

CHAPTER 214.

[S. S. B. 219.]

UNEMPLOYMENT COMPENSATION.

AN ACT relating to unemployment compensation, amending chapter 162 of the Laws of 1937, providing for the transfer of certain funds to the railroad unemployment insurance account in the United States treasury, making an appropriation.

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

Amends
§ 3, ch. 162,
Laws 1937.

SECTION 1. Section 3 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Payment of
benefits.

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 under sub-section (b) of this section 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 sub-section (d) of this section on the basis of such wages. All benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe.

Weekly
benefit
amount.

(b) (1) WEEKLY BENEFIT AMOUNT. 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.

(b) (2) WEEKLY BENEFIT FOR UNEMPLOYMENT. Each eligible individual who is unemployed in any week shall be paid with respect to such 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.

Weekly benefit for unemployment.

(c) BENEFITS IN SEASONAL EMPLOYMENT.

Benefits in seasonal employment.

(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 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. The commissioner shall determine whether the operations of any employer or operating unit are seasonal, but no such determination shall be had prior to investigation and hearing.

Seasonal employer.

Commissioner to determine.

The commissioner shall specify in his determination the period or periods within which the operations of such employer or operating unit shall be deemed 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.

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.

"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 sub-section (c) (4) of this section.

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 business.

Classification of employers.

(4) The commissioner may classify or join employers or their operating units into groups consisting either of seasonal employment of like yearly experience, or in groups of similar merit ratings, as will most facilitate and simplify accounting practices, and will most effectively contribute to the report to the Governor and Legislature provided for in section 7 (c) (1).

Benefits payable to seasonal workers.

(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, and no benefits shall be paid to seasonal workers for unemployment occurring or existing during the seasonal period or periods of unemployment.

Duration of benefits.

(d) DURATION OF BENEFITS. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed which ever is the lesser of (1) 16 times his weekly benefit amount, and (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.

(e) PART TIME WORKERS. (1) As used in this sub-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.

Part time workers.

(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.

Rules applicable to part time workers.

SEC. 2. Section 4 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Amends § 4, ch. 162, Laws 1937.

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:

Benefit eligibility conditions.

(a) He has registered for work at and thereafter has continued to report at an employment

Benefit
eligibility
conditions.

office in accordance with such regulations 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.

(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;

(d) He has been unemployed for a waiting period of two 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:

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

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

(3) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits: *Provided*, That the week or the two consecutive weeks immediately preceding the benefit year, if part of one uninterrupted period of unemployment which continues into such benefit year, shall be deemed (for the purposes of this sub-section only) to be within such benefit year as well as within the preceding benefit year.

(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.

SEC. 3. Section 5 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Amends
§ 5, ch. 162,
Laws 1937.

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

Disqualifica-
tion for
benefits.

(a) For the calendar week in which he has left work voluntarily without good cause, if so found by the commissioner, and for the two weeks which immediately follow such week (in addition to the waiting period).

(b) For the calendar week in which he has been discharged 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) Where an individual has left work voluntarily or has been discharged for misconduct not because of any labor activity or because of membership in any bona fide labor organization connected with his work he shall be disqualified for benefits during the periods herein provided, until he again earns such wages that benefits will not be payable;

(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.

(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.

(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: (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; (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.

(e) For any week with respect to which the commissioner finds that his total or partial 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:

(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 purposes of this sub-section, be deemed to be a separate factory, establishment, or other premises.

SEC. 4. Section 6 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Amends
§ 6, ch. 162,
Laws 1937.

Section 6. CLAIMS FOR BENEFITS. (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.

Claims for
benefits.

(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 include a determination with respect to whether or not benefits are payable, the week with respect to which benefits shall commence, the

Initial
determina-
tion.

weekly benefit amount payable and the maximum duration of benefits. The claimant, his most recent employer, and any other interested party which the commissioner by regulation prescribes shall be notified promptly of the initial determination and the reasons therefor. Benefits shall be denied, or if the claimant is eligible, promptly paid, in accordance with the initial determination, except as hereinafter otherwise provided. The claimant, his most recent employer, or any such interested party to the determination may file an appeal from such determination with the commissioner within five calendar days after the date of notification or mailing of such decision to his last known address. If, upon such initial determination, benefits are allowed, but the record in the case shows that a disqualification has been alleged or may exist, benefits shall not be paid prior to the expiration of the period for appeal, as hereinbefore provided. If an appeal is duly filed with respect to a matter other than the weekly benefit amount or maximum duration of benefits payable, benefits with respect to the period prior to the final decision of the commissioner shall be paid only after such decision. If subsequent to such initial determination, benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the 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 determination.

Appeals.

(c) APPEALS. 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 deputy. 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 of such decision, further appeal is initiated pursuant to sub-section (e) of this section.

(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.

Appeal
tribunals.

(e) **REVIEW.** The commissioner may on his own motion 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, or may permit any of the parties to such decision to initiate further appeal. The commissioner may permit such further appeal by the deputy whose decision has been overruled or modified by an appeal tribunal. The commissioner may transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal.

Review.

(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 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.

Procedure.

(g) **WITNESS FEES.** Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate

Witness
fees.

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.

Appeal to courts.

(h) APPEAL TO COURTS. Any decision of the commissioner or appeal tribunal in the absence of an appeal therefrom as herein provided shall become final thirty days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies as provided in sub-sections (c), (d), and (e) of this section. 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.

Court review.

(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 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

Proceedings.

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.

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 a part of 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.

Certified
copy of
record
served
and filed.

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.

Judgment.

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

Attorney's
fee.

shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

Costs.

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.

Amends
§ 7, ch. 162,
Laws 1937.

SEC. 5. Section 7 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Section 7. (a) PAYMENT.

Contribu-
tions,
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.

Rate of con-
tributions.

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

(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.

Future rates
based on
experience.

(c) FUTURE RATES BASED ON EXPERIENCE.

(1) The commissioner shall investigate, study, and report to the Governor and Legislature of this state not later than January, 1941, 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.

Report to
Governor
and
Legislature.

Classification.

(d) JOINT ACCOUNTS. The commissioner may 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.

Joint
accounts.

SEC. 6. Section 8 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Amends
§ 8, ch. 162,
Laws 1937.

Section 8. PERIOD, ELECTION, AND TERMINATION OF EMPLOYER'S COVERAGE. (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 of such calendar year.

Employer's
coverage.

(b) Except as otherwise provided in sub-section (c) of this section, an employing unit shall cease to be an employer subject to this act only as of the 1st day of January of any calendar year, if it files with the commissioner prior to the 15th day of January of such year, a written application for termination of coverage, and he finds that there were no twenty different weeks within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this act or that within said year total aggregate wages in excess of one hundred dollars did not become payable by such employing unit during any one calendar quarter. For the purpose of this sub-section the two or more employing units mentioned in paragraph (2) or (3) or (4) of section 19 (f) shall be treated as a single employing unit.

(c) (1) An employing unit, not otherwise subject to this act, which files with the commissioner its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if at least thirty days prior to such 1st day of January, it has filed with the commissioner a written notice to that effect.

Election.

(2) Any employing unit 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 com-

missioner, 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 at least thirty days prior to such 1st day of January such employing unit has filed with the commissioner a written notice to that effect.

Termination.

SEC. 7. Section 9 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Amends
§ 9, ch. 162,
Laws 1937.

Section 9. UNEMPLOYMENT COMPENSATION FUND.
(a) ESTABLISHMENT AND CONTROL. 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.

Unemploy-
ment com-
pensation
fund.

This fund shall consist of (1) all contributions collected under this act, together with any interest thereon collected pursuant to section 14 of this act; (2) all fines and penalties 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.

(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 unemploy-

Treasurer
and custo-
dian of fund.

Clearing
account.

Unemploy-
ment trust
fund
account.

Benefit
account.

Bond of
treasurer.

Withdrawals.

ment trust fund account, and (3) a benefit 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 may 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. The treasurer shall give a separate 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.

(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 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 sub-section (b) of this section.

Warrants.

(d) MANAGEMENT OF FUNDS UPON DISCONTINUANCE OF UNEMPLOYMENT TRUST FUND. The provisions of sub-sections (a), (b), and (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

Discontinu-
ance of un-
employment
trust fund.

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.

Investment
of moneys.

Railroad un-
employment
insurance
account.

(e) Notwithstanding any requirements of the foregoing sub-sections of this section, 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, 1940, 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 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.

SEC. 8. Section 10 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Amends
§ 10, ch. 162,
Laws 1937.

Section 10. ORGANIZATION. There are hereby created in the Office of Unemployment Compensation and Placement two coordinate divisions to be known as (a) the Unemployment Compensation Division, which shall be administered by a full time salaried supervisor, and (b) the Washington State Employment Service Division; each of which shall be under a 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

Organization
of two
coordinate
divisions.

Supervisor.

separation is impracticable. The commissioner is authorized to appoint, fix the compensation of, and prescribe the duties of the staff of the Washington State Unemployment Compensation Division: *Provided*, That such appointment shall be made on a non-partisan merit basis, and to appoint, fix the compensation of and prescribe the duties of the staff of the Washington State Employment Service Division in accordance with the provisions of section 12 of this act. In selecting the personnel for the subdivision of the blind in the employment service division, blind persons who are otherwise qualified and available shall be employed wherever practicable.

SEC. 9. Section 11 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

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 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

Amends
§ 11, ch. 162,
Laws 1937.

Duties and
powers of
commis-
sioner.

Rules and
regulations.

Annual
report to
Governor.

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.

(b) **RECIPROCAL STATE ARRANGEMENTS.** The commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states or the Federal government whereby individuals performing services in this and other states 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, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states, and whereby potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under such a law of the Federal government, or both, 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 substantial loss to the fund. The commissioner is also authorized to enter into arrangements with the appropriate agencies of other states or the Federal government (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 or of the Federal

Reciprocal
state ar-
rangements.

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 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 (2) whereby the commissioner will reimburse other state 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 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 or Federal agencies and receive from such other state or Federal agencies reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

Regulations
and general
and special
rules.

(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 this 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.

(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.

(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 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.

The commissioner shall classify positions and shall establish salary schedules and minimum personnel standards for the position so classified. 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. Salary schedules.

(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, re-training 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 re-employment of unemployed workers throughout the state in every other way that may be feasible; and to these Employment stabilization.

ends to carry and publish the results of investigations and research studies.

Records and reports.

(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 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 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 not be published or be open to public inspection (other than to public employes in the performance of their public duties) 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.

Oaths and witnesses.

(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.

(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. Subpoenas.

(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 Protection
against self
incrimina-
tion.

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.

State-
Federal
cooperation.

(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. 10. Section 12 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Amends
§ 12, ch. 162,
Laws 1937.

Section 12. (a) The Washington State Employment 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 in 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

Washington
State
Employment
Service
Division.

Placement is hereby designated and constituted the agency of this state for the purpose of said act. The commissioner shall appoint the officers and employees of the Washington State Employment Service Division. Such appointments shall be made in accordance with regulations prescribed by the director of the United States Employment Service. 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 subdivision of the blind concerned exclusively with the placement of blind persons. No persons 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.

Financing.

(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 subdivision 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.

Amends
§ 13, ch. 162,
Laws 1937.

SEC. 11. Section 13 of chapter 162 of the Laws of 1937 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. 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 separate and additional bond conditioned upon the faithful performance of his duties in connection with that fund in an amount to be fixed by the State Administrative Board and in a form prescribed by law or approved by the Attorney General. The premiums for such bond and the premiums for the bond given by the treasurer of the Unemployment Compensation Fund under section 9 of this act, shall be paid from the moneys in the Unemployment Compensation Administration Fund.

(b) EMPLOYMENT SERVICE ACCOUNT. A special "employment service account" shall be maintained in the State Treasury for the purpose of maintaining

Revolving
fund.

Employment
service
account.

Appropriation.

the public employment offices established pursuant to section 12 of this act and for the purpose of cooperating with the United States Employment Service. There is hereby appropriated to the employment service account from the general fund the sum of one hundred thousand dollars (\$100,000). In addition there shall be paid into such account the moneys designated in section 12 (b) of this act. There is hereby appropriated out of the employment service account and made available to the commissioner the sum of two hundred thousand dollars (\$200,000) or so much thereof as shall be necessary for the purposes heretofore mentioned in this subsection.

Amends § 12, ch. 162, Laws 1937.

SEC. 12. Section 14 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Interest on past due contribution.

Section 14. (a) INTEREST ON PAST DUE CONTRIBUTIONS. If contributions are not paid on the date on 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. 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 subsection shall be paid into the unemployment compensation fund.

Collection of contributions or interest.

(b) COLLECTION. If after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the State of Washington, and the employer adjudged in default shall pay the costs of 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.

(c) **PRIORITIES UNDER LEGAL DISSOLUTIONS OR DISTRIBUTIONS.** In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, 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 taxes and claims for remuneration for services of not more than \$250 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 section 64 (a) of that act, as amended.

Priorities
under legal
dissolutions
or distribu-
tions.

(d) **REFUNDS.** If not later than three years after the date which any contributions or interest thereon become due, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made and

Refunds.

the commissioner shall determine that such contributions or interest or any portion thereof was 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 so made on the commissioner's own initiative.

Amends
§ 15, ch. 162,
Laws 1937.

SEC. 13. Section 15 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Waiver of
rights void.

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 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 sub-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.

Limitation
of fees.

(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, by an appeal tribunal or by any court or any officer thereof: *Provided, however,* The individual shall pay such fees as are legal in Superior and Supreme Court. Any individual claiming benefits in any proceeding before the commissioner, an appeal tribunal or a court may be rep-

resented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive a fee for such services, but a legally licensed attorney shall be paid such reasonable fee for his services in the Superior Court as the judge orders. Any person who violates any provision of this subsection shall, for each offense, be fined not less than \$50 nor more than \$500, or imprisoned for not more than six months, or both.

(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 whatsoever provided for the collection of debt; 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 to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this sub-section shall be void.

No assignment of benefits; exemptions.

SEC. 14. Section 16 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Amends § 16, ch. 162, Laws 1937.

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 \$50, or by imprisonment for not longer than thirty 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.

Penalties.

Penalties.

(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 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.

(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.

(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. 15. Section 18 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Amends
§ 18, ch. 162,
Laws 1937.

Section 18. Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commissioner shall be liable for any amount in excess of such sums.

Non-liability
of state and
commis-
sioner.

SEC. 16. Section 19 of chapter 162 of the Laws of 1937 is hereby amended to read as follows:

Amends
§ 19, ch. 162,
Laws 1937.

Section 19. As used in this act, unless the context clearly requires otherwise:

(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.

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

Vetoed.

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

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

(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 for-

"Employing
unit."

eign, 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 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.

Contract or
sub-con-
tracts.

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 the 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 an 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 em-

ploying unit had actual or constructive knowledge of the work.

(f) "Employer" means:

(1) 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 one or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week) and for whose employment by such employing unit during such year total wages of not less than one hundred dollars became payable during one calendar quarter;

(2) Any individual, partnership, corporation, or 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;

(3) Any individual, partnership, corporation, or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit if the employment record of such individual, partnership, corporation, or employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit and an employer subject to this act under paragraph (1) of this sub-section;

(4) 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 (1) of this sub-section;

Vetoed.

Vetoed.

(5) Any employing unit which, having become an employer under paragraph (1), (2), (3), or (4), has not, under section 8, ceased to be an employer subject to this act; or

(6) 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.

"Employment."

(g) (1) "Employment," subject to the other provisions in this sub-section, means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

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

Services performed without state.

(3) Services not covered under paragraph (2) of this sub-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 Within state.

(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) 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:

(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

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

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

(i) Agricultural labor; (services customarily performed by a farm hand on a farm for the owner or tenant of a farm).

(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, daughter, 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, or-

"Employment" shall not include.

ganized 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 subdivisions thereof, or of any instrumentality of this state or its political subdivisions;

(vii) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of any instrumentality of any other state or states or their political subdivisions or the United States; except that if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation 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 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 (d) of this act and shall be refunded by the commissioner from the fund in accordance with such provisions of section 14 (d) of this act.

(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 rights 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;

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

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

(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.

"Employment office."

(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.

"Fund."

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

"State."

(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 in the procedures as to total unemployment, part-total unemployment and partial unemployment of individuals attached

"Unemployment."

to their regular jobs, and other forms of short-time work, as the commissioner deems necessary.

"Unemployment Compensation Administration Fund."

(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.

"Wages."

(m) "Wages" means the first three thousand dollars of remuneration payable by one employer to an individual worker for employment during any 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 director; but until Congress shall amend title IX of the Federal Social Security Act approved August 14, 1935, to similarly limit the amount of taxable wages to three thousand dollars the term "wages" for the purposes of this act shall be deemed to mean all remuneration payable by employers for employment.

"Week."

(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.

"Benefit year."

(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 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. 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 sub-section, if the individual has earned wages for employment by employers as provided in section 4 (e) of this act.

(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. "Base year."

(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. "Calendar quarter."

SEC. 17. (a) As used in this section, unless the context clearly requires otherwise:

(1) "Old law" means the "Unemployment Compensation Act" prior to its amendment by this act. "Old law."

(2) "New law" means the "Unemployment Compensation Act" as amended by this act. "New law."

(3) "Effective date" means the date upon which the new law becomes effective. "Effective date."

(b) Except as otherwise specifically provided in sub-section (c) of this section, the new law shall be exclusively applicable with respect to any individual on and after the effective date. No provision of the old law shall be construed to limit or to extend the rights of any individual as fixed by the new law, after the new law becomes exclusively applicable with respect to such individual as provided in this section.

(c) (1) With respect to any individual for whom there is current a benefit year, established pursuant to the old law, which has not expired prior to the effective date, sections 19 (p), 19 (q), 3 (f) and 4(e) of the old law, and the weekly benefit

amount determined pursuant to section 19 (o), 3 (b), 3 (c) and 3 (e) of the old law, shall be exclusively applicable until the expiration of such current benefit year, except that:

Base period.

(a) Notwithstanding any provision in section 19 (q), 3 (f), and 3 (e) of the old law to the contrary, the base period of such individual and the period usable in the determination or re-determination of his full-time weekly wage, shall in no event extend after the last day of the next to the last completed calendar quarter immediately preceding the effective date, and

(b) Notwithstanding any provision in section 4 (d) of the old law or the new law to the contrary, no waiting period shall be required of any such individual after the effective date and before the expiration of such current benefit year, and

(c) Notwithstanding any provision of the old law to the contrary, the weekly benefit amount and the maximum total benefits payable during such current benefit year shall, if not a multiple of fifty cents, be computed to the next higher multiple of fifty cents, with respect to all weeks of unemployment occurring after the effective date.

(2) Section 19 (o), 19 (p), 3 (b), (1), 3 (c) and 4 (e) of the new law shall be exclusively applicable with respect to such individual after the expiration of such benefit year.

Pending legal actions.

SEC. 18. All legal actions pending and all judgments outstanding in the name of the director of social security or the commissioner upon the effective date of this act shall not be affected by anything contained herein, and may continue in the name of any successor as chief administrative officer under the unemployment compensation act.

County not to charge fees.

SEC. 19. Neither the commissioner nor the state shall be charged any fee for any service rendered in connection with litigation under the unemployment

compensation act by the clerk of any court, or by any sheriff or constable.

Passed the Senate March 8, 1939.

Passed the House March 7, 1939.

Approved March 20, 1939, with the exception of section 16, of which section sub-divisions (e), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p) and (q) are approved, and the remainder of said section is vetoed.

CHAPTER 215.

[S. B. 350.]

NAVAL AND MARINE CORPS RESERVE ARMORY.

AN ACT making an appropriation for the construction of a naval and marine corps reserve armory at Seattle, Washington.

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

SECTION 1. There is hereby appropriated the sum of one hundred forty-six thousand two hundred fifty dollars (\$146,250), or so much thereof as may be necessary, from the general fund of the State of Washington for the construction of a naval and marine corps reserve armory at Seattle, Washington, to be expended independently of or in conjunction with funds allocated by the Federal, county or state governments or agencies or in conjunction with funds allocated for work projects: *Provided*, That the above appropriation shall become available only upon written approval of the Governor.

Appropriation.

Passed the Senate March 7, 1939.

Passed the House March 7, 1939.

Approved by the Governor March 20, 1939.