

no such dam or other structure shall impede, obstruct or in any way interfere with public navigation of such lake or water course: *And provided further,* That no portion of this act shall empower any city or town in this state to maintain or operate any automobiles or motor cars in the unscheduled transportation of passengers nor to operate any auto trucks in the transportation of freight for compensation. Exclusions.

Passed the Senate March 9, 1947.

Passed the House March 8, 1947.

Approved by the Governor March 19, 1947.

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## CHAPTER 215.

[ S. B. 263. ]

### UNEMPLOYMENT COMPENSATION.

AN ACT relating to unemployment compensation, amending chapter 35 of the Laws of 1945, and repealing sections 65, 66, 108, 109 and 116 of chapter 35 of the Laws of 1945.

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

SECTION 1. Section 7 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 7. *Commissioner.* "Commissioner" means the administrative head of the State Employment Security Department referred to in this act. Definitions. "Commissioner."

SEC. 2. Section 10 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 10. *Employing Unit.* "Employing unit" means any individual or any 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 "Employing unit."

its employ or in its "employment" one or more individuals performing services within this state.

SEC. 3. Section 16 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 16. *Agricultural Labor.* The term "employment" shall not include service performed

Agricultural  
labor  
excluded.

(a) 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 furbearing animals and wildlife, 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; or

(b) 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 any other commercial processing which changes the character of the product from its raw and natural state or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

SEC. 4. Section 17 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Domestic  
service  
excluded.

Section 17. *Domestic Service.* The term "employment" shall not include domestic service in a

private home, local college club, or local chapter of a college fraternity or sorority: *Provided, however,* That the terms local college club and local chapter of a college fraternity or sorority shall not be deemed to include alumni clubs or chapters.

SEC. 5. Section 18 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 18. *Maritime Service.* The term "employment" shall include an individual's entire service as an officer or member of a crew of an American vessel wherever performed and whether in intrastate or interstate or foreign commerce, if the employer maintains within this state at the beginning of the pay period an operating office from which the operations of the vessel are ordinarily and regularly supervised, managed, directed and controlled. The term "employment" shall not include services performed as an officer or member of the crew of a vessel not an American vessel and services on or in connection with an American vessel under a contract of service which is not entered into within the United States and during the performance of which the vessel does not touch at a port of the United States.

Maritime  
service.

"American vessel," means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

"American  
vessel."

SEC. 6. Section 33 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 33. *Wages.* Prior to January 1, 1947, "wages" means the first three thousand dollars of remuneration paid by one employer to an individ-

"Wages."

ual in its employment for services performed during one calendar year; and subsequent to December 31, 1946, "wages" means the first three thousand dollars of remuneration paid by one employer during any calendar year to an individual in its employment under this act or the unemployment compensation act of any other state.

"Remuneration."

"Remuneration" means all compensation paid for personal services, including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the Commissioner.

"Wage credits."

"Wage credits" applicable to eligibility for benefits means the same as "wages."

SEC. 7. The title of Chapter III of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

### CHAPTER III. ESTABLISHMENT OF DEPARTMENT

SEC. 8. Section 38 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Department established.

Section 38. *Department Established.* There is hereby established the Employment Security Department for the State of Washington, to be administered by a Commissioner. The Commissioner shall be appointed by the Governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the Governor.

SEC. 9. Section 39 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Divisions established.

Section 39. *Divisions Established.* There are hereby established in the Employment Security Department two coordinate divisions to be known as

the Unemployment Compensation Division, and the Washington State Employment Service Division, each of which shall be administered by a full-time salaried supervisor who shall be an assistant to the Commissioner and shall be appointed by him. Each division shall be responsible to the Commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except in so far as the Commissioner may find that such separation is impracticable. The Commissioner is authorized to appoint and fix the compensation of such officers, accountants, experts and other personnel as may be necessary to carry out the provisions of this act: *Provided*, That such appointment shall be made on a non-partisan merit basis in accordance with the provisions of this act relating to the selection of personnel.

It is hereby further provided that the Governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington State Employment Service Division to any Federal agency.

SEC. 10. Section 42 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 42. *Personnel Board and Commissioner's Regulations.* 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, 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 Employment Security Department, and such other departments or offices of the

Personnel Board and Commissioner's regulations.

Appointment by Governor.

Terms.

Regulations.

Merit system.

state as the Governor may designate, or as provided by law, shall be selected from the 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 Employment Security Department shall be governed by such regulations.

Destruction of office records.

SEC. 11. Section 53 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 53. *Destruction of Office Records.* The Commissioner may destroy any form, claim, ledger, check, letter, or other record of the Employment Security Department at the expiration of three years after such record was originated by or filed with the Employment Security Department, except that warrants and claims, claim determination, employer liability forms and contribution reports may be destroyed at the expiration of six years after such form is originated by or filed with the Employment Security Department, 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.

SEC. 12. Section 59 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 59. *State Advisory Council.* The Commissioner shall appoint a state advisory council composed of not more than nine (9) members, of which three (3) shall be representatives of employers, three (3) shall be representatives of employees, and three (3) shall be representatives of the general public who are not entitled to benefits under the Unemployment Compensation Act. 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. Members shall be reimbursed for any travel expense incurred in accordance with the travel regulations applicable to employees of the Employment Security Department. The Commissioner may also appoint industry or other special councils to perform appropriate services.

State  
Advisory  
Council.

Appointment  
by Commis-  
sioner.

Compensa-  
tion.

Expenses.

SEC. 13. Section 64 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 64. *Unemployment Compensation Administration Fund.* There is hereby established 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. All moneys received from the Social Security Board for said purpose pursuant to section 302 of the Social Security Act, as amended, 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. All moneys received from the United States Employment Service, United States Department of Labor, for said pur-

Unemploy-  
ment Comp-  
ensation  
Administra-  
tion Fund.

pose pursuant to the Act of Congress approved June 6, 1933, as amended or supplemented by any other Act of Congress, shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of the public employment office system of this state. The Unemployment Compensation Administration Fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. 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, as amended, 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.

Treasurer  
of Fund.

Bond.

SEC. 14. Sections 65 and 66 of chapter 35 of the Laws of 1945 are hereby repealed.

SEC. 15. Section 73 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Disqualifica-  
tion for  
voluntary  
quit.

Section 73. *Disqualification for Voluntary Quit.* An individual who has left work voluntarily without good cause shall be disqualified for benefits for a period, determined by the Commissioner, of not less than five (5) weeks nor more than ten (10) weeks, in each of which he has filed a claim for waiting period credit or benefits and was otherwise eligible: *Provided*, That acceptance of subsequent work shall void the disqualification.



SEC. 16. Section 74 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 74. *Disqualification for Unemployment Due to Misconduct.* An individual who has been discharged or suspended for misconduct connected with his work shall be disqualified for benefits for a period, determined by the Commissioner, of not less than five (5) weeks nor more than ten (10) weeks, in each of which he has filed a claim for waiting period credit or benefits and was otherwise eligible: *Provided,* That acceptance of subsequent work shall void the disqualification.

Disqualification for unemployment due to misconduct.

SEC. 17. Section 75 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 75. *Disqualification for Misrepresentation.* An individual shall be disqualified for benefits for the calendar week in which he has willfully made a false statement or representation or willfully failed to report a material fact to obtain any benefits under the provisions of this act and for not more than the fifty-two next following weeks as determined by the Commissioner according to the circumstances in each case.

Disqualification for misrepresentation.

SEC. 18. Section 87 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 87. *Recovery of Benefit Payments.* Any individual who has received any sum as benefits from the Unemployment Compensation Fund, when not entitled thereto under the provisions of this act, shall be liable to the fund for the sum improperly paid to him.

Recovery of benefit payments.

As soon as the Commissioner has knowledge of payment of benefits to an individual under the circumstances mentioned in this section, he shall promptly prepare and deliver or mail to the individual at his last known address a notice of determination of liability declaring that the individual has been determined liable to refund the amount of

Notice of liability.

benefits paid under the circumstances mentioned in this section. Such amount, if not previously collected, shall be deducted from any future benefits payable to the individual.

Appeals.

Appeal from the determination of liability herein provided may be had in the same manner and to the same extent as provided by this act for appeals relating to determinations in respect to claims for benefits. If no such appeal is taken to the appeal tribunal by the individual within ten days of the delivery of the notice of determination of liability, or within ten days of the mailing of the notice of determination, whichever is the earlier, said determination of liability shall be deemed conclusive and final. Such determination of liability shall be deemed conclusive and final and the Court shall, upon application of the Commissioner, enter a judgment in the amount provided by the notice of determination, which judgment shall have and be given the same effect as if entered pursuant to civil action.

Judgment.

SEC. 19. Section 93 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Lien for contributions generally.

Section 93. *Lien for Contributions Generally.* The claim of the Unemployment Compensation Division for any contributions, including interest thereon, not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property of the employer. In order to avail itself of the lien hereby created, the Unemployment Compensation Division shall file with the County Auditor of the county in which such property is located a statement in writing describing in general terms the specific property upon which the lien is claimed and stating the amount of the lien claimed by the division. The lien shall only attach to the property and be effective from the date of filing of such statement. This lien shall be separate and apart from, and in addition to, any

Filing of statement with County Auditor.

other lien or claim created by, or provided for in, this act. When any such notice of lien has been so filed, the Commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent contributions together with all interest thereon have been paid, or when such assurance of payment shall be made as the Commissioner may deem to be adequate. Any lien filed as provided in this section may also be filed in the office of the Secretary of State. Filing in the office of the Secretary of State shall be of no effect, however, until the lien or copy thereof shall have been filed with the County Auditor in the county where the property is located. When a lien is filed in compliance herewith and with the Secretary of State, such filing shall have the same effect as if the lien had been duly filed for record in the office of the Auditor in each county of this state.

Release of  
lien.

Filing with  
Secretary  
of State.

SEC. 20. Section 99 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 99. *Notice and Order to Withhold and Deliver.* The Commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when he has reason to believe that there is in the possession of such person, firm, corporation, political subdivision or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom a notice and order of assessment has been served by the Employment Security Department of the state for unemployment compensation contributions or interest.

Notice and  
order to  
withhold  
and deliver.

The notice and order to withhold and deliver shall be served by the Sheriff of the county wherein the service is made, or by his deputy, or by any duly authorized representative of the Commissioner. Any person, firm, corporation, political subdivision or

Service  
of notice.

Answer.

department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

Delivery of property or furnishing of bond.

In the event there is in the possession of any such person, firm, corporation, political subdivision or department, any property which may be subject to the claim of the Employment Security Department of the state, such property shall be delivered forthwith to the Commissioner or his duly authorized representative upon demand to be held in trust by the Commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or non-liability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the Commissioner conditioned upon final determination of liability.

Judgment.

Should any person, firm or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the Court, after the time to answer such order has expired, to render judgment by default against such person, firm or corporation for the full amount claimed by the Commissioner in the notice to withhold and deliver, together with costs.

SEC. 21. Section 107 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Limitation of actions and uncollectible accounts.

Section 107. *Limitation of Actions and Uncollectible Accounts.* The Commissioner shall commence action for the collection of contributions, interest and benefit overpayments imposed by this act by assessment or suit within three years after a return is filed. No proceedings for the collection of such amounts shall be begun after the expiration of such period.

Three years.

In case of a false or fraudulent return with intent to evade contributions or interest, or in the event of a failure to file a return, the contributions and interest may be assessed or a proceeding in Court for the collection thereof may be begun at any time.

Fraudulent returns.

The Commissioner is hereby authorized to charge off as uncollectible and no longer an asset of the Unemployment Compensation Fund any delinquent contributions, interest, credits, or benefit overpayments at any time after three years from the date of delinquency, if the Commissioner and the Attorney General are satisfied that there is no available and lawful means by which such contributions, interest, credits, or benefit overpayments may thereafter be collected.

Commissioner may charge off after three years.

SEC. 22. Section 108 and 109 of chapter 35 of the Laws of 1945 are hereby repealed.

Repeal.

SEC. 23. The title of Chapter IX of chapter 35 of the Laws of 1945 shall hereafter precede section 111 of chapter 35 of the Laws of 1945.

Sequence stated.

SEC. 24. Section 110 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 111. *Determination of Seasonal Employer.* As used in this section the term "seasonal employer" means an employer or operating unit of an employer which, because of the seasonal nature of its operations, reduces its employment to such an extent that its monthly payroll for each of three consecutive months in each of two consecutive calendar or operating years immediately preceding the year for which the determination is made, is less than one-half the average monthly payroll for the three consecutive months of highest payroll in the same calendar or operating years. No employer or operating unit shall be deemed to be seasonal unless and until so determined by the Commissioner. A successor in interest of a seasonal employer or operating unit shall be deemed seasonal upon the same basis

Determination of seasonal employer.

Determination by Commissioner.

as the predecessor unless determined otherwise by the Commissioner.

SEC. 25. Section 111 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Seasonal period and duration of determination.  
 Public hearing.  
 Notice.  
 Publication.

Section 112. *Seasonal Period and Duration of Determination.* Prior to any determination declaring an employer or operating unit seasonal the Commissioner shall hold a public hearing in accordance with such regulation as the Commissioner may prescribe. Written notice of such hearing shall be delivered or mailed to the employer involved and such representatives of individuals in the employment of such employer as may be known to the Commissioner. In addition thereto the Commissioner shall publish one notice in a newspaper of general circulation in the county wherein the employer maintains the operation in question. Said notice herein required shall be given and published at least ten days prior to the date fixed for such hearing.

Notice of finding.  
 Publication.

If pursuant to a hearing, as provided herein, an employer is found to be seasonal, a written determination declaring the employer to be seasonal and specifying the period or periods of seasonal operation shall be forwarded to the employer involved. Notice of the determined season shall be forwarded to any representative of individuals in the employment of such employer and of whom the Commissioner has knowledge and shall be published once in a newspaper of general circulation in the county wherein the employer maintains the operation in question.

Appeal.

Within ten days after the date of publication of such determined season the employer or other interested party may appeal from such determination in the same manner and to the same extent as provided for by this act on an appeal from an order and notice of assessment. If no appeal is taken to an appeal tribunal within the time prescribed by this

section, the determination shall be deemed to be conclusive and final.

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

Determination effective for two years.

SEC. 26. Section 112 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 113. *Seasonal Employment Defined.* "Seasonal employment" means all employment for a seasonal employer or operating unit within the season determined by the Commissioner as its operating season. All wages paid by a seasonal employer within such operating season shall be deemed seasonal wages.

Seasonal employment defined.

SEC. 27. Section 113 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 114. *Operating Unit.* For the purposes of this act relating to seasonal employment an "operating unit" is any unit of an employer's business which frequently is conducted as a separate and independent operation.

Operating unit.

SEC. 28. Section 114 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 115. *Seasonal Worker.* "Seasonal worker" means an individual who has base year credits of which at least eighty per centum have been earned in seasonal employment from one seasonal employer.

Seasonal worker.

SEC. 29. Section 115 of chapter 35 of the Laws of 1945 is hereby amended to read as follows:

Section 116. *Benefit Payments to Seasonal Workers.* When the Commissioner has designated the operations of an employer or an operating unit as seasonal, then benefits shall be payable to seasonal workers employed thereby only on account of un-

Benefit payments to seasonal workers.

employment occurring during the regular period of such seasonal employment.

Repeal.

SEC. 30. Section 116 of chapter 35 of the Laws of 1945 is hereby repealed.

SEC. 31. Section 123 of chapter 35 of the Laws of 1945 is hereby amended read as follows:

Petition for review by Commissioners.

Section 123. *Petition for Review by Commissioner.* Within ten days from the date of notification or mailing, whichever is the earlier, or any decision of an appeal tribunal, the Commissioner on his own order may, or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose of review thereof. Appeal from any decision of an appeal tribunal may be perfected so as to prevent finality of such decision if, within ten days from the date of mailing the appeal tribunal decision, or notification thereof, whichever is the earlier, a petition in writing for review by the Commissioner is received by the Commissioner or by such representative of the Commissioner as the Commissioner by regulation shall prescribe. The Commissioner may also prevent finality of any decision of an appeal tribunal and take jurisdiction of the proceedings for his review thereof by entering [entering] an order so providing on his own motion and mailing a copy thereof to the interested parties within the same period allowed herein for receipt of a petition for review. The time limit provided herein for seeking review by the Commissioner and for the Commissioner's assumption of jurisdiction on his own motion for review shall be deemed to be jurisdictional.

Petition to be received within ten days.

Time limit jurisdictional.

Passed the Senate March 9, 1947.

Passed the House March 8, 1947.

Approved by the Governor March 19, 1947.