

and which said application shall be filed in the office from which said records, files, documents, books, or papers have been turned over to said society; provided, also, that this act shall not repeal or annul the provisions of Section 145 of *Mason's Minnesota Statutes of 1927.*"

Sec. 7. Offenses—punishment.—Mason's Minnesota Statutes of 1927, Section 10013, is hereby amended to read as follows:

"Every person who shall wilfully and unlawfully remove, mutilate, destroy, conceal, *alter, deface,* or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office or with any public officer by authority of law, or *any public officer or employee who permits any other person to do so* shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than \$500.00, or by both."

Approved April 28, 1941.

CHAPTER 554—H. F. No. 1583

An act relating to unemployment compensation and a state system of public employment offices; amending Mason's Supplement 1940, Sections 4337-22 to 4337-41, inclusive, and 4337-42, and repealing Mason's Supplement 1940, Section 4337-32a, and 4337-32b and to amend the title of Chapter 2, Extra Session Laws of 1936, to provide for the appointment of an additional assistant attorney general to be assigned to the division of employment and security.

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

Section 1. Law amended—definitions.—Mason's Supplement 1940, Section 4337-22, is hereby amended to read as follows:

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

gaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of section 4337-22 F, *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*, 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 individual's entire service, performed within or both within and without this state if (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service shall be deemed to be localized within a state if (a) the service is performed entirely within such state; or (b) the service is performed both within and without such

state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(4) (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 state 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' cooperative 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 4337-22 H (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 administration of an employment and security program or 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.

Sec. 2. Law amended—unemployment compensation fund — establishment — how constituted. — Mason's Supplement 1940, section 4337-23, is hereby amended to read as follows:

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 succeeding 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.

Sec. 3. Law amended—contributions from employers—payment.—Mason's Supplement 1940, Section 4337-24, is hereby amended to read as follows:

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 de-

ducted, 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 employment *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:

<i>Ratio of total assets of fund to benefits paid, as defined above, and set forth below</i>	<i>Standard contribution rate, to be applied to the total current taxable payroll for the year 1941.</i>
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When amount in fund is equal to or more than:

<i>3½ times average benefits paid.....</i>	<i>2.75</i>
<i>3 times, but less than 3½ times average benefits paid</i>	<i>3.00</i>
<i>2½ times, but less than 3 times average benefits paid</i>	<i>3.25</i>
<i>2 times, but less than 2½ times average benefits paid</i>	<i>3.25</i>
<i>When the fund is less than 2 times average benefits paid</i>	<i>3.25</i>

(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 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)	(B)	(C)	(D)	(E)
Fund 3.5 or more times average annual benefits 10 categories	Fund 3 to 3.5 times average annual benefits 11 categories	Fund 2.5 to 3.0 times average annual benefits 13 categories	Fund 2.0 to 2.5 times average annual benefits 15 categories	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, in-

clusive, 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.

Sec. 4. Law amended—benefits payable—time of accrual—non-eligibility in certain instances.—Mason's Supplement 1940, Section 4337-25, is hereby amended to read as follows:

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 Under \$200	B Total Maximum Amount of Benefits Payable During a Benefit Year None	C Weekly Benefit Amount 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—\$1,499.99	240.00	15.00
\$1,500—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 indus-

try 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.

Sec. 5. Law amended—Benefit—eligibility—conditions.—Mason's Supplement 1940, Section 4337-26, is hereby amended to read as follows:

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.

Sec. 6. Law amended — Disqualification for benefits.—Mason's Supplement 1940, Section 4337-27, is hereby amended to read as follows:

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 rule 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.

Sec. 7. Law amended—Claims for benefits.—Mason's Supplement 1940, section 4337-28, is hereby amended to read as follows:

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.

Sec. 8. Law amended—Period, election and termination of employers' coverage.—Mason's Supplement 1940, section 4337-29, is hereby amended to read as follows:

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 4337-22 F, *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 4337-22 E, 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.*

Sec. 9. Law amended—Administration—industrial commission.—Mason's Supplement 1940, Section 4337-30, is hereby amended to read as follows:

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, or 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 the 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; and 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 cooperate 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 an 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.

Sec. 10. Law amended—reciprocal benefit arrangements.—Mason's Supplement 1940, Section 4337-31, is hereby amended to read as follows:

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; (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 cooperation 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 cooperate 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.

Sec. 11. Law amended—commission shall establish and maintain free public employment offices—acceptance of federal act.—Mason's Supplement 1940, Section 4337-32, is hereby amended to read as follows:

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 cooperation 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.

Sec. 12. Law amended—unemployment compensation administration fund—special fund.—Mason's Supplement 1940, Section 4337-33, is hereby amended to read as follows:

A. There is hereby created in the state treasury a special fund to be known as the *employment 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 moneys 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.

Sec. 13. Law amended—collection of contributions—interest on past due contributions.—Mason's Supplement 1940, Section 4337-34, is hereby amended to read as follows:

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.*

Sec. 14. Law amended—protection of rights and benefits—waiver of rights void.—Mason's Supplement 1940, Section 4337-35, is hereby amended to read as follows:

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 necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be *void*.

Sec. 15. Law amended—penalties.—Mason's Supplement 1940, Section 4337-36, is hereby amended to read as follows:

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 statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining 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 wilfully 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.

Sec. 16. Law amended—representation in court.—Mason's Supplement 1940, Section 4337-37, is hereby amended to read as follows:

A. In any civil action to enforce the provisions of this act the *director shall* be represented by the attorney general.

Sec. 17. Law amended—non-liability of state.—Mason's Supplement 1940, section 4337-38, is hereby amended to read as follows:

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.

Sec. 18. Law amended—savings clause.—Mason's Supplement 1940, Section 4337-39, is hereby amended to read as follows:

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 right, 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.

Sec. 19. Law amended—provisions severable.—Mason's Supplement 1940, Section 4337-40, is hereby amended to read as follows:

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.

Sec. 20. Law amended—short title.—Mason's Supplement 1940, Section 4337-41, is hereby amended to read as follows:

This act shall be known and may be cited as the "Minnesota *Employment and Security Act.*"

Sec. 21. Law amended—effective date.—Mason's Supplement 1940, Section 4337-42, is hereby amended to read as follows:

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 section 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.

Sec. 22. **Law amended—title amended.**—The title of Chapter 2, Extra Session Laws 1936, is hereby amended to read as follows:

“Chapter 2. 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 employment accounts, to provide for cooperation with the Social Security Board of the United States of America, to provide penalties for the violation of said act, to provide for the administration thereof, 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.”

Sec. 23. *Mason's Supplement 1940, Sections 4337-32a and 4337-32b are hereby repealed.*

Approved April 28, 1941.

CHAPTER 555—H. F. No. 470

An act proposing an amendment to Article IV, Section 36, of the constitution of the State of Minnesota to change the requirements for publication of proposed amendments to home rule charters of cities and villages.

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

Section 1. **Proposed constitutional amendment.**—The following amendment of Article IV, Section 36, of the constitution of the state of Minnesota is hereby proposed to the people of the state for their approval or rejection, which section when amended shall read as follows:

“Section 36. **Cities and villages may adopt charters—classification of cities for legislative purposes.**—Any city or village in this state may frame a charter for its own govern-