirement Board with respect to the establishment, maintenance, and use of free employment service facilities. There shall be maintained in the division of employment service a sub-division of the blind concerned exclusively with the placement of blind persons. No person shall be eligible for assistance under chapter 132 of the Laws of 1937 of the State of Washington unless and until he shall have registered for employment with this division.

Employment service a division of office.

Maintain public employment offices.

Compliance with Act of Congress.

Agency of State.

Agreement with Railroad Board.

Service for blind.

Registry required.

Federal funds paid into employment account.

Used to establish offices.

Enter into agreements with Federal agencies to fulfill purpose.

Amendments.

Revolving fund.

Available to Commissioner.

Sole purpose.

Administration.

Source of funds.

Section 12 (b) FINANCING. All moneys received by this state under the said Act of Congress, as amended, shall be paid into the special "employment service account" in the State Treasury, and said moneys are hereby made available to the Commissioner for the Washington State Employment Service Division to be expended as provided by this section and by said Act of Congress. For the purpose of establishing and maintaining free public employment offices, the Commissioner is authorized to enter into agreements with the Railroad Retirement Board, or any other agency of the United States charged with the administration of any unemployment compensation law, with any political sub-division of this state or with any private non-profit organization, and as a part of any such agreement the Commissioner may accept moneys, services, or quarters as a contribution to the employment service account.

SEC. 10. Section 13 of chapter 162 of the Laws of 1937, as amended by section 11 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Section 13 (a) REVOLVING FUND. There is hereby created a revolving fund to be known as the Unemployment Compensation Administration Fund. All moneys which are deposited or paid into this fund are hereby made available to the Commissioner. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this act, and for no other purpose whatsoever, and all moneys received from the Social Security Board for the fund pursuant to section 302 of the Social Security Act shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board for the proper and efficient administration of this act. The fund shall consist of all moneys received from the United States of America, or any agency thereof, including the Social Security Board, the Railroad Retirement Board, or

from any other source, for such purpose. Moneys received from the Railroad Retirement Board as compensation for services or facilities supplied to said board shall be paid into this fund or the Employment Service account as the Commissioner shall prescribe. All moneys in this fund shall be deposited, administered, and disbursed by the Treasurer of the Unemployment Compensation Fund under rules and regulations of the Commissioner and none of the provisions of section 5501 of Remington's Revised Statutes shall be applicable to this revolving fund. The Treasurer last named shall be the Treasurer of the Unemployment Compensation Administration Fund and shall give a bond conditioned upon the faithful performance of his duties in connection with that fund. All sums recovered on the official bond for losses sustained by the Unemployment Compensation Administration Fund shall be deposited in said fund.

Deposit of funds from Railroad Board.

Disbursal.

Department treasurer is treasurer of fund.

Section 13 (b) **EMPLOYMENT SERVICE ACCOUNT.** A special "employment service account" shall be maintained in the State Treasury for the purpose of maintaining the public employment offices established pursuant to section 12 of this act. Any sum appropriated by this state for the purpose of cooperating with the United States Employment Service shall be placed in said fund. In addition there shall be paid into such account the moneys designated in section 12 (b) of this act.

Employment service account.

Purpose.

Source of funds.

Section 13 (c) The State of Washington hereby pledges that effective July 1, 1941, it will replace within a reasonable time any moneys received pursuant to section 302 of the Federal Social Security Act which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Federal Social Security Board for the proper administration of the Washington Unemployment Compensation Act.

State to replace Federal funds.

Amendments.

SEC. 11. Section 14 of chapter 162 of the Laws of 1937, as amended by section 12 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Interest on past due contributions.

Section 14 (a) INTEREST ON PAST DUE CONTRIBUTIONS. If contributions are not paid on the date on

Rate.

which they are due and payable as prescribed by the Commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of 1 per centum (1%) per month from and after such date until payment plus accrued interest is received by him. In computing interest for any period less than a full month, the rate shall be 1/30 of one per centum for each day or fraction thereof. Interest shall not ac-

Limit.

cruce in excess of twenty-four per centum for delinquent contributions for any one contribution period. The date as of which payment of contributions, if mailed, is deemed to have been received may be determined by such regulations as the Commissioner may prescribe. Interest collected pursuant to this

Credit to fund.

section shall be paid into the Unemployment Compensation Fund. Interest shall not accrue on con-

Exceptions.

tributions from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, com-

Estate funds.

mon law assignee or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common-law assignee or other liquidating officer shall become due and shall draw interest in the same manner as contributions due from other employers. Payments of contribu-

Exception. Error in payment.

tions erroneously paid to an Unemployment Compensation Fund of another state which should have been paid to this state and which thereafter shall be refunded by such other state and paid by the employer to this state, shall be deemed to have been

paid to this state at the date of payment to such other state.

Section 14 (b) If any contributions, including interest thereon, shall not be paid when due, a lien therefor in favor of the Division of Unemployment Compensation shall attach to all property and rights to property of the employer so delinquent. Said lien shall date from the commencement of the period with respect to which said delinquent contributions are due, and shall be prior to all other liens except prior tax liens, but shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed with the Secretary of State. Even though a notice of lien has been filed in the manner provided herein, the lien shall not be valid with respect to a "security," as defined herein, as against any mortgagee, pledgee, or purchaser, of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge or purchase such mortgagee, pledgee or purchaser is without notice or knowledge of the existence of such lien. The term "security" as used herein means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political sub-division thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money. When a notice of lien has been so filed, the Commissioner may release the same by the filing of a certificate of release when it shall appear that the amount of delinquent contributions together with all interest thereon have been paid, or if there shall be furnished to the Commissioner a bond to secure the payment thereof.

Lien created for delinquent contributions.

Exceptions.

Effect of notice.

Commissioner may release notice.

Notice of assessment for delinquencies.

Section 14 (c) At any time after the Commissioner shall find that any contribution or the interest thereon have become delinquent, the Commissioner may issue a notice of assessment specifying the amount due, which notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of summons in a civil action, except that if the employer cannot be found within the state, said notice will be deemed served when mailed to the delinquent employer at his last known address by registered mail. If the amount so assessed is not paid within ten days after such service or mailing of said notice, the Commissioner or his duly authorized representative shall collect the amount stated in said assessment by the distraint, seizure and sale of the property, goods, chattels and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state.

Service.

Distraint.

Exemptions.

Procedure in distraint.

Section 14 (d) The Commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at last two public places in the county wherein the seizure has been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the Commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the Commissioner or his authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and may set a minimum price to include the ex-

Notice of sale.

penses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the Commissioner or his representative may declare such property to be purchased by the Division of Unemployment Compensation for such minimum price. The delinquent account shall be credited with the amount at which the property shall be sold. Property acquired by the Division of Unemployment Compensation as herein prescribed may be sold by the Commissioner at public or private sale, and the amount realized shall be placed in the Unemployment Compensation Trust Fund.

Minimum price to include costs of sale.

Division may purchase for minimum value.

Property accumulated may be sold.

In all cases of sale, as aforesaid, the Commissioner shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the Commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title and interest of the delinquent employer in said property. The proceeds of any such sale shall be first applied by the Commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent contributions and interest, the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the Commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the Commissioner by any other taxing authority of the state or its political sub-divisions.

Bill of sale or deed.

Excess refunded.

Excess subject to distraint.

Section 14 (e) When any notice of assessment has been delivered or mailed to a delinquent employer, as heretofore provided, such employer may within ten days thereafter file a petition in writing with the Commissioner, stating that such assessment

Petition to Commissioner.

Petition contents.

is unjust or incorrect and requesting a hearing thereon. Such petition shall set forth the reasons why the assessment is objected to and the amount of contributions, if any, which said employer admits to be due the Division of Unemployment Compensation. If no such petition be filed with the Commissioner within said ten days, said assessment shall be conclusively deemed to be just and correct. The filing of a petition on a disputed assessment with the Commissioner shall stay the distraint and sale proceeding provided for in this section until a final decision thereon shall have been made, but the filing of such a petition shall not affect the right of the Commissioner to perfect a lien, as provided in section 14 (b), upon the property of the employer. The issues raised by such petition shall be heard by the appeal tribunal, established in section 6 of this act, in the same manner and in accordance with the same procedure as is prescribed for appeals from benefit determinations, including the procedure set out in section 6 for review by the Commissioner and the Court.

Petition to stay distraint.

Hearing before tribunal.

Petition for refunds.

Limitation.

May adjust or refund.

Commissioner may refund without petition.

Section 14 (f) No later than three years after the date any contributions or interest have been paid, an employer who has paid such contributions or interest may file with the Commissioner a petition in writing for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof when such adjustment cannot be made. If the Commissioner upon an ex parte consideration shall determine that such contributions or interest, or portion thereof, were erroneously collected, he shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the Commissioner shall refund said amount without interest from the fund. For like cause and within the same period, adjustment or refund may be made on the

Commissioner's own initiative. If the Commissioner finds that upon ex parte consideration he cannot readily determine that such adjustment or refund should be allowed, he shall deny such application and notify the employer in writing. Within ten days after such notification shall have been mailed or delivered to such employer, whichever is the earlier, the employer may file a petition in writing with the Commissioner for a hearing thereon. The petition shall set forth the reasons why such hearing should be granted and the amount which the petitioner believes should be adjusted or refunded. If no such petition be filed within said ten days, the determination of the Commissioner as stated in said notice shall be final. The petition for refund shall be heard by the appeal tribunal and may be reviewed by the Commissioner and the courts in the manner prescribed for hearing appeals from benefit determinations.

May deny petition ex parte.

Notification.

Petition for hearing.

Time for filing.

Petition heard by tribunal.

Section 14 (g) If any employing unit shall fail or neglect to make or file any report or return required by this act, or any regulation made pursuant hereto, the Commissioner may upon the basis of such knowledge as may be available to him arbitrarily make a report on behalf of such employing unit, and the report so made shall be deemed prima facie correct.

Commissioner may make report if employer fails.

Section 14 (h) If the Commissioner shall have reason to believe that an employer is insolvent or if any reason exists why the collection of any contributions accrued but not yet delinquent will be jeopardized by delaying collection until the date of delinquency thereof, he may make an immediate assessment thereof and may proceed to enforce collection on said assessment immediately, but interest shall not begin to accrue upon any contributions until the date when such contributions would normally have become delinquent.

May make jeopardy assessment.

Act
conclusive.

Section 14 (i) The remedies provided in this act for determining the justness or correctness of assessments or refund or adjustment claims shall be exclusive and no Court shall entertain any action to enjoin an assessment or require a refund or adjustment except in accordance with the provisions of this act. Matters which may be determined by the procedures herein set out shall not be the subject of any declaratory judgment.

Employer
business may
be enjoined
for delin-
quency.

Section 14 (j) Any employer who shall be delinquent in the payment of contributions or interest may be enjoined upon the suit of the State of Washington from continuing in business in this state or employing persons herein until the contributions and interest shall have been paid, or until the employer shall have furnished a good and sufficient bond in the amount of double the estimated contributions which will become due from such employer during the next ensuing calendar year, conditioned that said employer will pay all contributions and interest accruing during said next ensuing calendar year before the same become delinquent.

Collections
by civil
procedure.

Section 14 (k) COLLECTION. If after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the State of Washington, and the employer adjudged in default shall pay the cost of such action. Any lien created by this act may be foreclosed by decree of the court in any such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the industrial insurance laws of this state.

Section 14 (l) Remedies given to the state

under this act for the collection of contributions and interest shall be cumulative and no action taken by the Commissioner or his duly authorized representative, the Attorney General, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other.

Remedies
cumulative.

Section 14 (m) In the event of any distribution of an employer's assets pursuant to an order of any court including any receivership, probate, legal dissolution, or similar proceeding, or in case of any assignment for the benefit of creditors, composition, or similar proceeding, contributions then or thereafter due shall be a lien upon all the assets of such employer. Said lien will be prior to all other liens or claims except prior tax liens and claims for remuneration for services of not more than \$250.00 to each claimant, earned within six months of the commencement of the proceeding. The mere existence of a condition of insolvency or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution of assets shall cause such a lien to attach without action on behalf of the Commissioner or the state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as provided in that act, as amended.

Lien against
assets of
estates.

Insolvency.

Priority.

SEC. 12. Section 15 of chapter 162 of the Laws of 1937, as amended by section 13 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Amend-
ments.

Section 15 (a) WAIVER OF RIGHTS VOID. Any agreement by an individual to waive, release or commute his rights to benefits or any other rights under this act shall be void. Any agreement by

Workman
cannot waive
rights.

Agreement to waive void.

an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this act from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from remuneration for services to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of any employer who violates any provision of this section shall, for each offense, be fined not less than \$100.00 nor more than \$1,000.00 or be imprisoned for not more than six months, or both.

Employer not to accept contributions from workmen.

Penalty for violation.

No fees for services or court actions.

Section 15 (b) LIMITATION OF FEES. No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the Commissioner or his representatives, or by an appeal tribunal or by any Court or any officer thereof. Any individual claiming benefits in any proceeding before the Commissioner, an appeal tribunal, or a Court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding. A legally licensed attorney shall be paid such reasonable fee for his services in the Superior or Supreme Court as the Court orders. Any person who violates any provision of this section shall, for each offense, be fined not less than \$50 nor more than \$500, or imprisoned for not more than six months, or both.

Attorneys fees limited.

Court or officer to fix.

Penalty for violation.

Assignments void.

Section 15 (c) NO ASSIGNMENT OF BENEFITS; EXEMPTIONS. Any assignment pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy

Benefits exempt from execution.

whatsoever provided for the collection of debts; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for collection of all debts except debts incurred for necessities furnished such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void.

Benefits kept separate are exempt.

Exception.

Waiver of exemption void.

SEC. 13. Section 16 of chapter 162 of the Laws of 1937, as amended by section 14 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Amendments.

Section 16 (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, either for himself or for any other person, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. This penalty shall be in addition to any penalty for any other crime involved in the same transaction.

Penalty for false representation.

Penalty additional.

Section 16 (b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject thereto or to avoid or reduce any contribution or other payment required from an employing unit under this act, or who wilfully fails or refuses to make any such contributions or other payment or to

False representation by employer.

Penalty for violation.

furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation or failure or refusal shall constitute a separate offense.

Penalty for any violation of act.

Section 16 (c) Any person who shall wilfully violate any provision of this act or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

Penalty for misrepresentation.

Section 16 (d) Any person who, by reason of the non-disclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such non-disclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall in the discretion of the Commissioner either be liable to have such sum deducted from any future benefits payable to him under this act or shall be liable to repay to the Commissioner for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collected in the manner provided in section 14 (b) of this act for the collection of past due contributions

SEC. 13. Section 19 of chapter 162 of the Laws of 1937 is hereby repealed. } Vetoed.

SEC. 14. That section of chapter 214 of the Laws of 1939 which passed both houses of the Legislature as section 16, and which appears in chapter 214 of the Laws of 1939 as an unnumbered section due to the number thereof having been included in a veto of a portion thereof by the Governor, which section is designated as section 9998-119(a) of Remington's Revised Statutes (Supp.), is hereby amended to read as follows: } Amend-
ments.

Section 19. As used in this act, unless the context clearly requires otherwise, all terms specially defined herein shall be given the meaning contained in such definition, irrespective of the common law or popular meaning of such terms. } Construction.

Section 19 (a) "Annual payroll" means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year. } Definitions.

Section 19 (b) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

Section 19 (c) "Commissioner" means the administrative head of the State Office of Unemployment Compensation and Placement referred to in section 10 of this act.

Section 19 (d) "Contributions" means the money payments to the state unemployment compensation fund required by this act.

Section 19 (e) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ

Definitions.
Employing
unit.

one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act.

Contractor
with employ-
ing unit.

Whenever any employing unit contracts with or has under it any contractor or sub-contractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or sub-contractor is an employer by reason of section 19 (f) or section 8 (c) of this act, the employing unit shall for all purposes of this act be deemed to employ each individual in the employ of each such contractor or sub-contractor for each day during which such individual is engaged in performing such work; except that each such contractor or sub-contractor who is an employer by reason of section 19 (f) or section 8 (c) of this act shall alone be liable for the employer's contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or sub-contractor who is not an employer by reason of section 19 (f) or section 8 (c) of this act, may recover the same from such contractor or sub-contractor. Each individual employed to perform or to assist in performing the work of any agent or employee of any employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

Employer.

Section 19 (f) "Employer" means:

(1) On and after July 1, 1941, any individual

or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person which has any person in employment for it or which having become an employer, has not ceased to be an employer as provided in this act.

Definitions.

Employer.

(2) Prior to July 1, 1941:

(a) Any employing unit which in each of twenty different weeks within either the current or the preceding calendar year (whether or not such weeks are or were consecutive) has or had in employment eight or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week);

(b) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(c) Any employing unit which acquired the organization, trade or business or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (a) of this section;

(d) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which if treated as a single unit with such other employing unit, would be an employer under paragraph (a) of this section;

Definitions.
Employer.

(e) Any employing unit which, having become an employer under paragraph (a), (b), (c), or (d), has not, under section 8, ceased to be an employer subject to this act; or

(f) For the effective period of its election pursuant to section 8 (c), any other employing unit which has elected to become fully subject to this act.

Vetoed.

Section 19 (g) (1) "Employment", subject to the other provisions in this section, means service, including service in interstate commerce, performed for wages or under any contracts of hire, written or oral, express or implied, and including the services of an independent contractor, the principal object of whose contract is the performance of his personal service, and including the services of an individual who, for remuneration by way of commission or otherwise under an agreement or agreements contemplating a series of transactions, secures applications or orders or otherwise personally performs services as a salesman for another in the performance of that other's trade or business, whether or not such individual is an employee of such other under the law of master and servant, unless such services are performed as a part of such individual's business as a broker or factor and in furtherance of such business as broker or factor, similar services are performed for other persons and one or more employees of such broker or factor performed a substantial part of such services.

Employment.

(2) The term "employment" shall include an individual's entire service performed within or both within and without this state if:

(i) The service is localized in this state; or

(ii) The service is not localized in any state but some of the service is performed in this state and

(a) 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

Definitions.

Employment.

(b) 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) Services not covered under paragraph (2) of this section, 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 act if the individual performing such services is a resident of this state and the Commissioner 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 act.

(4) Service shall be deemed to be localized within a state if:

(i) The service is performed entirely within such state; or

(ii) The service is performed both within and without such state, but the service performed without the state is incidental to the individual's service within such state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Irrespective of common law definitions, services performed by an individual for remuneration shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the Commissioner that all of the following conditions exist:

Vetoed.

(i) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and

(ii) 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 enterprises for which such service is performed; and

Vetoed.

(iii) Such individual is customarily engaged in a trade, occupation, profession or business, established and existing independently, which is of the same nature as that involved in the contract of service.

Exceptions.

(6) The term "employment" shall not include:

Agricultural labor.

(i) Agricultural Labor—the term "Agricultural Labor" includes all services performed:

Definition.

(1) On a farm, in the employ of any person, in connection with the cultivating of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wild life, or in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.

(2) In handling, planting, packing, packaging, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, in their raw and natural state, as an incident to the preparation of such fruits and vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to services performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural

commodity after its delivery to a terminal market for distribution or consumption. Exemptions.

(ii) Domestic service in a private home;

(iii) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(iv) Service performed by an individual in the employ of his son or daughter, or the community of which such son or daughter is a member, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(v) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(vi) Service performed in the employ of this state, or of any political sub-division thereof, or of any instrumentality of this state or its political sub-divisions; Public employees.

(vii) Service performed in the employ of any other state or its political sub-divisions, or of the United States Government, or of any instrumentality of any other state or states or their political sub-divisions or the United States; except that if the Congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation act, then, to the extent permitted by Congress, and from and after the date when such permission becomes effective, all the provisions of this act shall be applicable to such instrumentalities and to services performed for such instrumentalities in the Exceptions.
Certain U. S.
employees.

Exceptions.

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 should not be certified by the Social Security Board under section 903 of the Social Security Act for any year, then the payment required of such instrumentalities with respect to such year shall be deemed to be erroneously collected within the meaning of section 14 (f) of this act and shall be refunded by the Commissioner from the fund in accordance with such provisions of section 14 (f) of this act;

Proviso.

Acts of Congress.

(viii) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress: *Provided*, That the Commissioner is hereby authorized to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in section 11 (b) of this act for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired right to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act;

Agreements with U. S.

Time effective.

(ix) Service performed by an insurance agent or solicitor to the extent he is compensated by commission;

Exemptions.

(x) Service as a newsboy selling or distributing newspapers on the street or from house to house;

(xi) Service in connection with the raising or harvesting of mushrooms;

(xii) If the services performed during one-half or more of any pay period by an individual for an employer constitute employment, all of the ser-

Exemptions.

VICES of such individual for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for an employer do not constitute employment, then none of the services of such individual on behalf of such employer for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to the employee by the person employing him;

(xiii) Casual labor not in the course of the employer's trade or business (labor which does not promote or advance the trade or business of the employer). Temporary labor in the usual course of an employer's trade or business shall not be deemed to be casual labor.

Definitions.

Section 19 (h) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

Section 19 (i) "Fund" means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

Section 19 (j) "State" includes, in addition to the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

Section 19 (k) "Unemployment." An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no remuneration is payable to him, or in any week of less than full time work if the remuneration payable to him with respect to such week, is less than his weekly benefit amount. The Commissioner shall prescribe regulations applicable to unemployed individuals making such distinctions

Definitions.

in the procedures as to total unemployment, part-total unemployment and partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the Commissioner deems necessary.

Section 19 (l) "Unemployment Compensation Administration Fund" means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.

Section 19 (m) "Wages" means the first three thousand dollars of remuneration payable by one employer to an individual worker for employment during one calendar year. "Remuneration" means all compensation payable for personal services, including commissions and bonuses and the cash value of all compensation payable in any medium other than cash. The reasonable cash value of compensation payable in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Commissioner.

Exclusion.

The term "wages" shall not include:

(1) The amount of any payment by an employing unit with respect to services performed after July 1, 1941, to or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of:

Private insurance.

Provisions.

- (a) Retirement;
- (b) Sickness or accident disability;
- (c) Medical and hospitalization expenses in connection with sickness or accident disability; or
- (d) Death, provided the individual in its employ

(i) has not the option to receive instead of provision for such death benefits, any part of such payment, or if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit, and

Exclusion.
Private
insurance.

Provisions.

(ii) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit.

(2) The payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an employee under section 1400 of the Federal Internal Revenue Code with respect to services performed after July 1, 1941; or

Payments
under
Revenue Act.

(3) Dismissal payments after July 1, 1941, which the employing unit is not legally required to make; or

Provisions.

(4) Any amount paid to a person in the military service for any pay period during which he performs no service for the employer.

Section 19 (n) "Week" means any period of seven consecutive calendar days ending at midnight as the Commissioner may by regulation prescribe. The Commissioner may by regulation prescribe that a week shall be "in," "within," or "during" that benefit year which includes the greater part of such week.

Definitions.

Section 19 (o) "Benefit Year," with respect to any individual means the fifty-two consecutive week period beginning with the first day of the week with respect to which the individual first files a valid claim for benefits, and thereafter, the fifty-two consecutive week period beginning with the

Definitions.

first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year, except in any case where at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of a quarter in the base year that had been included in a previous base year, the benefit year shall be deemed to be fifty-three weeks. Any claim for benefits made in accordance with section 6 (a) of this act shall be deemed to be a valid claim for the purposes of this section, if the individual has earned wages for employment by employers as provided in section 4 (e) of this act.

Section 19 (p) "Base Year" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

Section 19 (q) "Calendar Quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1938, or the equivalent thereof as the Commissioner may by regulation prescribe.

Statutes repealed.

SEC. 15. Sections 22 and 23 of chapter 162 of the Laws of 1937 and section 17 of chapter 214 of the Laws of 1939 are hereby repealed.

New section added.

SEC. 16. A new section, to be known hereafter as section 22, is hereby added to chapter 162 of the Laws of 1937 to read as follows:

Commissioner may destroy old records.

Section 22. The Commissioner may destroy any form, claim, ledger, check, letter, or other record of the Office of Unemployment Compensation and Placement at the expiration of two years after

such record was originated or filed with the Office of Unemployment Compensation and Placement, except that warrants and claims, claim determinations, employer liability forms and contribution reports may be destroyed at the expiration of six years after such form is originated or filed with the Office of Unemployment Compensation and Placement, and except that this section shall not apply to records pertaining to grants, accounts or expenditures for administration, records of the unemployment compensation fund and the unemployment compensation administration fund.

Destruction
of old
records.

Exceptions.

SEC. 17. A new section is hereby added to chapter 162 of the Laws of 1937 to be hereafter known as section 23, to read as follows:

New section
added.

Section 23. The Commissioner shall appoint a State Advisory Council composed of an equal number of employer representatives and employee representatives who may fairly be regarded as representatives because of their vocations, employment or affiliation, and of such members representing the general public as the Commissioner may designate. Such Council shall aid the Commissioner in formulating policies and discussing problems related to the administration of this act and of assuring impartiality and freedom from political influence in the solution of such problems. Such Advisory Council shall serve without compensation, other than compensation for wage loss sustained for attendance at formal meetings of the Council or of duly constituted committees. Members shall be reimbursed for any travel expense incurred in accordance with the travel regulations applicable to employees of the Office of Unemployment Compensation and Placement. The Commissioner may also appoint

Advisory
Council.

Personnel.

Duties.

No compen-
sation.

Expenses.

**Special
councils.**

industry or other special councils to perform appropriate services.

Passed the Senate March 13, 1941.

Passed the House March 12, 1941.

Approved by the Governor March 25, 1941, with the exception of section 13, and sub-paragraphs 19(g)(1) and 19(g)(5) of section 14, which are vetoed.