130278

1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
Editorial Staff

Minnesota State Law Library
St. Paul, Minn.

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1941

An injury is regarded as arising out of and in the usual course of employment where employment exposes employee in special degree to risk of injury. Byhardt v. B., 296NW504. See Dun. Dig. 10403.

An injury occurring to an employee while engaged in moving office furniture, equipment and safe of a realtor from one office to another arises out of and in usual course of employer's business. Id. See Dun. Dig. 10404.

Where store manager suffered sudden pain in knee when stooping to pick up a piece of paper and it was discovered on examination that cartilage was torn, whether injury arose out of employment was question of fact for commission. Budd v. C., 296NW571. See Dun. Dig. 10406.

——Injuries occurring in another state.

Severson v. H., (CCA8), 105F(2d)622. Cert. den., 60SCR 514.

4327. Occupational diseases—How regarded—Compensation, etc.

(9).

Evidence sustains finding of disability arising out of and in course of his employment by reason of becoming afflicted with an occupational disease of phosphorus poisoning. Malzac v. S., 288NW837. See Dun. Dig. 10398.

4330-1. Settlement of claims.

Commission properly refused to approve settlement between employer, insurance carrier, employee, and wife for herself and as guardian for minor children, it being contrary to policy of the act to permit a release of death benefits by a prospective dependent. Dale v. S., 287NW 787. See Dun. Dig. 10418.

GENERAL PROVISIONS

4337-1. Application of act to state employees; etc.

Industrial commission should not undertake responsibility of determining claims of former SERA employees. Op. Atty. Gen. (523-g-18), May 27, 1940.

Supervisors in cotton mattress program in connection with distribution of surplus cotton are not employees of the state. Op. Atty. Gen. (523g-18), Jan. 14, 1941.

CHAPTER 23AA

Unemployment Compensation Law

4337-21. Declaration of public policy.

Arkansas unemployment compensation law is constitutional. McKinley v. R., 143SW(2d)(Ark)38.

4337-22. Definitions.—As used in this act, unless the context clearly requires otherwise—

A. "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual benefit year.

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

C. "Benefit year", with respect to any individual means the one year period beginning with the first day of the first week with respect to which the individual files a valid claim for benefits.

D. "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 director may by regulation prescribe.

E. "Contributions" means the money payments required by this act to be made into the state unemployment compensation fund by any employing unit on account of having individuals in its employ.

F. "Corporation" includes associations, joint-stock companies, and insurance companies, provided, however, that this definition shall not be exclusive.

G. "Director" means the director of the division of employment and security.

H. "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 individual 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 sub-contractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of section 4337-22F or Section 4337-29C, Mason's Supplement 1940, as amended by this act the employing unit shall for all the purposes of this act be deemed to employ each such contractor or subcontractor and individual 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 4337-22F, Mason's Supplement 1940, as amended by 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.

I. "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, an employing unit which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state of Minnesota, 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 paragraphs (1), (2), (3), or (4), has not, under section 4337-29, Mason's Supplement 1940

as amended by this act, ceased to be an employer subject to this act;

(6) For the effective period of its election pursuant to section 4337-29 C, Mason's Supplement 1940, as amended by this act, or any other employing unit which has elected to become fully subject to this act; or

(7) Notwithstanding any inconsistent provisions of this act, any employing unit not an employer by reason of any other paragraph of this subsection for which service is performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; but service performed for such employing unit shall constitute employment for the purposes of this act only to the extent that such service constitutes employment with respect to which such federal tax is payable.

J. "Employee" means every individual, whether male, female, citizen, alien, or minor, who is performing, or subsequent to January 1, 1936, has performed services in insured work.

K. (1) Subject to the other provisions of this subsection "employment" means service performed prior to January 1, 1940, which was employment as defined in this act prior to such date, and any service performed after December 31, 1939, including service in interstate commerce and service as an officer of a corporation 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 individuals 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) (a) Service covered by an election pursuant to section 4337-29 C, Mason's Supplement 1940, as amended by this act; and

(b) Service covered by an arrangement pursuant to section 4337-31, Mason's Supplement 1940, as amended by this act, between the director and the agency charged with the administration of any other state or federal employment and security law, pursuant to which all service performed by an individual for an employing unit is deemed to be performed entirely within this state, shall be deemed to be employment if the director has approved an election of the employing unit for whom such service is performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment.

(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 director that the relationship of master and servant does not exist as specified in subdivision (1) hereof or (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 hire 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:

(a) Agricultural labor, the term "agricultural labor" includes all service performed subsequent to December 31, 1939:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising, harvesting or threshing any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane or fire, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

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

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) Casual labor not in the course of the employing unit's trade or business;

(d) Service performed on the navigable waters of the United States as to which this state is prohibited by the Constitution and laws of the United States of America from requiring contributions of employers with respect to wages as provided in this act;

(e) 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;

(f) Service performed in the employ of the United States government, or any instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this act, except that with respect to such service performed subsequent to December 31, 1939, and to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation act, then, to the extent permitted by Congress, and from and after the date as of which

such permission becomes effective, all of the provisions of this act shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided that if this state shall not be certified for any year by the Social Security Board under section 1603 (c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the director from the fund in the same manner and within the same period as is provided in section 4337-34 D, Mason's Supplement 1940, as amended by this act, with respect to contributions erroneously collected;

(g) Service performed in the employ of this state, or of any other state, or of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned by this state or by one or more states or political subdivisions, and any service performed in the employ of any instrumentality of this state or of one or more states or political subdivisions to the extent that the instrumentality is, with respect to such service immune under the Constitution of the United States from the tax imposed by section 1600 of the Federal Internal Revenue Code:

(h) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress:

(i) Service performed in any calendar quarter subsequent to December 31, 1940, in the employ of any organization exempt under section 1607(c)(10) of the Federal Internal Revenue Code from the tax imposed by section 1600 of the Federal Internal Revenue Code:

(j) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative):

(k) Service performed in the employ of an instrumentality wholly owned by a foreign government, if

(1) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(2) The director finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(l) Service covered by an arrangement between the director and the agency charged with the administration of any other state or federal employment and security law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within such agency's state;

(m) Services 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, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(n) Service performed subsequent to December 31, 1940, as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;

(o) Service performed subsequent to December 31, 1940, by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission; (the word "insurance" as used in this subsection shall include an annuity and an optional annuity.)

(p) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(q) Service performed in the employ of any farmers' co-operative association dealing primarily with agricultural or dairy products or farmers' mutual insurance company, not subject to the tax imposed by section 1600 of the Federal Internal Revenue Code:

(r) Service performed subsequent to December 31, 1939, without wages by an officer of a corporation which is not subject to the tax imposed by section 1600 of the Federal Internal Revenue Code;

(s) Service performed subsequent to December 31, 1939, outside the corporate limits of a city, village, or borough of 10,000 population or more, as determined by the most recent United States census, for an employer who is not subject to the tax imposed by section 1600 of the Federal Internal Revenue Code; provided the services of all of such employer's employees are performed outside such corporate limits. For the purpose of this provision, service shall be deemed to be performed outside such corporate limits if

(1) Performed entirely outside such corporate limits; or

(2) Performed both outside and within such corporate limits, if the service performed within such corporate limits is incidental to the individual's service outside such corporate limits and is temporary or transitory in nature or consists of isolated transactions.

(t) If the service performed subsequent to December 31, 1940, during one-half or more of any pay period by an individual for the person employing him constitutes employment, all the service of such individual for such period shall be deemed to be employment; but if the service performed during more than one-half of any such pay period by an individual for the person employing him does not constitute employment, then none of the service of such individual for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing him. This subsection shall not be applicable with respect to service performed in a pay period by an individual for the person employing him, where any of such service is excluded by section 4337-22H(6)(c) and H(6)(k), Mason's Supplement 1940, as amended by this act.

(u) Service performed as a part time student worker whose principal occupation during the year is as a student actually attending a public or private school;

Provided, however, that the specific exclusions mentioned in subsection K(6) of this section shall not be exclusive;

L. "Employment and Security Administration Fund" means the employment and security administration fund established by this act, from which administrative expenses under this act shall be paid.

M. "Employment office" means a free public employment office, or branch thereof, operated by this or any other state, territory or the District of Columbia as a part of a state-controlled system of public employment offices charged with the administra-

tion of an employment and security program of free public employment offices.

N. "Fund" means the unemployment compensation fund established by this act.

O. "Insured work" means employment for employers as defined in this act.

P. "Person" means an individual, trust or estate, a partnership or a corporation.

Q. "Social Security Act" means the social security act passed by the Congress of the United States of America, approved August 14, 1935, as amended.

R. "Social Security Board" means the board established pursuant to Title VII of the Social Security Act.

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

T. "Unemployment"—An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The director may, in his discretion, prescribe regulations relating to the payment of benefits to such unemployed individuals.

U. "Valid claim" with respect to any individual means a claim filed pursuant to section 4337-28 A, Mason's Supplement 1940, as amended by this act.

V. "Wages" means all remuneration for services, employment, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, except that such term shall not include:

(1) That part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year subsequent to December 31, 1939, is paid to such individual by such employer with respect to employment during such calendar year;

(2) The amount of any payment made on behalf of an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employer and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400 of the Federal Internal Revenue Code, or (B) of any payment required from an employee under a state unemployment compensation law; or

(4) Dismissal payments which the employer is not legally required to make.

(5) Any payments made to a former employee during the period of active military service in the armed forces of the United States by such employee, which are not legally required.

W. "Wage credits" mean the amount of wages paid and wages due but not paid by or from an employer to an employee for insured work during his base period, except that with respect to wages paid by or due from an employer to an employee during his base period for seasonal employment (as defined in section 4337-25 D, Mason's Supplement 1940, as amended by this act) "wage credits" shall mean the proportion (computed to the next highest multiple of five per cent) of such wages which the customary period of operations bears to a calendar year, except that wage credits shall not include wages paid by an employer for part time employment, who continues to give the employee part time employment substantially equal to the part time employment furnished such employee by such employer during said base period.

X. "Week" means calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with regulations prescribed by the director.

Y. "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 4337-25, Mason's Supplement 1940, as amended by this act, which an individual would be entitled to receive for such week, if totally unemployed and eligible.

Z. "Interested party," as used in this act, shall include the claimant, his most recent employer and all his employers during his base period. (As amended Act Apr. 28, 1941, c. 554, §1.)

Act Apr. 28, 1941, c. 554, §22, amended the title of Chapter 2, Extra Session Laws 1936, to read as follows:

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 guaranteed employed accounts, to provide for cooperation with the Social Security Board of the United States of America, to provide penalties for the violations of said act, to provide for the administration thereof, to provide for the appointment of an assistant attorney general to be assigned to the division of employment and security, and to appropriate money therefor.

Sheppard v. C., 145SW(2d)(Tex)562. Cert. den. 61SCR 734.

In determining future rates based on benefit experience for years 1941, et seq., base period should be defined as provided in 1939 Laws, and not as defined prior to 1939 amendment. Op. Atty. Gen. (885), Nov. 19, 1940.

D.

Employee of cooperative fruit marketing association, held engaged in agricultural labor and is not within unemployment compensation law. Industrial Com. v. United Fruit Growers Ass'n, 103Pac(2d)(Colo)15.

E.

State Unemployment Compensation statute providing tax upon employers of 8 or more persons and including in definition of employer any employing unit which together with one or more employing units is owned or controlled by the same interests, is unconstitutional when applied to corporation controlling interests of which are held by one stockholder, regardless of fact that majority stockholder has control of corporation in its power to dictate who corporation's directors shall be. Benner-Coryell Lumber Co. v. I., 29NE(2d)(Ind)776. Cert. den. 61 SCR741.

A company which hired a contractor to perform certain work for it, held not bound by a part of contract which stated that contractor was engaged in business in which company was not then engaged in, and where company became liable for contributions to State Unemployment Compensation Fund on account of employees working for contractor, it could withhold amount of such contributions from amount due to contractor. Strickland v. N., 200So(La)652.

Where a company hired an independent contractor to do work which was a part of regular trade and business of company, it was liable for payment of contributions on account of men employed by contractor in doing work. Id.

Fact that a president of a corporation employing 7 people, owned a majority of stock of corporation, and his family owned remainder, and that president also individually owned another company employing 6 people, held not to show that both corporations were controlled by same interests so as to put them within provisions of Missouri act. Murphy v. D., 147SW(2d)(Mo)616.

Musician in restaurant employed under contract with musicians' union which provided that the union acted only as agent for the restaurant keeper, held the "employee" of such keeper and not of the union. Ajello v. S., 19NYS(2d)886.

Salesman using employer's vehicle on limited route and forbidden to sell competing goods, held "employee" and not "independent contractor." Perdziak, 19NYS(2d)1000.

Partner who resumed business in same building some time after dissolution and disposal of partnership properties held not a "successor" within provisions of New York unemployment insurance law, the word "successor" applying to devolution of property by statutory succes-

sion and not by voluntary acts of owners. Turano, 23 NYS(2d)213, 260AppDiv971.

Partners who carried on business formerly carried on by corporation of which they had been members, held not liable as successors of corporation for employment insurance contributions. Joachim, 23NYS(2d)229, 260App Div972.

A municipality cannot be an "employing unit". Op. Atty. Gen., (885), Oct. 6, 1939.

F.

State unemployment compensation act limited to employers of eight or more is constitutional. Maine Unemployment Comp. Comm'n. v. A., 16Atl(2d)(Me)252.

Missouri employer was not relieved from liability under Missouri Unemployment Compensation Act for year 1938 because of its non-liability under the Federal Social Security Act for that year, where it had 8 employees or more in its employment for the requisite number of days to make it liable under the Missouri law. Murphy v. H., 142SW(2d)(Mo)449.

Unemployment Compensation Law passed in January, 1937, which levied tax on all employers who employed 8 or more employees for specified period after January, 1936, was unconstitutional as applied to one who did not employ 8 or more employees at any time after law was passed. Murphy v. L., 147SW(2d)(Mo)420.

Corporation which employed 3 persons regularly but hired substitute to take place of regular employee on vacation did not employ 4 or more persons so as to come within purview of unemployment insurance statute. Mart Waterman Holding Corp. v. M., 23NYS(2d)215, 260 AppDiv971.

Provision of state unemployment compensation act precluding employer who became subject to the act at time he employed eight or more employees from terminating his coverage so long as he had one or more in his employ did not violate equal protection clause of the Fourteenth Amendment. Shelton Hotel Co. v. B., 104Pac (2d)(Wash)478.

F (1).

Secretary of corporation who performed no service and received no salary could not be counted to bring the employer into a unit employing eight or more persons. State v. W., 103Pac(2d)(Okl)533.

(G).

Evidence held to sustain finding that a lumber stacker was an employee and not an independent contractor. McKinley v. R., 143SW(2d)(Ark)38.

Where alleged partnership did not have requisites of partnership, "junior partner" was entitled to compensation under Indiana Unemployment Compensation Act. Zeits, 31NE(2d)(IndApp)209.

One selling goods in a territory under a "dealer's contract," held an independent contractor and not an employee, though there was supervision to extent of stimulating activities of dealers by reports and inspection and instruction in classes and meetings, and bonuses in addition to commissions. Moorman Mfg. Co. v. I., 296NW(Ia) 791.

Claim of employee of independent contractor, engaged for specific services at a fixed price, who hired his own employees, paid and controlled them in performance of their duties without interference of others, is not allowable against employer of independent contractor. Hill Hotel Co. v. K., 295NW(Neb)397.

Saleswoman working under supervision and direction of employer was not an independent contractor but an employee and was entitled to unemployment compensation. Morton, 30NE(2d)(NYApp)369.

Corporate stock salesmen without any settled hours for work, and whose time was their own, and who used their own devices and arguments in making sales, held "independent contractors" and not "employees" within unemployment compensation law, though they were invited to attend salesmen's meetings. Fidel Ass'n v. M., 20NYS(2d)381, 259AppDiv486.

Where bank leased building from realty corporation with stipulation that realty corporation should operate and maintain building, porter in building was an employee of realty corporation, though paid out of bank funds, for purposes of unemployment insurance. Gordon, 23NYS(2d)261, 260AppDiv973.

Member of orchestra which was hired by hotel was not an "employee" of the hotel but an employee of the orchestra leader within purview of New York unemployment insurance law. Brown, 23NYS(2d)330, 260App Div972.

A non-compensated president of a corporation, whose acts are only such as are required for maintaining defendant as a corporation, as distinguished from management and conduct of business, is not an employee for whom corporation would be liable for contributions. Unemployment Comp. Div. v. P., 295NW(ND)656.

Contract by sewing machine company with agent to sell on commission, to make collections, and to do such other work as employer might direct, held an "employee." Singer Sew. Mach. Co. v. S., 103Pac(2d)(Ore)708.

A painter and paper hanger working on property of trust estate under contract with trust company held an employee of trust company as distinguished from employee of owners of several properties upon which he worked. Central Wisconsin Trust Co. v. I., 295NW(Wis) 711.

Paper hanger and painter working upon trust properties under contract with trust company was an employee and not an independent contractor. Id.

H.

Salesmen working on commission for a securities brokerage house held to be employees requiring brokerage house to pay a tax to Connecticut Fund on their account. Robert C. Buell & Co. v. D., 18Atl(2d)(Conn)697.

Whether salesman from whose compensation automobile company deducted one per cent as required by Social Security Act and to whom Social Security card was issued as employee of the company, was an agent or servant of the company at the time of automobile accident so as to render the company liable for such salesman's negligence, held for jury and award of nonsuit was improper. Nichols v. G., 10SE(2d)(Ga)439.

It was not intent of legislature to classify vendors of ice cream products who work independently of control of manufacturer as employees, subject to provisions of this act. Garcia v. V., 147SW(2d)(Mo)141.

Evidence held to sustain finding that solicitor of subscriptions to a daily newspaper was an employee. Todd, 22NYS(2d)393.

Musician, member of trio, organized by agent of manager of hotel, held employee of hotel and entitled to compensation. Dellapenta, 24NYS(2d)748, 261AppDiv863.

Question of whether claimant was an employee or an independent contractor is question of fact. Seibert, 24 NYS(2d)755, 261AppDiv867.

Members of an orchestra which played at a restaurant and at various other places under contract which their leader made with owners held to be customarily engaged in independent, established business within Wyoming law. Unemployment Compensation Com'n v. M., 111Pac (2d)(Wyo)111.

H (1).

Owner of bulk station through whom refiner distributed petroleum products under a consignment agreement held an independent contractor and not an employee of the refiner. Texas Co. v. H., (DC-NY)32FSupp428.

President and vice president of corporation operating store who worked in the store on weekly wage, held employees, but wife of president, nominally acting as secretary, but performing no service and receiving no wages, was not an "employee," and she could not be counted as such to bring the personnel to eight in number. State v. Welch & Brown, 103Pac(2d)(Okl)533.

H (2).

In computing unemployment benefits of a railroad relay telegrapher time during which telegrapher was working under superintend of a division located in another state was properly deducted, so far as unemployment in 1938 is concerned. Stevens v. M., 291NW890.

H (5).

One having exclusive right to sell product of a milk company and receiving for his services no more than the excess of the price received from the company's patrons and the cost to him of the milk, held within the Utah Act. Creameries of Am. v. I., 102Pac(2d)(Utah)300.

Newspaper carrier purchasing papers from publisher at specified price, and selling same in his own way at a fixed price, held one performing "services" for "wages" within Utah Unemployment Compensation Act. Salt Lake Tribune Pub. Co. v. I., 102Pac(2d)(Utah)307.

H (6).

"Employment" does not include service performed for city of Minneapolis. Op. Atty. Gen., (885), Oct. 6, 1939.

H (6)(d).

Labor rendered in a greenhouse on grounds of a cemetery is not agricultural labor. Christgau v. W., 293NW 619.

Labor rendered in a greenhouse and on a tract of land cultivated in connection therewith is not agricultural labor under North Dakota act where greenhouse was primarily a commercial enterprise, notwithstanding amendment to federal act. Un. Comp. Div. v. Valker's Greenhouses, 296NW(ND)143.

Rule defining "agricultural labor" approved. Op. Atty. Gen., (885d-1), March 1, 1940.

H. (6) (f). Navy service.

The captain, mate, and deckhand, of non-self-propelled oil barges, subject to federal inspection were seamen, and their employer was not liable to contribute on their account to state unemployment insurance fund. Blue Line Tank Barges, (NY Dept Lab), 1940AMC1589.

Members of mat crew, rock barge crew, pile driver crew, including watchmen, pile drivers and deck hands, and towboat deck hands and operators, employed on improvement of navigability of rivers under supervision of army engineers, accomplished by fabricating lumber mats from floating barges and sinking them to river bed at designated places, were "members of crew" of a "vessel" and were not entitled to benefits under Iowa act. Woods Bros. Const. Co. v. I., 296NW(Iowa)345.

H (6)(i).

A public cemetery corporation is not a corporation organized and operated exclusively as a charitable corporation. Christgau v. W., 293NW619.

Whether hospital created by city under ordinances is subject to unemployment compensation act is a question of fact. Op. Atty. Gen., (885d-7), Feb. 29, 1940.

H (6) (k).

Action for a declaratory judgment as to constitutionality of 1939 amendment making act inapplicable to employers of less than eight outside municipalities of less than 10,000 population, brought by an employee who was still employed, was dismissed because not based on a justiciable controversy. Seiz v. C., 290NW802. See Dun. Dig. 4988a.

State Unemployment Compensation Law denying benefits to employee outside municipality of less than 10,000 population and whose employer is not subject to Federal Social Security Act, is constitutional as against objection of discrimination and improper classification. Eldred v. D., 295NW412.

4337-23. Unemployment compensation fund.—A. 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 director exclusively for the purpose of this act. This fund shall consist of:

(1) All contributions collected under this act, together with any interest thereon collected pursuant to section 4337-34, Mason's Supplement 1940, as amended by 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;

(5) All earnings of such property or securities; and

(6) All moneys received for the fund from any other source.

All moneys in the fund shall be mingled and undivided.

B. 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 director and shall issue his warrants upon it in accordance with such regulations as the director 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 director, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. All moneys in the clearing account, after clearance thereof, shall, except as herein otherwise provided, 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. Refunds payable pursuant to sections 4337-34 D and 4337-22 H (6) (b), Mason's Supplement 1940, as amended by this act, may be paid from the clearing account or the benefit account. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund in the United States Treasury. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the director, in any depository bank 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. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. Such money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this state; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties with respect to the fund in an amount not less than $25,000. The bond shall be approved by the attorney general of this state. Premiums for said bond shall be paid from the administration fund. All sums recovered for losses sustained by the fund shall be deposited therein.

C. (1) Moneys requisitioned from this state's account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to section 4337-34 D, Mason's Supplement 1940, as amended by this act. The director, or his duly authorized agent for that purpose, shall from time to time requisition from the unemployment trust fund such amounts not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of such benefits and refunds 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 counter signature of the director or his duly authorized agent for that purpose.

(2) 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 and refunds during suceeding periods, or, in the discretion of the director, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection B of this section. (As amended Act Apr. 28, 1941, c. 554, §2.)

D. Transfer of money from state account in hands of Secretary of the Treasury to railroad unemployment insurance account.

Stevens v. M., 291NW290; note under §4337-22(H)(2).

4337-24. Contributions from employers.—A. (1) 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 (as defined in Section 4337-22 V.) for employment. Such contributions shall become due and be paid by each employer to the division of employment and security for the fund in accordance with such regulations as the director may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. No rule of the director 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 Section 1600 of the Internal Revenue Code.

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

(a) Nine-tenths of one per centum with respect to unemployment occurring during the calendar year 1936;

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

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

(2) Each employer shall pay contributions equal to two and seven-tenths per centum of wages paid by and wages overdue and delayed beyond the usual time of payment from him with respect to employment occurring during each calendar year subsequent to December 31, 1940, except as may be otherwise prescribed in subsections C. and D. of this section; provided, however, that contributions, payment of which has been deferred to May 31, 1941, with respect to

employment occurring during the calendar year 1940 shall not become due from or payable by an employer not subject to the tax imposed by section 1600 of the Federal Internal Revenue Code.

C. (1) The director shall, for the year 1941 and 1942, determine the contribution rate of each employer whose unemployment experience as an employer under this act is equivalent to the minimum requirements of section 1602 of the Federal Internal Revenue Code for the purpose of obtaining additional credit thereunder with respect to any reduced rates of state contributions.

(2) "Beneficiary wages," for the purpose of this section, means wages paid or payable by an employer for employment to an employee during his base period, except that with respect to wages paid or payable by an employer to an employee during his base period for seasonal employment as defined in Section 4337-25 D. of this act, "beneficiary wages" shall mean the proportion of wages paid or payable by an employer to an employee for seasonal employment during his base period which is allowed to the employee as wage credits in accordance with Section 4337-22 W. of this act. "Beneficiary wages" as defined in this subsection shall be charged in the year in which benefits are first paid or payable pursuant to a claim for benefits.

(3) (a) The "beneficiary wage ratio" of each employer for the year 1941 shall be a percentage equal to the total of his beneficiary wages for the three immediately preceding completed calendar years divided by his total taxable payroll for the same three years on which all contributions due have been paid to the director for the fund on or before January 31, 1941.

(b) The "beneficiary wage ratio" if each employer for the year 1942 shall be a percentage equal to the total of his beneficiary wages for the thirty-six (36) consecutive calendar-month period ending on June 30, 1941, divided by his total taxable payroll for the same period on which all contributions due have been paid to the division on or before July 31, 1941.

(4) (a) The director shall, for the year 1941 determine the standard contribution rate to be applied to the total, current, employer's payroll for employment. Such standard contribution rate shall be determined on the basis of the ratio of the total assets of the fund, excluding contributions not yet paid at the beginning of such calendar year, to the average (one-third) of the total amount of benefits paid during the three calendar years immediately preceding, and in accordance with the schedule in paragraph (c) of this subsection.

(b) The director shall, for the year 1942 determine the standard rate to be applied to the total, current, employers' payroll for employment. Such standard contribution rate shall be determined on the basis of the ratio of the total assets of the fund, excluding contributions not yet paid as of June 30, 1941, to the average (one-third) of the total amount of benefits paid in the thirty-six (36) consecutive calendar month-period immediately preceding July 1, 1941, and in accordance with the schedule in paragraph (c) of this subsection.

(c) The following schedule shall be used in determining the standard rate:

Ratio of total assets of fund to benefits paid, as defined above, and set forth below	Standard contribution rate, to be applied to the total current taxable payroll for the year 1941.
When amount in fund is equal to or more than:	
3½ times average benefits paid	2.75
3 times, but less than 3½ times average benefits paid	3.00
2½ times, but less than 3 times average benefits paid	3.25
2 times, but less than 2½ times average benefits paid	3.25
When the fund is less than 2 times average benefits paid	3.25

(5) The director, after having determined the standard contribution rate for a calendar year shall:

(a) Prepare a schedule of contribution rates for each current calendar year 1941 and 1942 in accordance with the schedule prescribed in subsection D. (4) of this Section.

(b) Divide the sum of all employers' payroll eligible for experience rating for employment during the preceding calendar year into categories of equal amount. The number of such categories shall be equal to the number of rates as set forth in the schedule of employers' contribution rates for the current calendar year;

(c) Classify employers in accordance with their beneficiary wage ratios commencing with the lowest ratio; and assign a contribution rate to each payroll category in accordance with the schedule of rates for the current calendar year commencing with the lowest rate;

(d) Allocate the preceding calendar year's payrolls of employers eligible for experience rating into separate categories in order of their beneficiary wage ratios as classified, commencing with the lowest ratio and the payroll category having the lowest contribution rate. When an employer's payroll falls within two payroll categories, his entire payroll shall be allocated to the category into which more than 50 per centum of his payroll falls; in case of 50 per centum of an employer's payroll falls within each of two categories, his total payroll shall be allocated to the category having the lower rate.

(6) (a) Each employer's contribution rate for the year 1941 and for the year 1942 shall be the rate applicable to the payroll category to which his payroll has been allocated except if payrolls of employers having a zero beneficiary wage ratio exceed the amount allocated to the lowest contribution rate, then all of such employers shall be assigned the lowest rate available under the schedule.

(b) If, subsequent to the date on which the director allocated the payrolls of all employers into categories in the order of their experience ratio pursuant to section 4337-24, any circumstance requires the recomputation of any employer's experience ratio, such recomputation shall not alter the category of any other employer, but the employer whose experience ratio has been recomputed shall be placed, for the purposes of subsection (4), in that category to which he is entitled by such recomputation.

D. (1) The director shall for the year 1943 and for each calendar year thereafter determine the contribution rate of each employer whose unemployment experience as an employer under this act is equivalent to the minimum requirements of section 1602 of the Federal Internal Revenue Code for the purpose of obtaining additional credit thereunder with respect to any reduced rates of state contributions.

(2) Benefits paid to an individual during a benefit year beginning subsequent to June 30, 1941, shall be charged, against the accounts of his base-period employers. The amount of benefits so chargeable against each base-period employer's account shall bear the same ratio to the total benefits paid to an individual as the base-period wage credits of the individual earned from such employer bear to the total amount of base-period wage credits of the individual earned from all his base-period employers. In making computations under this provision, the amount of

wage credits if not a multiple of $1.00, shall be computed to the nearest multiple of $1.00.

(3) (a) The director shall, for the calendar year 1943, and for each calendar year thereafter, compute an experience ratio for each employer. Such benefit ratio shall be the quotient obtained by dividing the total benefits chargeable to his account which was paid during the 36-month period ending on June 30 of the preceding calendar year divided by his total taxable payroll for the same three years on which all contributions due have been paid to the division of employment and security on or before July 31 of the preceding calendar year. Such benefit ratio shall be computed to the fifth decimal point.

(b) Notwithstanding any inconsistent provisions of this act, whenever any portion of the experience period ends prior to July 1, 1941, one-fourth of the beneficiary wages resulting shall be deemed to constitute benefits chargeable, and the resulting quotient shall be used in computing the employer benefit ratio.

(4) The director shall, for the year 1943, and for each calendar year thereafter, determine a schedule of rates varying from and including the "standard rate" which shall be the highest rate applicable under the schedule. The position of such rates with respect to the standard rate shall be determined on the basis of the ratio of the total assets of the fund as of July 31, of the preceding calendar year, excluding contributions not yet paid on July 31 of such calendar year, to the average (one-third) of the total amount of benefits paid during the three year period ending June 30 of the year immediately preceding, in accordance with the following schedule and as herein further provided.

(A)				
Fund 3.5 or more times average annual benefits 10 categories				
(B)				
Fund 3 to 3.5 times average annual benefits 11 categories				
(C)				
Fund 2.5 to 3.0 times average annual benefits 13 categories				
(D)				
Fund 2.0 to 2.5 times average annual benefits 15 categories				
(E)				
Fund below 2 times average annual benefits 12 categories				
....	....	....	....	3.25
....	....	....	....	3.25
....	....	....	....	3.25
....	....	....	3.25	3.25
....	....	....	3.25	3.25
....	....	3.25	3.25	3.25
....	....	3.25	3.25	3.25
....	3.00	3.00	3.00	3.00
2.75	2.75	2.75	2.75	2.75
....	....	....	....	....
2.50	2.50	2.50	2.50	2.50
2.25	2.25	2.25	2.25	2.25
2.00	2.00	2.00	2.00	2.00
1.75	1.75	1.75	1.75	....
1.50	1.50	1.50	1.50	....
1.25	1.25	1.25	1.25	....
1.00	1.00	1.00	1.00	....
.75	.75	.75	.75	....
.50	.50	.50	.50	....
....	....	....	....	....

(5) The director shall, after having determined the schedule of rates for the current calendar year

(a) divide equally into the number of categories indicated in paragraph 4 of this subsection, the sum of the preceding year's payroll of all employers eligible for experience rating under the provisions of subsection (1) of this section:

(b) assign a contribution rate to each payroll category in accordance with the schedule of rates for the current calendar year and classify employers in accordance with their experience ratios, commencing with the lowest ratio;

(c) allocate the payrolls of employers eligible for experience rating under this section for the preceding year into separate categories in the order of their experience ratios as classified, commencing with the lowest ratio and the payroll category having the lowest contribution rate. When an employer's payroll falls within two payroll categories, the entire payroll shall be allocated to the payroll category into which more than 50 per centum of his payroll falls; in case 50 per centum of an employer's payroll falls within each of two categories, his total payroll shall be allocated to the category having the lower rate.

If, subsequent to the date on which the director allocated the payrolls of all employers into categories in the order of their experience ratio pursuant to Section 4337-24, any circumstance requires the recomputation of any employer's experience ratio, such recomputation shall not alter the category of any other employer, but the employer whose experience ratio has been recomputed shall be placed, for the purposes of subsection (4), in that category to which he is entitled by such recomputation.

(6) Each employer's contribution rate for the year 1943 and for each year thereafter shall be the rate applicable to the payroll category to which his payroll has been allocated, except if payrolls of employers having a zero experience ratio exceed the amount allocated to the lowest contribution rate, then all of such payrolls shall be assigned the lowest rate available under the schedule.

E. The director

(1) shall at least once each year notify employers of the benefits chargeable to their accounts and wage credits upon which such benefits were based and of the status of their accounts under the experience rating provisions of this act.

Appeals from the determination as indicated by such notification to employers may be made in the same manner and under the same conditions as provided in section 4337-28 of this act, which determination shall be final as to all matters than presented.

(2) shall promptly notify each employer of his rate of contributions as determined for any calendar year pursuant to this section. Such determination shall become conclusive and binding upon the employer unless an appeal is entered from such determination as provided in section 4337-28 of this act.

F. (1) The director shall maintain a separate account for each employer, and shall credit his account with all the contributions paid by him. 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 the employer into the fund.

G. For the purposes of this section, two or more employing units which are parties to or the subject of a merger, consolidation or other form of reorganization effecting a change in legal identity or form, shall be deemed to be a single employing unit if the director finds that

(1) Immediately after such change the employing enterprises of the predecessor employing unit or units are continued solely through a single employing unit as successor thereto; and

(2) Immediately after such change such successor is owned or controlled by substantially the same interests as the predecessor employing unit or units; and

(3) The successor has assumed liability for all contributions required of the predecessor employing unit or units; and

(4) The consolidation of such two or more employing units as a single employing unit for the purposes of this subsection would not be inequitable.

(5) The provisions of this section shall apply to acquisitions prior to as well as subsequent to the effective date of this act for the purpose of computing contributions due for the year 1941 and subsequent years.

H. Notwithstanding any inconsistent provisions of this act, if prior to September 1, 1941, an employer files a claim for adjustment in which he alleges that he had reemployed, within the period from January 1, 1938 to June 30, 1941, inclusive, an employee for whom beneficiary wages were debited against him, and the director finds that such employee did not receive the maximum benefit-payments to which he was entitled within any benefit year because of such reemployment, the employer's beneficiary wage record for such period shall be credited with beneficiary wages equal to the percentage of unpaid benefits to the maximum benefit of the beneficiary wages charged for said employee.

Provided, however, that any adjustment granted under this section shall be used in the determination of the contribution rate provided in Section 4337-24 C., Mason's Supplement 1940, as amended by this act, only for the year 1942 and subsequent years, except if such unemployment existed because of a labor dispute at the factory, establishment, or other premises at which he was an employee or was last employed prior to such dispute, in such cases any adjustment granted under this section shall be used in the determination of the contribution rate provided in Section 4337-24 C., Mason's Supplement 1940, as amended by this act, only for the year 1941 and subsequent years.

Provided, however, that in the event the Social Security Board shall determine that this subsection H is not in conformity with the various provisions of the Federal Internal Revenue Code, or the Social Security Act then this subsection H shall have no force and effect. (As amended Act Apr. 28, 1941, c. 554, §3.)

Where certain employees of a boys' military school were required to accept board and lodging with students, as a matter of discipline, and they were paid the same amount for their other work as other employees not boarded and not lodged, and were paid nothing in cash for their services in boarding and lodging with the students, commission was justified in finding that board and lodging furnished was a part of wages and subject to taxation under California Act. California Employment Com'n v. B., 110Pac(2d) (Cal)729.

There was nothing to prevent a Commission from enforcing a ruling which was contrary to its previous decision that board and lodging furnished certain employees was not a part of their wages. Id.

It was not error to exclude a ruling of Internal Revenue Department, in action to determine whether a brokerage house was liable to be taxed for unemployment compensation fund on account of its salesmen working on commission. Robert C. Buell & Co. v. D., 18Atl(2d)(Conn)697.

Taxes are excise taxes. Benner-Coryell Lumber Co. v. I., 29NE(2d)(Ind)776.

Amount of unemployment compensation insurance tax owing from bankrupt to state could be set off in claim against state for refund of liquor license fee. Siegel v. S., 24NYS(2d)120, 175Misc515.

West Virginia Income Tax Act allowing deduction from gross income of "ordinary and necessary" expenses of business, does not authorize deduction as such expenses, of taxes paid by taxpayer on account of either (1) old age benefits and unemployment compensation under Social Security Act, (2) the Bituminous Coal Act, (3) state unemployment insurance, (4) state gross sales. Christopher v. J., 12SE(2d)(WVaApp)813.

Monetary burden placed on employers by West Virginia Unemployment Compensation law is an excise tax within constitutional power of legislature. Id.

A. Payments.

In bankruptcy unpaid unemployment compensation contributions are classed, as far as priority is concerned, as administration expenses. Missouri v. E., (CCA8)111F(2d)992, 42AmB(NS)634. Cert. den. 61SCR43.

Interest is not allowable on such claims. Id.

Due process on appeal from assessment of employer under Unemployment Compensation Law, held to require a full hearing after notice, the original assessment having been made ex parte. Beaverdale Memorial Park v. D., 15Atl(2d)(Conn)17.

C. Future contributions, etc.

As affecting merit rating of employer whose former employee was disqualified under §4337-27, it is immaterial that overt act giving rise to a disqualification occurred prior to April 23, 1939. Op. Atty. Gen., (885), Oct. 18, 1939.

Regulation 15 creates a presumption against employer who has failed to comply with requirements of a separation notice be delivered to Division of Employment and Security showing conditions which may disqualify worker from benefits, and an employer may rebut this presumption by producing facts by affidavit or otherwise showing disqualifications. Op. Atty. Gen. (885), Nov. 19, 1940.

C (1).

Computation of employer's contribution for year 1941 must be based upon events which occurred prior to effective date of 1939 amendment, even where overt act giving rise to disqualification occurred and benefit year commenced prior to that amendment. Op. Atty. Gen., (885), April 24, 1940.

(C)(2).

In determining future rates based on benefit experience for years 1941, et seq., base period should be defined as provided in 1939 Laws, and not as defined prior to 1939 amendment. Op. Atty. Gen. (885), Nov. 19, 1940.

4337-25. Benefits payable.—A. All benefits provided herein shall be payable from the fund and shall be paid through employment offices, in accordance with such regulations as the director may prescribe.

B. (1) An individual's weekly benefit amount and maximum amount of benefits payable during his benefit year shall be the amounts appearing in columns B and C respectively in the table in this subsection on the line on which in column A, of such table there appear the total wage credits accruing in his base-period for insured work.

A Wage Credits in Base Period	B Total Maximum Amount of Benefits Payable During a Benefit Year	C Weekly Benefit Amount
Under $200	None	None
$ 200 - $ 224.99	$ 70.00	$ 7.00
$ 225 - $ 249.99	80.00	8.00
$ 250 - $ 299.99	90.00	9.00
$ 300 - $ 349.99	108.00	9.00
$ 350 - $ 399.99	120.00	10.00
$ 400 - $ 449.99	132.00	11.00
$ 450 - $ 549.99	168.00	12.00
$ 550 - $ 649.99	182.00	13.00
$ 650 - $ 749.99	196.00	14.00
$ 750 - $ 849.99	210.00	15.00
$ 850 - $ 949.99	225.00	15.00
$ 950 - $1499.99	240.00	15.00
$1500 - and over	256.00	16.00

(2) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his earnings, payable to him with respect to such week which is in excess of $3.00. Such benefit, if not a multiple of $1.00 shall be computed to the next higher multiple of $1.00.

C. Any person who, by reason of his fraud has received any sum as benefits under this act to which he was not entitled after a fair hearing, and in the discretion of the director, shall be liable to repay such sum to the division of employment and security for the fund or to have such sum deducted from any future benefits payable to him under this act.

D. (1) "Seasonal employment" means employment in any industry or any establishment or class of occupation in any industry which is engaged in activities relating to the first processing of seasonally produced agricultural products in which, because of the seasonal nature thereof, it is customary to operate only during a regularly recurring period or periods of less

than 26 weeks in any calendar year. The director shall after investigation and hearing, determine and may thereafter from time to time redetermine such customary period or periods of seasonal operations. Until the effective date of such determination by the director, no employment shall be deemed seasonal.

(2) Any employer who contends that employment in his industry or any establishment or occupation in such industry is seasonal shall file with the director a written application for a hearing and determination of such matter. Upon receipt of such application, the director shall fix a time and place for such hearing and shall give the employer written notice thereof of not less than 15 days prior to the time of such hearing. Within three days after receipt of such notice, the employer shall post in a conspicuous place in each department of each establishment of his industry, with respect to which such application was made, a written notice setting forth the time and place of such hearing and shall cause such notice to be published in the first next issue of the legal newspaper published nearest such place of business and shall furnish to the director proof of such posting and publication.

(3) In order to insure the prompt disposition of all applications for seasonality determinations, the director shall designate one or more representatives, herein referred to as referees, to conduct hearings thereon at which hearings the employer and his employees shall be entitled to appear, introduce evidence, and be heard in person, by counsel, or by any other representative of their own selection. After having heard the matter, the referee shall promptly make findings of fact and render a decision thereon. Notice of such decision together with a copy of the findings of fact and the decision shall be promptly given to the parties to the hearing, and unless the employer or any other party to such matter, within ten calendar days after the delivery of such notice or within 12 calendar days after such notice was mailed to his last known address, files an appeal with the director from such decision, such decision shall be final, and benefits shall be paid or denied in accordance therewith.

(4) The director may, on his own motion, cause an investigation of any industry, or class of occupation in any industry which he believes to be seasonal in nature, and, after a hearing on such matter, the referee may make findings of fact and render his decision thereon based upon the facts disclosed by such investigation and hearing.

(5) Any employer, employee, or other party to the hearing may appeal from the decision of the referee in the same manner as appeals are provided for in this act relative to decisions made by an appeal tribunal in regard to claims for benefits under this act.

E. (1) Notwithstanding any inconsistent provisions of this act, the benefit rights of military trainees shall be determined in accordance with the following provisions of this subsection for the periods and with respect to the matters specified therein. Except as herein otherwise provided, all other provisions of this act shall continue to be applicable in connection with such benefits.

(2) The term "military service" as used in this subsection means active service in the land or naval forces of the United States, but the service of an individual in any reserve component of the land or naval forces of the United States who is ordered to active duty in any such force for a period of 30 days or less shall not be deemed to be active service in such force during such period.

(3) The term "military trainee" as used in this subsection means an individual who entered military service after March 31, 1940, who continued such service for not less than 90 consecutive days, and whose military service was terminated on or before March 31, 1943.

(4) With respect to any military trainee, the first benefit year following the termination of his military service shall be the one year period beginning on the first day of the first week next following the date of such termination.

(5) With respect to a benefit year as defined in paragraph (4) of this subsection, the base period of a military trainee shall be the four completed calendar quarters immediately preceding the date of his entry into such service.

(6) The provisions of Section 4337-26 E. of this act with respect to waiting period shall not be applicable to a benefit year as defined in paragraph (4) of this subsection.

(7) An otherwise eligible military trainee shall be entitled, during the benefit year as defined in paragraph (4) of this subsection, to a weekly benefit amount and a maximum total amount of benefits payable during a benefit year in accordance with the provisions contained in subsection B. of this section.

(8) The provisions of Section 4337-27 of this act shall not be applied to any military trainee after the termination of his military service by reason of any act or course of action on his part prior to the date of entry into such service.

(9) If, under an act of Congress, payments with respect to the unemployment of individuals who have completed a period of military service are payable by the United States, a trainee shall be disqualified for benefits with respect to any week beginning within a benefit year as defined in paragraph (4) of this subsection until he has exhausted all his rights to such payments from the United States. (As amended Act Apr. 28, 1941, c. 554, §4.)

D (1). Seasonal employment, etc.

Right to benefit shall apply only to longest seasonal period or periods which are customary, and that is true regardless of whether employer has been granted a seasonality determination by commission by reason of delay, and rule of commission confining scope of seasonal employment to that performed subsequent to date of *seasonality determination or Dec. 31, 1938, whichever is* the later, cannot change the substance of the law. Bielke v. A., 288NW584.

4337-26. Benefit eligibility conditions.—An individual shall be eligible to receive benefits with respect to any week of unemployment only if the director finds that:

A. He has registered for work at and thereafter has continued to report to an employment office, or agent of such office, in accordance with such regulations as the director may prescribe; except that the director may by regulation waive or alter either or both of the requirements of this subsection as to types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this act;

B. He has made a claim for benefits in accordance with such regulations as the director may prescribe;

C. He was able to work and was available for work;

D. He has not received or is not seeking unemployment benefits under an employment security law of another state or of the United States; provided that if the appropriate agency of such other state or the United States finally determines that he is not entitled to such unemployment benefits, this provision shall not apply.

E. He has been unemployed for a waiting period of two weeks. Such weeks of unemployment need not be consecutive. No week shall be counted as a week of unemployment for the purposes of this subsection:

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

(2) Unless the individual has wage credits sufficient to entitle him to benefits as set forth in the schedule in section 4337-25 B (1) of this act;

(3) Unless it occurs within the benefit year and subsequent to the filing of a valid claim for benefits;

(4) Unless it occurs after benefits first could become payable to any individual under this act. (As amended Act Apr. 28, 1941, c. 554, §5.)

A. Registration.

Stop-order on failure of claimant to register pursuant to notice, held proper. Volet v. M., 19NYS(2d)977.

E. Earning of credits in base period.

"Weekly benefit amount" means actual weekly benefit amount and not adjusted weekly benefit amount to next higher multiple of $1. Op. Atty. Gen., (885), March 9, 1940.

4337-27. Disqualification for benefits.—A. An individual shall be disqualified for benefits:

(1) For not less than two nor more than sixteen weeks beginning with the first day of the first week in any benefit year with respect to which the individual files a valid claim for benefits if it is found by the director that such individual voluntarily and without good cause discontinued insured work from any base period employer. Available benefits shall be reduced as if the full weekly benefit amount had been paid for each such week.

(2) For not less than three nor more than sixteen weeks according to the circumstances of each case beginning with the first day of the first week in any benefit year with respect to which the individual files a valid claim for benefits if it is found by the director that such individual was discharged by any base period employer for misconduct connected with his work. Available benefits shall be reduced as if the full weekly benefit amount had been paid for each such week.

(3) If such individual's unemployment was caused by separation from employment pursuant to a rule of any employer of such individual within the period commencing with the beginning of the base period and ending with the close of the current benefit year whereby any female in the employ of any such employer shall be dismissed or not reemployed upon, or within a period of 30 days after, acquiring a marital status; provided, however, that:

(a) Such rules shall have been in effect and posted continuously in a conspicuous place in each establishment of the employer's place of business not less than six months immediately preceding the date on which such marital status was acquired; and

(b) Such employer did not reemploy such individual within a period of six months from the date of such separation; and

(c) Such individual's wages are not the only support of herself or the main support of an immediate member of her family.

(2) If such individual's unemployment is due to separation from her most recent employment for the purpose of assuming the duties of a mother or housewife.

(4) If the director finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the director or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the director. Such disqualification shall continue until he shall have earned at least $200.00 in wages in employment after such refusal of employment.

(a) In determining whether or not any work is suitable for an individual, the director 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 of securing local work in his customary occupation, and the distance of the available work from his residence.

(b) 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:

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

(2) 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;

(3) 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.

(6) For any week with respect to which the director 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 paragraph shall not apply if it is shown to the satisfaction of the director that

(a) He is not participating in or financing the labor dispute which caused the stoppage of work; and

(b) 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 paragraph be deemed to be a separate factory, establishment, or other premises.

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

(a) Wages in lieu of notice;

(b) Compensation for temporary partial disability under the workmen's compensation law of any state or under a similar law of the United States, or under other insurance or fund established and paid for by the employer; or

(c) Old-age benefits under Title II of the Social Security Act, as amended, or similar payments under any act of Congress, or this state or any other state, or pension payments from any fund, annuity, or insurance provided by or through the employer and to which the employer contributes 50% or more of the total of the entire premiums or contributions to the fund; 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. (As amended Act Apr. 28, 1941, c. 554, §6.)

Director cannot adopt a rule prescribing that an unemployed individual in order to remove disqualification must have been employed in subsequent employment for at least a period of one week and then unemployed through no fault of his own. Op. Atty. Gen., (885), Sept. 25, 1939.

Account of employer from whose employment an individual has been separated under circumstances set forth in this section should not be charged with benefits paid in cases where individual has subsequently been employed and then unemployed through no fault of his own. Id.

Disqualification imposed by this section may not be removed by subsequent services performed in employment in a foreign state. Id.

As affecting merit rating of employer whose former employee was disqualified it is immaterial that overt act giving rise to a disqualification occurred prior to April 23, 1939. Op. Atty. Gen., (885), Oct. 18, 1939.

Computation of employer's contribution for year 1941 must be based upon events which occurred prior to effective date of 1939 amendment, even where overt act giving rise to disqualification occurred and benefit year commenced prior to that amendment. Op. Atty. Gen., (885), April 24, 1940.

Employer may rebut presumption of qualification of worker separated from employment by producing facts by affidavit showing disqualification. Op. Atty. Gen. (885), Nov. 19, 1940.

A. Quitting work without cause.

One who voluntarily leaves his work is not entitled to unemployment compensation. Mandel v. U., 15Atl(2d)(Pa)479.

An employer had good grounds for construing the Unemployment Compensation Act to mean that it was not bound to furnish a former employee, who had voluntarily quit his employment, with a wage and separation notice. Chambers v. R., 13SE(2d)(SC)281.

One who voluntarily resigned his employment to go to school, where he was unavailable for work between hours of 9 a. m. and 1 p.m. was not entitled to benefits. Keen v. T., 148SW(2d)(Tex)211.

E. Strikes.

Where miner's unemployment was caused by failure of union and employer to agree upon new employment contract, there was a "labor dispute" precluding recovery by worker of unemployment compensation. Dept of Industrial Relations v. P., 199So(AlaApp)720. Aff'd 199So (Ala)726.

Where a machinist at a plant left work because of picket lines established by the striking welders' union such leaving was a voluntary one on account of a trade dispute, within the meaning of the act and they were not entitled to unemployment compensation. Bodinson Mfg. Co. v. C., 109Pac(2d)(Cal)935.

Since Kentucky Unemployment Compensation Act conforms to Mason's U. S. C. A., Title 42, §1103, it is presumed in absence of definition in Kentucky act that legislature intended to use term "labor dispute" in same sense as it is employed in Mason's U. S. C. A., Title 29, §152(9) and Title 29, §113(c). Barnes v. H., 146SW(2d)(KyApp) 929.

Where coal miners refused to work at expiration of contract of employment until new contract was made, there was a "labor dispute" within meaning of Kentucky Unemployment Compensation Act, and miners were disqualified for benefits. Id.

Employee who did not participate in a labor dispute which interrupted production or who was not a production worker, held not disqualified from receiving unemployment compensation. Kieckhefer Container Co. v. U., 13Atl(2d)(NJ)646, 648.

Fact that miners did not work while union was negotiating for a new contract, did not constitute a strike, and miners were entitled to compensation. United States Coal Co. v. U., 32NE(2d)(Ohio)763.

Closing of a mine during negotiations between employers and employees for a new agreement, was caused by a labor dispute within Tennessee law. Block Coal & Coke Co. v. U., 148SW(2d)(Tenn)364.

Application to industrial commission for unemployment compensation is not an adversary proceeding, and decision of commission without a hearing does not deny due process where full hearing before appeal examiner is accorded, though commission later reverses decision of examiner. Employees of Utah Fuel Co. v. I., 104Pac(2d) (Utah)197.

Where members of a union which called a strike received union permits to pass through picket lines to work, but were discharged by company because strike prevented their having enough to do, their unemployment was due to labor dispute and they were not eligible to unemployment compensation. St. Paul & Tacoma Lumber Co., 110Pac(2d)(Wash)877.

Employees engaged in same line of work as that of men who refused to pass through picket lines during a strike were disqualified from receiving unemployment compensation. Id.

Employees who were members of one union and who refused to pass through the picket lines formed by employees who were members of another union which had called a strike, were out of employment due to a labor dispute and were not eligible for unemployment compensation. Id.

The mere fact that passage through picket lines was contrary to union conviction was not enough to make refusal of union members to pass through such lines involuntary. Id.

Employee who was a member of union which called a strike on account of a labor dispute, and who refused to pass through picket lines, was not entitled to unemployment compensation merely because of fact that after strike was called he obtained a job for a short time with another company. Id.

Where independent contractor had contracted to perform services for a company at which a strike was called on account of a labor dispute, and employees of such contractor refused to go through picket lines without a permit from union, unemployment of such employees was due to a labor dispute and they were not eligible for unemployment compensation. Id.

Employees of a lumber mill who went out on strike because of employer's refusal to negotiate with the union of which they were members were not entitled to compensation under the Washington Compensation Law. Id.

Two plants forty miles apart, synchronized in production of automobiles constituted a single "establishment," and a strike by an independent union in one plant which had effect of closing both plants was a strike "in" the establishment, and employees in neither plant were entitled to unemployment benefits. Spielmann v. I., 295NW (Wis)1.

Where automobile manufacturer closed one plant and laid off employees there, and local union called out pickets to prevent removal of machinery and materials and manufactured parts to another plant, there was a "strike" arising out of a "labor dispute," though voluntary quitting of work was not involved, as affecting right of employees in other plants to unemployment compensation benefits. Id.

4337-28. Claims for benefits.—A. Claims for benefits shall be made in accordance with such regulations as the director 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 director to each employer without cost to him.

B. The director shall promptly examine the claims for benefits made pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates. Notice of any determination, together with the reasons therefor, shall be promptly given the claimant and all other interested parties. Unless the claimant or such other interested party, parties, or employing unit or units 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 may be paid on the uncontested portion of the claim; benefits on the contested portion of the claim, if any, shall be paid after the final determination of the appeal. Provided, that, except in respect to cases arising under Section 4337-27, subsection E, Mason's Supplement 1940, as amended by this act, if an appeal tribunal affirms an initial determination or the director 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, such benefits so paid shall not be considered in determining any individual employer's future contribution rate under Section 4337-24, subsection C., Mason's Supplement 1940, as amended by this act.

C. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify, or set aside the initial determination. 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 director, 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. In order to assure the prompt disposition of all claims for benefits, the director 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 employees; each of the latter two members shall serve at the pleasure of the director and be paid a fee of not more than $10.00 per day of active service on such tribunal plus necessary expense. The director shall by regulation prescribe the procedure by which such appeal tribunals may hear and decide disputed claims, subject to appeal to the director. No person shall participate on behalf of the director in any case in which he is an interested party. The director 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 employee in prosecuting his appeal.

E. Within twelve days after the rendition thereof the director may, on his own motion, affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. In any case in which

a claim for benefits has been allowed or denied, an appeal shall be allowed before the director and an opportunity for a fair hearing granted. The director shall promptly notify the interested parties of his findings and decision.

F. 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 director 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. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the director. Such fees shall be deemed a part of the expense of administering this act.

H. Any decision of the director 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 director as provided by this act. The director 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 division of employment and security and has been designated by the director for that purpose, or, at the director's request, by the attorney general.

I. Within 20 days after the filing of any decision of the director 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 an appeal tribunal or the director, 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 director, or his representatives, or by any court or any officers thereof. Any individual claiming benefits in any proceedings before the director or his 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 director and no fees shall be collected from an individual claiming benefits by any agent unless he is an attorney at law. (As amended Act Apr. 28, 1941, c. 554, §7.)

California Unemployment Insurance Act containing complete administrative procedure with provisions for one origin of determination and two appeals, fulfilled every requisite of due process of law. Abelleira v. D., 109Pac(2d)(Cal)942.

B. Examination and initial determination of claims—appeal.

That the courts cannot interfere except to review decision of administrative board as to right to unemployment compensation, held not to deny due process of law. Abelleira v. D., 102Pac(2d)(Cal)329.

Employer receiving notice from employees that they would strike on a specified day was justified in notifying the employees not to come to work on such day. Employees of Utah Fuel Co. v. I., 104Pac(2d)(Utah)197.

Where certain employees, who were unemployed as a result of a strike called on account of a labor dispute were first determined by the Commission to be entitled to unemployment compensation, but with right to investigate labor dispute reserved, they could later be found ineligible for compensation upon facts not determined in first decision. St. Paul & Tacoma Lumber Co., 110Pac(2d)(Wash)877.

D. Appeal tribunals.

Findings of board on claim for benefits based upon transcript of evidence only were no more binding upon supreme court than those of district court. Phipps v. B., 107Pac(2d)(Ida)148.

H. Appeal to Courts.

Action for a declaratory judgment as to constitutionality of 1939 amendment making act inapplicable to employers of less than eight outside municipalities of less than 10,000 population, brought by an employee who was still employed, was dismissed because not based on a just justiciable controversy. Seiz v. C., 290NW802. See Dun. Dig. 4988a.

Act does not impose any duty or obligation upon employer in favor of employee, and it is only against special funds, created by this act, that employee may assert any claim. Stevens v. M., 291NW890.

It is not province of court to consider arguments and social policies or to question wisdom of scheme set up by California act. Robinson Mfg. Co. v. C., 109Pac(2d)(Cal)935.

Fact that act does not provide for an appeal from a decision of commission, except after payment of compensation under protest, does not mean that courts are without power to review a decision awarding unemployment benefits when it is alleged that commission has violated plain provisions of statute under which it functions. Id.

Party could not appeal to district court before making an appeal to commission or while such an appeal was pending, merely on ground that commission would decide adversely to such party if appeal was taken to it. Abelleira v. D., 109Pac(2d)(Cal)942.

The right of one employer to act for and on behalf of others was not conferred by provisions of act permitting appeals to courts from devisions of commission, where there was no community of interest in subject matter of controversy. Stearns Coal & L. Co. v. U., 147 SW(2d)(Ky)382.

On an appeal from a decision of Commissioner as to whether applicants are or are not entitled to unemployment compensation, a court shall review issues of law which have been previously raised, but administrative determination of facts is conclusive on court unless it be wholly without evidential support or wholly dependent upon a question of law, or clearly arbitrary or capricious. St. Paul & Tacoma Lumber Co., 110Pac(2d)(Wash)877.

Upon an initial determination, without reservation of labor dispute question, that an employee who was unemployed due to a strike was entitled to unemployment compensation, failure of employer to appeal within 5 days settled right of such employee to compensation. Id.

I. Appeal to Supreme court.

Claimants could not appeal to Supreme Court of Virginia from a decision of Unemployment Compensation Commission where matter was entirely pecuniary and amount of each of their claims was less than $300. Blankenship v. U., 13SE(2d)(Va)409.

J. Representation by agent or attorney—Fees.

One appealing from order of Commissioner of Division of Unemployment Compensation is required to pay county clerk's docket fees as condition precedent to filing notice of appeal under the terms of the Washington Unemployment Compensation Act. State v. King County, 109Pac(2d)(Wash)291.

Upon a finding of the supreme court that trial court erred in reversing Commissioner's decision that certain applicants were not entitled to unemployment compensation, such applicants were not entitled to have attorney's fees paid out of the unemployment compensation administration fund. St. Paul & Tacoma Lumber Co., 110Pac(2d)(Wash)877.

Upon affirmance by Supreme Court of trial court's decision reversing ruling of Commissioner denying compensation, applicant was entitled to have his attorney's fees allowed. Id.

4337-29. Period, election and termination of employer's coverage.—A. Except as provided in subsection C of this section, any employing unit which is or becomes an employer subject to this act within any calendar year shall be deemed to be an employer 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 as of the first day of January of any calendar year, only if it files with the director, prior to the first day of May of such year, a written application for termination of coverage, and the director 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 as provided in section 4337-22H, Mason's Supplement 1940, as amended by this act. For the purpose of this subsection, the two or more employing units mentioned in paragraph (2) or (3) or (4) of Section 4337-22F, Mason's Supplement 1940, as amended by this act shall be treated as a single employing unit.

C. (1) An employing unit, not otherwise subject to this act as an employer, which files with the director

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 director, 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 the first day of January of any calendar year subsequent to such two calendar years, only, if at least 30 days prior to such first day of January, it has filed with the director 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 director a written election that all such service 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 director, 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 the first day of January of any calendar year subsequent to such two calendar years only if at least 30 days prior to such first day of January such employing unit has filed with the director a written notice to that effect.

(3) (a) The director shall approve all such written elections where, if such elections were not approved, the employing unit as a contractor or a subcontractor or otherwise, together with the individuals in his employ, under another employing unit, would be deemed employees of such other employing unit, as described in Section 4337-22E, Mason's Supplement 1940, as amended by this act.

(b) Any such employing unit which has heretofore filed such written elections, or which has heretofore paid to the director quarterly contributions and has made the wage reports required hereunder shall, in case the initial contributions and reports so paid and made have been accepted by the director and the money not refunded, be deemed to be elected employers hereunder, and the services performed by its employees shall be deemed employment, and such employing unit shall be liable for any contributions which may now be due, or which were refunded after the payment and acceptance of the initial contribution. (As amended Act Apr. 28, 1941, c. 554, §8.)

(c)(2).
A municipality cannot be an "employing unit". Op. Atty. Gen., (885), Oct. 6, 1939.

4337-30. Administration.—A. The director shall administer this act and shall appoint such officers and employees as may be necessary for the administration thereof. The salary of the director shall be $6000 per annum payable semi-monthly.

B. Not later than the first day of August of each year, the director 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 director deems proper. Whenever the director believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

C. The director is hereby authorized to adopt, amend or rescind such rules and regulations as may be necessary for the administration of this act.

(1) General and special rules may be adopted, amended, or rescinded by the director which rules shall become effective ten (10) days after the 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 director 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 director at a time and place designated by the director after due notice of said hearing has been served by the director 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 director and shall become effective in the manner and at the time prescribed by the director; provided, however, that the director shall provide for reasonable notice of all regulations affecting employers and employees, and provided further, that any person affected by a regulation of the director may, within ten days after the promulgation thereof, petition the director for reconsideration of said regulation; the director shall then provide a reasonable opportunity to the petitioner for a hearing on said reconsideration.

D. The director shall cause to be printed for distribution to the public the text of this act, the director's regulations and general rules and his annual reports to the governor and any other material the director deems relevant and suitable.

E. (1) Subject to the provision of the state civil service act and to the other provisions of this act, the director is authorized to appoint, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his duties under this act. The director may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of this act, and may in his discretion bond any person handling moneys or signing checks hereunder. The director is authorized to adopt such regulations as he deems necessary to meet personnel standards promulgated by the Social Security Board pursuant to the Social Security Act, as amended, and the Act of Congress entitled "An act to provide for the establishment of a national employment system and to cooperate with the states in the promotion of such system and for other purposes" approved June 6, 1933, as amended.

The attorney general shall appoint an assistant attorney general, to be in addition to the number now authorized by law, who shall be the attorney and the chief counsel for the division of employment and security. Such assistant attorney general shall receive the same salary as the other assistant attorneys general, but shall devote his entire time to said division. Said assistant attorney general shall have the power to act for and represent the attorney general in all matters in which the attorney general is authorized to act for the director by this act. The compensation and all expenses and disbursements of such assistant attorney general shall be paid from the moneys appropriated to and for the use of the director.

(2) (a) No officer or employee engaged in the administration of this act shall use his official authority to influence for the purpose of interfering with an election or affecting the results thereof. No person engaged in the administration of this act who holds a position in the state classified service pursuant to provisions contained in the state civil service act, while retaining the right to vote as he pleases and to express privately his opinion on all political subjects, shall take an active part in political management or campaigns.

(b) No officer or employee engaged in the administration of this act shall solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, on contribution for any political purpose whatever for any person.

(c) No officer or employee engaged in the administration of this act shall, for political purposes, furnish or disclose, or aid or assist in furnishing or disclosing, any list or names of persons obtained in the administration of this act, to a political candidate,

committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.

F. The director shall appoint a state advisory council and may appoint such local advisory councils as he deems advisable, composed in each case of an equal number of employer and employee representatives who shall be selected because of their vocation, employment, or affiliation, and of such members representing the general public as the director may designate. Such councils shall aid the director in formulating policies and discussing problems relating to the administration of this act and in assuring impartiality and freedom from political influence in the solution of such problems. The members of such advisory councils shall serve at the pleasure of the director and may be paid a fee of not more than $10.00 per day for active service on such councils in lieu of remuneration for such service and subsistence and shall be reimbursed for any necessary traveling expenses at the rate of five cents per mile.

G. The director is authorized to 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. (1) Each employing unit shall keep true and accurate work records for such periods of time and containing such information as the director may prescribe. Such records shall be open to inspection, audit, and verification, and be subject to being copied by any authorized representative of the director at any reasonable time and as often as may be necessary. The director, appeal referee, chairman of an appeal tribunal, or any other duly authorized representative of the director, may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the director, appeal referee, chairman of an appeal tribunal, or any other duly authorized representative of the director deems necessary for the effective administration of this act.

(2) The director may, with the consent and approval of the Social Security Board, dispose of records, other than original records, of the division of employment and security more than four years old and no longer necessary for the purpose of determining benefit rights of claimants or contributions of employers.

I. (1) In the discharge of the duties imposed by this act, the director, the chairman of an appeal tribunal, appeal referee, or any duly authorized representative of the director 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.

(2) Witnesses subpoenaed pursuant to this subsection or any other section of this act shall be allowed fees at a fixed rate prescribed by regulation by the director, which fees need not be paid in advance of the time of giving of testimony, and such fees of witnesses so subpoenaed shall be deemed part of the expense of administering this act.

(3) 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 director, chairman of an appeal tribunal, or referee, or any duly authorized representative of the director, shall have jurisdiction to issue to such person an order requiring such person to appear before the director, the chairman of an appeal tribunal referee, or any duly authorized representative of the director, there to produce evidence if so ordered or there to give testimony relative to the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof.

J. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the director, the chairman of an appeal tribunal, referee, or any duly authorized representative of the director, or in obedience to the subpoena of any of them in any cause or proceeding before the director, an appeal tribunal, referee, or any duly authorized representative of the director on the grounds 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.

K. In the administration of this act, the director shall co-operate to the fullest extent consistent with the provisions of this act, with the Social Security Board, created by the Act of Congress, entitled the Social Security Act, 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 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.

L. Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of this act, and from any determination as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant (or his legal representative) shall be supplied with information from the records of the Division of Employment and Security, to the extent necessary for the proper presentation of his claim in any proceeding under this act with respect thereto. Subject to such restrictions as the director may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency charged with the administration of an employment and security law or the maintenance of a system of public employment offices or the Bureau of Internal Revenue of the United States Department of the Treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor, the director shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's right to further benefits under this act. The director

may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this act, and may in connection with such request, transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 1606(c) of the Federal Internal Revenue Code.

M. (1) The director may, upon his own motion or upon the written application of any employing unit, and after notice of hearing as hereinafter provided, make findings of fact, and on the basis thereof, determinations with respect to whether an employing unit constitutes an employer and whether services performed for, or in connection with the business of any employing unit constitute employment for such employing unit.

(2) The director shall designate one or more representatives, herein referred to as referees, to conduct hearings upon such matter, at which hearings the employing unit, any individual claiming to be or claimed to be an employee of such employing unit, and any other individual having information pertinent to the issues, shall be entitled to appear, introduce evidence, and be heard in person, by counsel, or by any other representative of their own selection. The referee shall fix a time and place within this state for such hearing and shall give the employing unit written notice thereof, by registered mail, not less than ten days prior to the time of such hearing. In the discharge of the duties imposed by this section, the referee 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 the subject matter of such hearing. The written report of any employee of the Division of Employment and Security, made in the regular course of the performance of such employee's duties, shall be competent evidence of the facts therein contained and shall be prima facie correct, unless refuted by other credible evidence.

(3) Upon the conclusion of such hearing, the referee shall promptly make findings of fact and render a decision thereon, which shall be the determination of the director with respect to whether the employing unit constitutes an employer and whether services performed for, or in connection with the business of an employing unit constitute employment for an employing unit. If such determination is that the employing unit constitutes an employer with respect to such services, such decision and determination shall show the period or periods for which such employer is liable for the payment of contributions, and may also include, but need not necessarily do so, a determination of the amount of such contributions, together with interest, due and unpaid. Notice of such determination, together with a copy of the findings of fact and the decision, shall promptly be given to the employing unit by the referee, by registered mail. Such notice shall contain a statement setting forth the cost of certification of the record, as hereinafter provided. The record shall consist of the notices and demands caused to be served by the director, the original determination of the director, the written application for hearing, the transcript of testimony introduced at such hearing, the exhibits produced at such hearing, or certified copies thereof, the decision of the referee, and such other documents in the nature of pleadings as are filed in the proceeding. Any decision and determination of the referee and director made pursuant to the provisions of this paragraph shall be final and conclusive, unless reviewed as in this subsection hereinafter provided.

(4) The district court of the county wherein the hearing was held shall, by writ of certiorari to the director, have power to review all questions of law and fact presented by the record. Such suit by writ of certiorari shall be commenced within twenty (20) days of the service by registered mail of notice of the decision and determination of the director upon the employing unit affected thereby. Such proceedings before the courts shall be given precedence over all other civil cases. The director shall not be required to certify the record to the district court unless the party commencing such proceedings for review, as above provided, shall pay to the director the cost of certification of the record computed at the rate of ten cents per one hundred words. It shall be the duty of the director upon receipt of such payment to prepare and certify to the court a true and correct typewritten copy of all matters contained in such record. The costs so collected by the director shall be deposited by him in the employment and security administration fund provided for in Section 4337-33 of this act. The court may confirm or set aside the decision and determination of the director. If the decision and determination is set aside and the facts found in the proceedings before the referee are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the director for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper.

(5) A determination of the director, in the absence of appeal therefrom, shall be conclusive for all the purposes of this act except as herein otherwise provided, and, together with the records therein made, shall be admissible in any subsequent judicial proceeding involving liability for contributions. A determination of the director which has not been appealed, may be introduced in any proceeding involving a claim for benefits and the facts therein found and the determination therein made shall be conclusive, unless substantial evidence to the contrary is introduced by or on behalf of the claimant. (As amended Act Apr. 28, 1941, c. 554, §9.)

Substantive portions of statute cannot be changed by rule of commission. Bielke v. A., 288NW584. See Dun. Dig. 1600.

A. Industrial commission.

Member of national guard did not vacate his office of chairman and executive director of Texas Unemployment Compensation Commission under state or federal law when called into active military service of the United States and appointed an officer therein. Carpenter v. S., 145SW(2d)(Tex)562.

C. Rules and regulations.

Director cannot adopt a rule prescribing that an unemployed individual in order to remove disqualification must have been employed in subsequent employment for at least a period of one week and then unemployed through no fault of his own. Op. Atty. Gen., (885), Sept. 25, 1939.

Rules and regulations may not be inconsistent with act, but a valid regulation has force and effect of law. Op. Atty. Gen., (885d-1), March 1, 1940.

E. Personnel.

Civil service employees of unemployment compensation board discharged after serving 11 months on ground that their education and experience did not meet minimum requirements were entitled to reinstatement, but reimbursement for loss of salary is discretionary with board. Maloney v. U., 15Atl(2d)(Pa)407; Halteman v. U., 15Atl(2d)(Pa)408.

Where act provides that any employee in unemployment compensation department who is given notice of furlough shall be entitled to appeal within 10 days, he cannot appeal 4 months after notice though he did not acquire knowledge of reason justifying appeal until 10 days statutory period had elapsed. Ehrman v. U., 16Atl(2d)(Pa)428.

New unemployment compensation board of review had no authority to change classification of employee appointed by civil service examination and classified by former board. Id.

Where board has acted in matter involving its discretion in respect to selection of civil service employees, its actions cannot be set aside by subsequent board, in absence of fraud, misrepresentation or misconduct. Ryan v. U., 17Atl(2d)(Pa)664.

Evidence that employee had willfully made a false statement in regard to amount of his education, in order to increase his civil service rating, justified dismissing him from service. Force v. U., 18Atl(2d)(Pa)81.

A war veteran having permanent employment status under division of unemployment compensation and who obtained leave of absence and filed as a candidate for office prior to effective date of civil service law did not lose his status of permanent employment, though he continued his candidacy for office after effective date of

that act, without filing of charges and a hearing. Op. Atty. Gen., (644), Oct. 18, 1939.

H. Records and reports...

Commissioner administering New Hampshire law was empowered to require reports deemed by him necessary for effective administration of act to be furnished to him by employer. State v. Proctor, 18Atl(2d)(NH)753.

4337-31. Reciprocal benefit arrangements.—A. The director is hereby authorized to enter into reciprocal arrangements with the appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

(1) Service performed by an individual for a single employing unit for which service is customarily performed by such individual in more than one state shall be deemed to be service performed entirely within any one of the states

(a) In which any part of such individual's service is performed, or

(b) In which such individual has his residence, or

(c) In which the employing unit maintains a place of business: provided, there is in effect, as to such service, an election, approved by the agency charged with the administration of such state's employment security law, pursuant to which all the service performed by such individual for such employing unit is deemed to be performed entirely within such state;

(2) Potential rights to benefits accumulated under the employment and security laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the director finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(3) Wages or services, upon the basis of which an individual may become entitled to benefits under an employment and security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under this act, and wages for insured work, on the basis of which an individual may become entitled to benefits under this act shall be deemed to be wages or service on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this act upon the basis of such wages or service, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the director finds will be fair and reasonable as to all affected interests; and

(4) Contributions due under this act with respect to wages for insured work shall for the purpose of Section 4337-34; Mason's Supplement, 1940, as amended by this act be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment and security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the director finds will be fair and reasonable as to all affected interests.

B. Reimbursements paid from the fund pursuant to paragraph (3) of subsection A. of this section shall be deemed to be benefits for the purposes of Sections 4337-23, Mason's Supplement 1940 as amended by this act and 4337-25B of this act. The director is authorized to make to other state or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subsection A. of this section.

C. The administration of this act and of other state and federal employment and security and public employment service laws will be promoted by co-operation between this state and such other states and the appropriate federal agencies in exchanging services, and making available facilities and information. The director is therefore authorized to make such investigations and audits, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this act as he deems necessary or appropriate to facilitate the administration of any such employment and security or public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this state by the agency charged with the administration of any such other employment and security or public employment service law.

D. To the extent permissible under the laws and Constitution of the United States, the director is authorized to enter into or co-operate in arrangements whereby facilities and services provided under this act and facilities and services provided under the employment and security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the employment and security law of this state or under a similar law of such government. (As amended Act Apr. 28, 1941, c. 554, §10.)

4337-32. Commission shall establish and maintain free public employment offices.—A. A state employment service is hereby established in the Division of Employment and Security. The director in the conduct of such service shall establish and maintain free public employment offices, in such number and in such places as may be necessary for the proper administration of this act and for the purpose of performing such functions as are within the purview of the act of Congress entitled "An Act to provide for the establishment of a national employment system for the co-operation with the states in the promotion of such system and for other purposes." Approved June 6, 1933, as amended. The provisions of said act of Congress are hereby accepted by this state, and the Division of Employment and Security is hereby designated and constituted the agency of this state for the purposes of said act.

All moneys received by this state under said act of Congress shall be paid into the employment and security administration fund, and shall be expended solely for the maintenance of state public employment offices. For the purpose of establishing and maintaining free public employment offices and promoting the use of their facilities, the director is authorized to enter into agreements with the Railroad Retirement Board or any other agency of the United States or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of this act, and may enter into agreements with any political subdivision of this state or with any private organization or person, and as a part of any such agreements, may accept moneys, services, or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed. All moneys received for such purposes shall be paid into the employment and security administration fund. The director may establish auxiliary employment offices and may, notwithstanding any other law to the contrary, employ individuals on a part-time or temporary basis to perform services in such offices and for related purposes, compensate such individuals for such services, and reimburse such individuals for necessary expenses incurred by them in the performance of such services. Such individuals shall serve at the pleasure of the director, and the functions performed by them shall have the same force and effect as though the same were performed by employees of the division of employment and security. (As amended Act Apr. 28, 1941, c. 554, §11.)

4337-32a and 4337-32b. [Repealed.]

Repealed. Laws 1941, c. 554.

4337-33. Unemployment compensation administration fund.—A. There is hereby created in the state treasury a special fund to be known as the employ-

ment and security administration fund. All moneys which are deposited or paid into this fund shall be continuously available to the director for expenditure in accordance with the provisions of this act, and shall not lapse at any time or be transferred to any other fund. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in section 4337-32, Mason"s Supplement 1940, as amended by this act, shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board for the proper and efficient administration of this act. The fund shall consist of all moneys appropriated by this state, all moneys received from the United States of America, or any agency thereof, including the Social Security Board, and all moneys received from any other source, for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the employment and security administration fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this act. 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 the other special funds in the state treasury except that moneys in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of a depositary bank. Such moneys shall be secured by the depositary in which they are held to the same extent and in the same manner as required by the general depositary law of the state, and collateral pledged shall be maintained in a separate custody account. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment and security administration fund provided for under this act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the employment and security administration fund shall be deposited in said fund.

B. If any moneys received after June 30, 1941, from the Social Security Board under Title III of the Federal Social Security Act, or any unencumbered balances in the employment and security administration fund as of that date, or any moneys granted after that date to the state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the Social Security Board, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Social Security Board for the proper administration of this act, it is the policy of this state that such money shall be replaced by moneys appropriated for such purpose from the general funds of this state to the employment and security administration fund for expenditure as provided in subsection A of this section. Upon receipt of notice of such a finding by the Social Security Board, the director shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act. (As amended Act Apr. 28, 1941, c. 554, §12.)

4337-34. Collection of contributions.—A. If contributions are not paid on the date on which they are due and payable, as prescribed by the director, the whole or part thereafter remaining unpaid shall bear interest at the rate of one per centum per month from and after such date until payment is made to the division of employment and security, provided however that after any contribution has become delinquent for a period of 12 months thereafter interest thereon shall be computed at the rate of six per centum per annum. In computing interest for any period of less than a full month, the rate shall be one-thirtieth of the per centum of interest applicable for each day or fraction thereof. Contributions, if mailed, shall be deemed to have been paid on the date of mailing as indicated by the postmark on the cover thereof. Interest collected pursuant to this subsection shall be paid into the unemployment compensation fund.

B. Any employer who knowingly fails to make and submit to the division of employment and security any report of wages paid by or due from him for insured work in the manner and at the time such report is required by regulations prescribed by the director shall pay to the division of employment and security for the fund an amount equal to one per cent of contributions accrued during the period for which such report is required, for each month from and after such due date until such report is properly made and submitted to the division of employment and security. In no case shall the amount of the penalty imposed hereby be less than $10.00. Any employing unit which fails to make and submit to the director any report, other than one of wages paid or payable for insured work, as and when required by the regulations of the director, shall be liable to the division of employment and security for the fund in the sum of $10.00. All such penalties shall be in addition to interest and any other penalties provided for by this act and shall be collected by civil action as hereinafter provided.

C. If, after due notice, any employer defaults in any payment of contributions or interest due thereon or penalties for failure to file returns and other reports as and when required by the provisions of this act or by any rule or regulation of the director, the amount due shall be collected by civil action in the name of the state of Minnesota, and any money recovered on account thereof shall be credited to the employment and security fund provided for under the provisions of this act. This remedy shall be in addition to such other remedies as may be herein provided or otherwise provided by law, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions, interest due thereon, or penalties from an employer shall be heard by the court at the earliest possible date. No action for the collection of contributions or interest thereon shall be commenced more than four years after the contributions have been reported by the employer or determined by the director to be due and payable.

D. 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, contributions then or thereafter due shall be paid in full prior to all other claims except claims for wages of not more than $250.00 to each claimant, earned within six months of the commencement of the proceedings. 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 that act for taxes due any state of the United States.

E. If not later than three years after the date of payment of any amount as contributions or interest thereon, an employer who has made such payment 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 if the director shall determine that payment of such contributions or interest or any portion thereof was erroneous, the director shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the director shall refund from the fund, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the director's own initiative.

F. Nothing in this act, or any part thereof, shall be construed to authorize any refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid. (As amended Act Apr. 28, 1941, c. 554, §13.)

4337-35. Protection of rights and benefits.—A. Any agreement by an individual to waive, release or commute his rights to benefits or any other rights under this act shall be void. Any agreement by 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 void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, require or accept any waiver of any right hereunder by any individual in his employ, or in any manner obstruct or impede the filing of claims for benefits. Any employer or officer or agent of any employer who violates any provision of this subsection shall, for each offense, be guilty of a misdemeanor.

B. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts, except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void. (As amended Act Apr. 28, 1941, c. 554, §14.)

4337-36. Penalties.—A. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under this act or under the employment security law of any state or of the federal government, either for himself or any other person shall be guilty of a misdemeanor.

B. Any employing unit or any officer or agent of an employing unit or any other person who makes a false sttaement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under this act or under the employment and security law of any state or of the federal government, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports at the time when required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a misdemeanor. (As amended Act Apr. 28, 1941, c. 554, §15.)

4337-37. Representation in court.—A. In any civil action to enforce the provisions of this act the director shall be represented by the attorney general. (As amended Act Apr. 28, 1941, c. 554, §16.)

4337-38. 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 director shall be liable for any amount in excess of such sums. (As amended Act Apr. 28, 1941, c. 554, §17.)

4337-39. 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. (As amended Act Apr. 28, 1941, c. 554, §18.)

Provision in Indiana Unemployment Compensation Act that if any part of Federal Social Security Act shall become inoperative, provisions of Indiana Act shall likewise become inoperative does not contemplate only a situation where whole federal act is repealed or held unconstitutional, and where federal statutes abate taxes of receivership of bank under Federal Social Security Act, the taxes are abated also under State Unemployment Compensation Act. State v. Scheumann, 31NE(2d)(Ind) 632.

4339-40. 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. (As amended Act Apr. 28, 1941, c. 554, §19.)

4337-41. Short title.—This act shall be known and may be cited as the "Minnesota Employment and Security Act." (As amended Act Apr. 28, 1941, c. 554, §20.)

4337-42. Effective date.—This act shall take effect and be in force from and after its passage unless otherwise specifically provided therein except that sections 4337-22, 4337-23, 4337-25, 4337-26, 4337-27, 4337-30 and 4337-33, Mason's Supplement 1940, as amended by this act shall take effect and be in force from and after July 1, 1941; provided, further, that sections 4337-22, 4337-25, 4337-26, Mason's Supplement 1940, as amended by this act shall not affect the determination of, or rights to, benefits with respect to claims filed prior to July 1, 1941. (As amended Act Apr. 28, 1941, c. 554, §21.)

4337-43. Repealer.—Mason's Supplement 1940, Sections 4337-32a and 4337-32b are hereby repealed.

CHAPTER 24

Soldiers' Home, Relief, Etc.

4345. Persons who may be admitted to soldiers' home.

Wife of member of home less than 55 years of age and having mental condition which would bar her from being admitted to the home may be given relief outside home. Op. Atty. Gen. (394i), Sept. 5, 1940.

4349. Trustees of soldiers' home board to receive expenses in addition to per diem compensation.

Per diem cannot be paid to a member of board for attendance at conventions which are not meetings of the board or a committee thereof. Op. Atty. Gen., (394f), May 23, 1940.