

CHAPTER 306—S. F. No. 1320

An act to amend Sections 2, 4, 5, 6, 8, 9, 10, 11, and 12, Chapter 2, Extra Session Laws of 1936, as amended by Chapter 43 of the Laws of 1937 relative to unemployment compensation for involuntary unemployment.

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

Section 1. **Law amended.**—That Section 2, Chapter 2 of the Extra Session Laws of 1936, as amended by Chapter 43 of the Laws of 1937, is hereby amended to read as follows:

“Sec. 2. **Definitions.**—As used in this Act, unless the context clearly requires otherwise—

(a) (1) “Annual pay roll” means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year.

(2) “Average annual pay roll” means the average of the annual pay rolls of any employer for the last three or five preceding calendar years, whichever average is higher.

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

(c) “Commission” means the Industrial Commission of the State of Minnesota.

(d) “Contributions” means the 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 foreign, or the receiver, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it. 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 notwithstanding any inconsistent provisions of this Act. (Whenever any employing unit contracts with or has under it any contractor or subcontractor 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 subcontractor is an employer by reason of Section 2 (f) or Section 9 (c) of this Act, the employing unit shall for all the purposes of this Act be deemed to employ each such contractor or subcontractor and individuals in his employ for each day

during which such contractor, subcontractor, and individual, is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of Section 2 (f) of this Act shall alone be liable for the employer's contributions measured by wages payable to individuals in his employ.) Each individual employed to perform or assist in performing the work of any agent or individual employed by 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 individual, provided the employing unit had actual or constructive knowledge of such work."

(f) "Employer" means:

(1) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive, within the year 1936 has or had in employment eight or more individuals (irrespective of whether the same individuals are or were employed in each such day) and, for any calendar year subsequent to 1936, and employing unit which, for some portion of a day, in each of twenty (20) different weeks, whether or not such weeks are or were consecutive, within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day).

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

(3) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(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 units or interests or both, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraph (1), (2), (3), or (4), has not, under Section 9, ceased to be an employer subject to this Act; or

(6) For the effective period of its election pursuant to section 9 (c) any other employing unit which has elected to become fully subject to this Act.

(g) "Employee" means every individual, whether male, female, citizen, alien or minor, who is performing, or subsequent to January first, 1936, has performed services for an employer in an employment subject to this Act.

(h) (1) Subject to the other provisions of this subsection "employment" means service, including service in inter-state commerce, or otherwise performed for wages or under any contract of hire, written or oral, express or implied, where the relationship of master and servant exists.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if: (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (1) 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; (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) *Services not covered under paragraph (2) of this subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other State or of the Federal Government, shall be deemed to be employment subject to this Act if the individual performing such services is a resident of this State and the commission 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 (a) the service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be "employment" subject to this act unless and until it is shown to the satisfaction of the commission that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and (b) such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) such individual is customarily engaged in an independently established trade, occupation, profession or business.

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

Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions;

Service performed in the employ of any other State or its political subdivisions, or of the United States government, or of an instrumentality of any other State or States or their political subdivisions or of the United States;

Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress, provided that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 10 (d) and 10 (m) 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;

Agricultural labor;

Domestic service in a private home;

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

Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

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

(i) "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.

(j) "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.

(k) "Partial unemployment"—An individual shall be deemed "partially unemployed" in any week of less than full-time work if

his wages payable for such week are less than six-fifths of the weekly benefit amount he would be entitled to receive if totally unemployed and eligible.

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

(m) "Total unemployment"—An individual shall be deemed "totally unemployed" in any week during which he performs no services *and* with respect to which *no* wages are payable to him. An individual's week of total unemployment shall be deemed to commence only after his registration pursuant to section 6 (a) of this Act.

(n) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this Act, from which administrative expenses under this Act shall be paid.

(o) "Wages" means all remuneration payable for personal services, including commissions and bonuses, and the cash value of all remuneration payable in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages payable by his employing unit. The reasonable cash value of remuneration 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 commission.

(p) "Week" means calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with regulations prescribed by the commission.

(q) "Weekly benefit amount"—An individual's "weekly benefit amount" with respect to any particular week of total unemployment means the amount of benefits computed in accordance with the provisions of section 5 of this Act, which he would be entitled to receive for such week, if totally unemployed and eligible.

(r) "Benefit year" with respect to any individual means the 52 consecutive week period beginning with the first day of the week with respect to which benefits are first payable to him and thereafter the 52 consecutive week period beginning with the first day of the first week with respect to which benefits are next payable to him after the termination of his last preceding benefit year.

(s) "Base period" means the first eight of the last nine completed calendar quarters immediately preceding the first day of an individual's benefit year: provided, however, that with respect to any benefit year which begins prior to April 1, 1939, it shall mean those

calendar quarters beginning January 1, 1937, and ending with the last day of the next to the last completed calendar quarter immediately preceding such benefit year.

(t) "Person" means an individual, trust or estate, a partnership or a corporation.

(u) "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, 1937, or the equivalent thereof as the commission may by regulation prescribe."

Sec. 2. Law amended.—That Section 4, Chapter 2, Extra Session Laws of 1936 is hereby amended to read as follows:

"Sec. 4. Contributions.—

(a) Payments. (1) On and after January 1, 1936, 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 2 (h)) accruing during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in his employ. No rule of the commission shall be put in force which will permit the payment of such contributions at a time or under conditions which will not allow the employer to take credit for such contribution against the tax imposed by Title IX of the Social Security Act.

(2) In the payment of any contribution, 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 one cent.

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

(1) Nine-tenths of one per centum with respect to employment during the calendar year 1936;

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

(3) Two and seven-tenths per centum with respect to employment during the calendar year 1938, 1939, 1940; and

(4) With respect to employment after December 31, 1940, the percentage determined pursuant to subsection (c) of this section

and after December 31, 1937, in accordance with the guaranteed employment provisions contained in subsection (d) of this section.

(c) Future Rates Based on Benefit Experience.

(1) The commission shall maintain a separate account for each employer, and shall credit his account with all the contributions which he has paid on his own behalf. But nothing in this Act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged against the account of his most recent employers against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred, but the maximum amount so charged against the account of any employer shall not exceed one-sixth of the wages payable to such individual by each such employer for employment which occurs on and after the first day of such individual's base period, or \$65 per completed calendar quarter or portion thereof, whichever is the lesser. The commission shall by general rules prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment during the same week *but nothing in this section shall be construed to limit benefits payable pursuant to Section 5 of this act.*

(2) The commission 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 an 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.

(3) The commission shall, for the year 1941 and for each calendar year thereafter, determine the contribution rate of each employer on the basis of such employer's actual record in the payment of contributions on his own behalf and with respect to benefits charged against his account, in accordance with the following requirements:

(i) Each employer's rate shall be two and seven-tenths per centum except as otherwise provided in the following provisions. No employer's rate shall be less than two and seven-tenths per centum unless there shall have been three calendar years throughout which any individual in his employ could have received benefits if eligible.

(ii) If, at the beginning of any calendar year, the total of all contributions paid by the employer on his own behalf for all past

years exceeds the total benefits charged to his account for all such years, his contribution rate shall be—

(a) One and eight-tenths per centum, if such excess equals or exceeds seven and one-half per centum but is less than ten per centum of his average annual payroll.

(b) One and three-tenths of one per centum if such excess equals or exceeds ten per centum of his average annual payroll and is less than twelve and one-half per centum of his average annual payroll.

(c) Nine-tenths of one per centum if such excess equals or exceeds twelve and one-half per centum of his average annual payroll or if such excess equals three times the amount of total benefits charged to his account for the preceding calendar year.

(iii) No employer's rate for the period of twelve months commencing January first of any calendar year shall be less than two and seven-tenths per centum, unless the total assets of the fund, excluding contributions not yet paid at the beginning of such calendar year, exceed the total benefits paid from the fund within the last preceding calendar year; and no employer's rate shall be less than one and eight-tenths per centum unless such assets at such time were at least twice the total benefits paid from the fund within such last preceding year.

(d) The commission shall establish a guaranteed employment account for *any employer who chooses to be bound by the provisions of this subsection* and shall after the calendar year, 1938 fix the rate of contribution of each and any employer who chooses to come under the provisions of this subsection at the rate of five-tenths of one per centum of this previous annual payroll, *if said employer complies* with the following terms and conditions:

(1) If at the beginning of any calendar year the total of all contributions paid by the employer on his own behalf in said guaranteed employment account exceeds the total benefits charged to his account for all such years by seven and one-half per centum of his previous annual payroll.

(2) That said employer has fulfilled the terms and conditions of having furnished to *all of the individuals in his employ* during the previous calendar year not less than the number of hours of wages and weeks of wages of the guarantee as hereinafter provided.

(3) That said employer shall guarantee under a plan to be approved by the commission to all of his employees in one or more distinct establishments in his employ at the time of putting such plan into effect (and to each employee who is thereafter employed and

continued in employment after a total of eight weeks of employment included within 12 or less consecutive calendar weeks) in advance for stated one year periods at least 30 hours of wages for each of 40 calendar weeks (or more, with one weekly hour deducted for each added week guaranteed).

(4) That said employer shall deposit with the commission such security or securities or give said commission such assurance as said commission shall require that he shall fulfill the terms of his guarantee out of which securities or account compensation shall be payable with respect to the unemployment of any individual whose guarantee of employment is not fulfilled or renewed and who is otherwise eligible for compensation under the provisions of this act."

Sec. 3. Law amended.—That Section 5, Chapter 2, Extra Session Laws of 1936 is hereby amended to read as follows:

"Sec. 5. Benefits.—(a) Payment of Benefits. Beginning January 1, 1938, benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the commission may prescribe.

(b) Weekly Benefit Amount for Total Unemployment. Each eligible individual who is totally unemployed (as defined in Section 2 (m)) in any week shall be paid, with respect to such week, benefits at the rate of 50 per centum of his full-time weekly wages, but not more than \$15.00 per week, nor less than either \$6.00 or three-fourths of such full-time weekly wage whichever is the lesser.

(c) Weekly Benefit for Partial Unemployment. Each eligible individual who is partially unemployed (as defined in Section 2 (k)) in any week shall be paid with respect to such week a partial benefit. Such partial benefit shall be an amount equal to the difference between his weekly benefit amount (as defined in Section 2 (q)) and five-sixths of his wages for such week. If such partial benefit for any week equals less than \$2.00, it shall not be payable unless and until the accumulated total of such partial benefits with respect to weeks occurring within the preceding 13 weeks equal \$2.00 or more. Where an employee is furnished part-time employment at regularly recurring intervals the total amount of compensation to which he shall be entitled hereunder for any period of four consecutive weeks shall not exceed an amount which, when added to his wages earned during that period, will equal eight dollars more than four times his weekly benefit amount as defined in section 2 (q).

(d) Determination of Full-time Weekly Wage. (1) The full-time weekly wage of any individual means the weekly wages that such individual would receive if he were employed at the most recent wage rate earned by him in employment by an employer in his base

period and for the customary scheduled full-time *weekly hours* prevailing for his occupation in the enterprise in which he last earned wages in employment by an employer during his base period.

(2) If the commission finds that the full time weekly wage, as above defined, would be unreasonable or arbitrary or not readily determinable with respect to any individual, the full-time weekly wage of such individual shall be deemed to be one-thirteenth of his total weekly wages in employment by employers in that quarter in which such total wages were highest in his base period.

(e) The maximum total amount of benefits payable to any eligible employee during any benefit year shall not exceed one-sixth of his total wages earned in employment by an employer during his base period or 16 times his weekly benefit amount, whichever is the lesser. The commission shall maintain a separate account for each individual who subsequent to January 1, 1937, earns wages in employment by an employer. After the expiration of each calendar quarter, the commission shall credit each such account with one-sixth of such wages earned by such individual during such quarter, or \$65.00, whichever is the lesser. Benefits paid to an eligible individual shall be charged against amounts which have been credited to his account on the basis of wages earned in employment by employers during his base period and which have not previously been charged hereunder, in the same chronological order as such wages were earned.

(f) Benefits in Seasonal and Irregular Employment. (1) Whenever in any industry or class of occupation in any industry it is customary to operate only during a regularly recurring period or periods of less than *40 weeks in a calendar year*, then the rights to benefits shall apply only to the longest seasonal period or periods which are customary in such industry or class of employment. It shall be the duty of the commission prior to January 1, 1939, and thereafter from time to time, to ascertain and determine, or redetermine, such seasonal period or periods for each such seasonal employment. When the commission has determined such season, it shall also fix the right to benefits and the conditions required for the payment of benefits to unemployed persons in such industry or class of occupation and shall modify the requirements of the right to benefits and the conditions required for the payment of benefits in such manner, that the total benefits paid to such persons will be in reasonable proportion to the total contributions to the fund of employers in such occupation or industry on account of such seasonal employees.

(2) The commission shall also, prior to January 1, 1939, and from time to time thereafter, ascertain and determine, or redetermine, employment in which it is customary to operate only at irregular

periods, and shall fix the right to benefit and the conditions required for payment of benefits to persons having such employment, and shall modify the requirements of the right to benefit and the conditions required for the payment of benefits in such manner, that the total benefits paid to such persons will be in reasonable proportion to the total contributions to the fund of employers in such occupation or industry on account of such seasonal employes."

Sec. 4. Law amended.—That Section 6, Chapter 2, Extra Session Laws of 1936, as amended by Chapter 43, Laws of 1937, is hereby amended to read as follows:

"Sec. 6. **Benefit eligibility conditions.**—An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that—

(a) He has registered for work at and thereafter has continued to report to an employment office in accordance with such regulations as the commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of section 8 (a) of this Act;

(c) He is able to work and is available for work; and

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of two weeks (and for the purposes of this subsection, three weeks of partial unemployment shall be deemed to be equivalent to one week of total unemployment). Such weeks of total or partial unemployment or both need not be consecutive. No week shall be counted as a week of total unemployment for the purposes of this subsection:

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

(2) unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsections (b) and (e) of this Section.

(3) unless it occurs within the 13 consecutive weeks preceding the week for which he claims benefits, provided that this condition shall not interrupt the payment of benefits for consecutive weeks of unemployment nor require any individual who, prior to the first day of his benefit year, shall have accumulated such two waiting period weeks, to accumulate more than three additional waiting period weeks during his ensuing benefit year;

(4) unless it occurs after benefits first could become payable to any individual under this act.

(e) He has within the first four out of the last five completed calendar quarters immediately preceding the first day of his benefit

year, earned wages for employment by employers of not less than sixteen times his weekly benefit amount, provided, that when the first day of a benefit year shall occur during the first calendar quarter in the year 1938, this requirement shall be deemed to be satisfied if the individual, within the first three out of the last four completed calendar quarters immediately preceding the first day of such benefit year, has earned wages for employment by employers of not less than twelve times his weekly benefit amount; and provided further, that if the aforesaid wages of an individual during such period of three or four calendar quarters have been reduced below the required amount because of some mental or physical disability due to services in the armed forces of the United States in time of war, wages earned by such an individual in employment by an employer during his base period, shall be substituted for those earned in such periods of three or four calendar quarters."

Sec. 5. Law amended.—That Section 8, Chapter 2, Extra Session Laws of 1936 is hereby amended to read as follows:

"Sec. 8. Claims for benefits.—(a) Filing. Claims for benefits shall be made in accordance with such regulations as the commission 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. Such printed statements shall be supplied by the commission to each employer without cost to him.

(b) Initial Determination. The commission shall designate representatives, herein referred to as referees, to insure the prompt examination of claims for benefits made pursuant to this section, provided, however, that no person shall be designated as a referee to act upon any claim for benefit, or participate on behalf of the commission in any case in which he is an interested party. The designated representative shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an *appeal tribunal*, which shall make its determinations with respect thereto in accordance with the procedure prescribed in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of Section 7 (d) of this Act, the referee shall promptly transmit his full findings of fact with respect to that subsection to the commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the referee a decision

upon the issues involved under that subsection *which shall be deemed to be the decision of the referee*. The referee shall promptly notify the claimant and *any other interested party* of the decision and the reasons therefor. Unless the claimant or such employer or employers within ten calendar days after the delivery of such notification, or within 12 calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is filed, benefits with respect to the period prior to the final *decision of the commission*, shall be paid only after such determination; provided that if an *appeal tribunal* affirms a decision of a referee or the commission affirms a decision of the *appeal tribunal*, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(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 referee. 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 of the commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

(d) *Appeal Tribunals*. In order to assure the prompt disposition of all claims for benefits, the commission shall establish one or more impartial appeal tribunals consisting of a salaried examiner, who shall serve as chairman, and two additional members, one of whom shall be a representative of employers and the other of whom shall be a representative of employes; each of the latter two members shall serve at the pleasure of the commission and be paid a fee of not more than \$10.00 per day of active service on such tribunal plus necessary expenses. The commission shall by regulation prescribe the procedure by which such appeal tribunals may hear and decide disputed claims, subject to appeal to the commission. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall a hearing before an appeal tribunal proceed unless the chairman of such tribunal is present. There shall be no charges, fees, transcript costs or other costs imposed upon the employe in prosecuting his appeal.

(e) *Commission Review*. The commission may, on its 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 appeals before it. In any case in which a claim for benefits has been denied an appeal shall be allowed before the commission and an opportunity for a fair hearing granted. The commission shall promptly notify the interested parties of its findings and decision. In no case shall a hearing before the commission as a body proceed unless all three members of the commission are present.

(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 the *regulations* prescribed by the commission 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 shall be reduced to writing, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness Fees. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission. Such fees shall be deemed a part of the expense of administering this Act.

(h) Appeal to Courts. Any decision of the commission in the absence of an appeal therefrom as herein provided, shall become final ten 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 before the commission, as provided by this Act. The commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the commission and has been designated by it for that purpose or, at the commission's request, by the Attorney General.

(i) Within 20 days after the filing of any decision of the commission or within ten days after any such decision has become final, any party aggrieved thereby may secure judicial review thereof by taking an appeal from such decision to the *Supreme Court of the State of Minnesota in the same manner provided for the taking of appeals in civil cases.*

(j) In any proceeding under this act before the referee, *appeal tribunal* or the commission, a party may be represented by an agent or attorney, *but no individual claiming benefits shall be charged fees of any kind in any proceeding under this Act by the appeal tribunal, the commission, or its representatives, or by any court or any officers*

thereof. Any individual claiming benefits in any proceedings before the commission or its representatives or a court may be represented by counsel or other duly authorized agent except that said agent in any court proceedings under this act must be an attorney at law; but no such counsel shall either charge or receive for such services more than an amount approved by the commission and no fees shall be collected from an individual claiming benefits, by any agent unless he is an attorney at law.

Sec. 6. Law amended.—That Section 9, Chapter 2, Extra Session Laws of 1936 is hereby amended to read as follows:

“Sec. 9. 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.

(b) Except as otherwise provided in subsection (c) of this section, an employing unit shall cease to be an employer subject to this Act only as of the first day of January of any calendar year, if it files with the commission, prior to the 5th day of January of such year, a written application for termination of coverage, and the commission finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this Act. For the purpose of this subsection, the two or more employing units mentioned in paragraph (2) or (3) or (4) of section 2 (f) shall be treated as a single employing unit.

(c) (1) An employing unit, not otherwise subject to this Act, which files with the commission its written election to become an employer subject thereto for not less than two calendar years, shall, with the written approval of such election by the commission, 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 commission a written notice to that effect.

(2) Any employing unit for which services that do not constitute employment as defined in this Act are performed, may file with the commission 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 commission, 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 1st of any calendar year subsequent to such two calendar years only if at least 30 days prior to such 1st day of January such employing unit has filed with the commission a written notice to that effect."

Sec. 7. Law amended.—That Section 10, Chapter 2, Extra Session Laws of 1936 is hereby amended to read as follows:

"Sec. 10. Administration.—(a) The commission shall administer this act and shall appoint such officers and employees as may be necessary for the administration thereof and shall establish a division of unemployment compensation *and shall employ a full-time salaried director for the division of unemployment compensation herein established.*

(b) Quorum. Any two commissioners shall constitute a quorum. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission.

(c) The commission shall have power and authority to adopt, amend or rescind such rules and regulations, make such expenditures, require such reports, make such investigations and take such other action as it deems necessary or suitable in the administration of this Act. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the commission shall prescribe. Not later than the 1st day of August of each year, the commission 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 the commission deems proper. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the legislature and make recommendations with respect thereto.

(d) Publication. The commission shall cause to be printed for distribution to the public the text of this Act, the commission's regulations and general rules and its annual reports to the Governor, and any other material the commission deems relevant and suitable.

(e) Personnel. Subject to other provisions of this Act, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The commission shall classify its positions and shall establish salary schedules and minimum personnel standards for the positions so classified. The commission shall appoint its personnel on the basis of efficiency and fitness without regard to party affilia-

tion. The commission 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. The commission shall establish and enforce fair and reasonable regulations for appointments, promotions and demotions based upon ratings of efficiency and fitness and for terminations for cause. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this Act, and may in its discretion bond any person handling moneys or signing checks hereunder. Employment by the commission shall be subject to the provisions of the Minnesota Soldiers Preference law as provided in sections 4368 and 4369, Mason's Minnesota Statutes for 1927, as amended by Chapter 357, Laws 1931. All salaries, compensation and wages paid shall be in conformity with the schedules for salaries, wages and compensation for other departments of State employes doing similar work.

(f) **Advisory Councils.** The commission shall appoint a State advisory council and local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the commission may designate. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this Act and in assuring impartiality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses.

(g) **Employment Stabilization.** The commission, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(h) **Records And Reports.** Each employing unit shall keep true and accurate *work* records containing such information as the commission may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employing unit any

sworn or unsworn reports, with respect to persons employed by it, which the commission deems necessary for the effective administration of this Act. Information thus obtained *or obtained from any individual pursuant to the administration of this act except to the extent necessary for the presentation of a claim shall be held confidential and shall not be published or be open to public inspection* (other than to public employees in the performance of their public duties) in any manner revealing the *individual's* or employing unit's identity, but any claimant at a hearing before *an appeal tribunal or the commission* shall be supplied with information from such records to the extent necessary for the proper presentation of his claim.

(i) Oaths and Witnesses. In the discharge of the duties imposed by this Act *the chairman of an appeal tribunal*, any duly authorized representative or member of the commission 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.

(j) Subpoenas. In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this 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 the commission or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before a commissioner, the commission, or its duly authorized 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.

(k) Protection Against Self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission *or its duly authorized representative* or in obedience to *the subpoena of the commission* or any member thereof or any duly authorized representative of the commission in any cause or proceeding before the commission *or its duly authorized representative* 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 indi-

vidual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(1) **State-Federal Cooperation.** In the administration of this Act, the commission 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 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 commission 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.

(m) Rules and Regulations.—General and special rules may be adopted, amended, or rescinded by the Commission which rules shall become effective ten (10) days after publication of the same in one or more newspapers of general circulation in this state, provided that any employer, employee or other person whose interest is or may be affected thereby may object to any such rule within ten (10) days after publication thereof by filing with the Commission a petition setting forth the grounds of objection to said rule and request for hearing thereon, whereupon a hearing shall thereafter be had before the Commission at a time and place designated by the Commission after due notice of said hearing has been served by the Commission or duly authorized person, upon the objecting party or parties not less than five (5) days before said hearing.

Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission."

Sec. 8. Law amended.—That Section 11, Chapter 2, Extra Session Laws of 1936 is hereby amended to read as follows:

"Sec. 11. Reciprocal benefit arrangements.—The Commission 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 2 (f) 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 several 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 the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund."

Sec. 9. Law amended.—That Section 12, Chapter 2, Extra Session Laws of 1936 is hereby amended to read as follows:

"Sec. 12. Commission shall establish and maintain free public employment offices.—(a) The commission shall establish and maintain under the division of employment 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 provisions of said Act of Congress, as amended, are hereby accepted by the state, in conformity with Section 4 of said Act and this state will observe and comply with the requirements thereof.

(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 unemployment compensation administration fund, and said moneys are hereby made available to the commission for the Minnesota State Employment Service 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 commission is authorized to enter into agreements with any political subdivision of this State or with any private, nonprofit organization and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service account."

Approved April 19, 1937.

CHAPTER 307—S. F. No. 1515

An act to appropriate \$10,000.00 to the oil inspection division of the department of agriculture.

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