

## CHAPTER 2—H. F. No. 11

*An act to create an unemployment compensation fund from contributions by employers for the payment of compensation for involuntary unemployment, to provide for merit ratings for employers with creditable employment records, to provide for guarantee employment accounts, to provide for cooperation with the Social Security Board of the United States of America, to provide penalties for the violation of said act, to provide for the administration thereof, and to appropriate money therefor.*

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

**Section 1. Declaration of public policy.**—As a guide to the interpretation and application of this Act, the public policy of this State, is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burdens. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this State will be promoted by providing, under the police powers of the State for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

**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 in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ eight or more individuals performing services for it within this State, and which has subsequent to January 1, 1937, 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. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment 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 individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of section 2 (f) or section 9 (c) of this Act shall alone be liable for the 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 subcontractor who is not an employer by reason of section 2 (f) or section 9 (c) of this Act, may recover the same from such contractor or subcontractor. 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 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 which has subsequent to January 1, 1937, in its employ one or more individuals performing services for it.

(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 unit, 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) 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.

(4) 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.

(5) 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) 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 pre-

vention 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 with respect to which 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.

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

Sec. 3. **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 commission exclusively for the purposes of this Act. 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 moneys in the fund shall be mingled and undivided except as otherwise provided in section 4.

(b) Accounts and Deposits. The State Treasurer shall be ex officio the treasurer and custodian of the fund, who shall administer such fund in accordance with the directions of the commission and shall issue his warrants upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three separate accounts; (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, 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 commission. 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, and shall be used exclusively for the payment of benefits as provided in this act except as herein otherwise provided. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any banks 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 commission 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 commission. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as it 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. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of a member of the commission or its 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 such 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 commission, shall be re-deposited 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 subsection (b) of this section.

**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)) occurring 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 contribution at a time or under condi-

tions 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 years 1938, 1939 and 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.

(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 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 his previous annual payroll, on 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 his employees during the previous calendar year not less than the number of hours and weeks of service 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) in advance for stated one year periods at least 40 weeks of 30 hours in each such week (or more, with one weekly hour deducted for each added week guaranteed).

(4) That said employer shall deposit with the commission such securities or give said commission such assurance as said commission shall require that he shall fulfill the terms of his guarantee.

**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 (computed to the next highest multiple of 20 cents) 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 wage 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 an employer 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 one year in length, 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, 1938, 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 employes.

(2) The commission shall also, prior to January 1, 1938, 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 employees.

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 16 times his weekly benefit amount and that he has had not less than ten weeks of employment as defined in this Act within the last half of his base period ; provided, that if the aforesaid wages of the individual

during such four calendar quarters have been reduced below the eligible amount because of some mental or physical disability due to service in the armed forces of the United States in time of war, wages earned by the individual in employment by an employer during his base period shall be substituted for those earned in such four calendar quarters.

**Sec. 7. Disqualification for benefits.**—An individual shall be disqualified for benefits—

(a) For the week in which he has left work voluntarily without good cause, if so found by the commission, and for not less than one nor more than the five weeks which immediately follow such week (in addition to the waiting period) as determined by the commission according to the circumstances in each case.

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

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

(1) In determining whether or not any work is suitable for an individual, the commission 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 wages, 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;

(d) For any week with respect to which the commission 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 subsection shall not apply if it is shown to the satisfaction of the commission that—

(1) He is not participating in or financing 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 the dispute; and provided further, 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 subsection be deemed to be a separate factory, establishment, or other premises.

(e) For the week with respect to which he is receiving or has received remuneration in the form of—

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability under the workmen's compensation law of any State or under a similar law of the United States; or

(3) Old-age benefits under Title II of the Social Security Act; as amended, or similar payments under any Act of Congress;

Provided that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

**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 exami-

nation 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 the commission, 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 finding 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. The referee shall promptly notify the claimant and the employer or employers against whose reserve account such benefits are chargeable 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 determination of the commission, shall be paid only after such determination; provided that if the commission affirms a decision of a referee, 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) Commission Review. The commission may, on its own motion, affirm, modify, or set aside any decision of a referee 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.

(d) 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 rules prescribed by the commission for determining the rights of the parties, whether or not such rules 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.

(e) **Witness Fees.** Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this Act.

(f) **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.

(g) 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 district court of the county wherein the employee claiming compensation resides, and if there be within such county more than one place of holding district court, to such place as may be designated or printed on the face of such notice of appeal. Such appeal may be effected in the following manner: (1) the aggrieved party or his attorney shall execute a notice of appeal stating briefly and concisely the title of the proceeding, the date and provisions of the order appealed from and whether the appeal is taken upon questions of fact or law, and the errors relied upon by such appellant for a reversal; (2) by serving said notice of appeal upon the Industrial Commission, together with as many copies as there may be parties, of which the commission shall forthwith mail one such copy to each party other than the appellant; and (3) within ten days after such service by filing such notice of appeal with proof of service with the clerk of the district court of the county and at the place to which the appeal is taken. No bond or filing or appeal fee shall be required to complete such appeal.

Thereupon the commission shall prepare a record of the proceeding and shall certify to and file with said court all documents and papers, a transcript of evidence taken, together with its findings of facts and decision therein. The commission may also, in its discretion, certify to such court any questions of law involved in any decision by it. In the



event of an appeal on questions of law alone, no transcript of evidence shall be required unless deemed necessary by the Industrial Commission.

Such appeals and the questions so certified shall be heard and determined in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state. If the appeal be taken on questions of law alone, the appeal shall be determined upon the record.

In the hearing and determination of any such appeal, the court shall not be bound by the rules of evidence, but any decision shall be based on competent evidence. The service of a notice of appeal shall not operate as a stay of proceedings unless the commission shall so order. On any such appeal upon a question of fact, the district court may disregard the findings of fact and decision of the commission or referee and may examine the testimony taken before the commission and referee, and if it deem proper to accomplish the ends of justice, may hear other evidence, and may substitute for the findings of the commission or referee such findings of fact as the evidence taken before the commission or referee, and the court as herein provided may in the judgment of the court require.

An appeal may be taken from the decision of the district court to the Supreme Court of Minnesota in the same manner provided for the taking of appeals in civil cases.

(h) In any proceeding under this Act before the referee or the commission, a party may be represented by an agent or attorney, but *no fees for services rendered by an agent shall be allowable or payable unless such agent is an attorney at law, and claims for fees of attorneys at law for services rendered to an employee for services rendered before the commission or a referee thereof shall not be enforceable unless approved by the commission.*

(i) Appeal Tribunals. In order to assure the prompt disposition of all claims for benefits, the commission is hereby authorized to 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 employees; 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 before an appeal tribunal 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 employée in prosecuting his appeal.

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 hereto 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 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 1st 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. 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.

(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 affiliation. 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 347, 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 employees 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 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 employment 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 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 employing unit's identity, but any claimant at a hearing before 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, 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, corre-

spondence, 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 any member thereof or any duly authorized representative of the commission in any cause or proceeding before the commission 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.

(l) 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.

Sec. 11. **Reciprocal benefit arrangements.**—The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states of the Federal Government 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. 12. (a) The commission is authorized to 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 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 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, said division 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.

Sec. 13. **Unemployment compensation administration fund.**—(a) **Special Fund.** There is hereby created in the State Treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commission. 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, provided, however, that the initial appropriation made by the State of Minnesota in this Act may be returned to the State Treasury. The fund shall consist of all moneys appropriated by this State, and all moneys received from the United States of America, or any agency thereof, including the Social Security Board and the United States Employment Service, or from any other source, for such purpose. All

moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury. Any balances in this fund shall not lapse at any time but shall be continuously available to the commission for expenditure consistent with this Act. The State Treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund in an amount to be fixed by the commission 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 3 of this Act, shall be paid from the moneys in the unemployment compensation administration fund.

**Sec. 14. Collection of contributions.**—(a) Interest on Past Due Contributions. Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of one per centum per month from and after such date until payment plus accrued interest is received by the commission. Interest collected pursuant to this subsection shall be paid into the fund's pooled account.

(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 commission, 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.

(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, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contribution then or thereafter due shall be paid in-full prior to all other claims except taxes and claims for wages of not more than \$250.00 to each claimant, earned within four months of the commencement of the proceeding. 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 is provided in section 64 (b) of that Act (U. S. C. Title XI, sec. 104 (b)), as amended.

(d) Refunds. If not later than one year after the date on which any contributions or interest thereon became 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 the commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such just adjustment cannot be made, the commission shall refund said amount, without interest, from the fund. For like cause and within the same period, an adjustment or refund may be so made on the commission's own initiative.

**Sec. 15. Protection of rights and benefits.**—(a) Waiver of Rights Void. No agreement by an individual to waive, release or commute his rights to benefits or any other rights under this Act shall be valid. No agreement by any 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 valid. No employer shall directly or indirectly make or require or accept any deduction from wages 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.

(b) No Assignment of Benefits: Exemptions. No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Act shall be valid; 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 the 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. No waiver of any exemption provided for in this subsection shall be valid.

**Sec. 16. Penalties.**—(a) Whoever violates any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$100.00 or by imprisonment of not longer than 90 days.

(b) Any person who wilfully makes a false statement or representation to obtain any benefit or payment under the provisions of this Act either for himself or another person or to cause or attempt to cause a lower contribution to be paid to the fund, or any person who wilfully refuses to pay a contribution to the fund shall be guilty of a misdemeanor and punished by a fine of not more than \$100.00 or by imprisonment of not longer than 90 days.

**Sec. 17. Representation in court.**—In any civil action to enforce the provisions of this Act the commission and the State may be represented by any qualified attorney who is a regular salaried employee of the commission and is designated by it for this purpose or at the



commission's request by the Attorney General; an aggrieved employee shall be entitled to appear before any court by himself or with a licensed attorney.

Sec. 18. **Nonliability of State.**—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 commission shall be liable for any amount in excess of such sum.

Sec. 19. **Saving clause.**—The legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this Act at any time. If for any reason the excise tax on wages provided for in Title IX of the Social Security Act is held to be invalid by the Supreme Court of the United States or the contributions imposed under this Act are held to be invalid by a court of last resort, or in case the Social Security Act is repealed, no further contributions shall be collected under this Act, and no further benefits paid, and any moneys in the unemployment compensation fund shall be held in a separate account by the Treasurer of the State of Minnesota pending the disposition thereof as may be provided by law. The contribution imposed under this Act shall not be collected for the calendar year 1936, if this Act is not approved by the Social Security Board and the State of Minnesota certified to the Secretary of the Treasury, as provided in Section 903 of the Social Security Act, previous to January 1, 1937.

Sec. 20. **Separability of provisions.**—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby, and if this Act should be held invalid in any of its provisions which differ from the Federal Social Security Act then, and in that event, the provisions of the Federal Social Security Act shall be read into and become a part of the provisions of this Act.

Sec. 21. **Short title.**—This Act shall be known and may be cited as the "Minnesota Unemployment Compensation Law."

Sec. 22. **Effective date.**—This Act shall take effect and be in force from and after its passage.

Approved December 24, 1936.