

# SOCIAL SECURITY

## CHAPTER 232

S. B. No. 62—(McGillic, Blaisdell, and Nelson of Grand Forks)

### NORTH DAKOTA UNEMPLOYMENT COMPENSATION LAW

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, to create an unemployment compensation division in the Workmen's Compensation Bureau, to transfer the North Dakota State Employment Service to the Workmen's Compensation Bureau as a Division thereof, to provide for cooperation with the Social Security Board of the United States of America, to provide for an employment service account and an appropriation therefor, defining and regulating the administration of this Act, to provide for penalties for violation of said Act; and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

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

§ 2. DEFINITIONS.] As used in this Act, unless the context clearly requires otherwise—

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

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

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

(c) "Bureau" means the North Dakota Workmen's Compensation Bureau consisting of three Commissioners, appointed for terms of six years.

(d) "Contributions" means the payments to the State Unemployment Compensation Fund required by this Act.

(e) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ eight or more individuals performing services for it within this State. 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. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this Act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(f) "Employer" means:

(1) Any employing unit which for some portion of a day in each of twenty different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment eight or more individuals (irrespective of whether the same individuals are or were employed in each such day);

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

(3) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, not an employer subject to this Act, and which if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under Paragraph (1) of this Subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing units, or interests, or both, would be an employer under Paragraph (1) of this Subsection;

(5) Any employing unit which, having become an employer

under Paragraph (1), (2), (3), or (4), has not, under Section 9, ceased to be an employer subject to this Act; or

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

(g) "Employee" means every individual, whether male, female, citizen, alien or minor, who is performing, or subsequent to January 1st, 1936, has performed services for an employer in an employment subject to this Act.

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

(2) The term "Employment" shall include an individual's entire service, performed within or both within and without this State if—

(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 (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any State in which some part of the service is performed but the individual's residence is in this State.

(3) Services not covered under Paragraph (2) of this Subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other State or of the Federal Government, shall be deemed to be employment subject to this Act if the individual performing such services is a resident of this State and the Bureau approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Act.

(4) Service shall be deemed to be localized within a State if—

(a) The service is performed entirely within such State; or

(b) The service is performed both within and without such State, but the service performed without such State is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this Act unless and until it is shown, to the satisfaction of the Bureau that—

(a) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

(b) Such service is either outside the usual course of the

business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business;

(6) The term employment shall not include:

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

(2) Services performed in the employ of any other State of its political subdivisions, or of the United States Government, or of an instrumentality of any other State or States or their political subdivisions or of the United States.

(3) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress, provided that the Bureau is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in Section 11 (b) of this Act for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act.

(4) Agricultural labor; *296 n.w. 113*

(5) Domestic service in a private home;

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

(7) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

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

(i) "Employment office" means a free public employment office, or branch thereof, operated by this State or maintained as a part of a State-controlled system of public employment offices.

(j) "Fund" means the Unemployment Compensation Fund established by this Act, to which all contributions required and from which all benefits provided under this Act shall be paid.

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

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

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

(m) "Total unemployment." An individual shall be deemed "totally unemployed" in any week during which he performs no services and with respect to which no wages are payable to him.

(1) As used in Subsections (k) and (m) herein, the term "wages" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of \$3 in any one week, and the term "services" shall not include that part of odd jobs or subsidiary work, or both, for which remuneration equal to or less than \$3 in any one week is payable.

(2) As used in Subsections (k) and (m), an individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Bureau may by regulation otherwise prescribe.

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

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

(p) "Week" means such period of seven consecutive calendar days, as the Bureau may by regulations prescribe.

(q) "Weekly benefit amount." An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one week of total unemployment.

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

(s) "Base period" means the period beginning with the first day of the nine completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter imme-

diately preceding any week with respect to which benefits are payable.

(t) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1938, or the equivalent thereof as the Bureau may by regulation prescribe.

§ 3. (a) UNEMPLOYMENT COMPENSATION FUND.]

ESTABLISHMENT AND CONTROL.] There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an unemployment compensation fund, which shall be administered by the Bureau exclusively for the purposes of this Act. This fund shall consist of (1) all contributions collected under this Act, together with any interest thereon collected pursuant to Section 14 of this Act; (2) all fines and penalties collected pursuant to the provisions of this Act; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided.

(b) Accounts and deposit. 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 Bureau and shall issue his warrants upon it in accordance with such regulations as the Bureau 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 Bureau, shall be forwarded to the Treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to Section 15 of this Act may be paid from the clearing account upon warrants issued by the Treasurer under the direction of the Bureau. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provisions of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. Except as otherwise herein provided moneys in the clearing and benefit accounts may be deposited by the Treasurer, under the direction of the Bureau, in the Bank of North Dakota, but no public deposit insurance charge or premium shall be paid out of the fund. The Treasurer shall give a separate bond conditioned upon the faithful performance of his duties as

custodian of the fund in an amount fixed by the Bureau and in a form prescribed by law or approved by the Attorney General. Premiums for said bond shall be paid from the administration fund.

(c) Withdrawals, Moneys shall be requisitioned from this State's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the Bureau. The Bureau 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 it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the Treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued by the Treasurer for the payment of benefits and refunds shall bear the signature of the Treasurer and the countersignature of a member of the Bureau or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Bureau, shall be re-deposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the Unemployment Trust Fund, as provided in Subsection (b) of this Section.

(d) Management of Funds Upon Discontinuance of Unemployment Trust Fund. The provisions of Sub-sections (a), (b), and (c) to the extent that they relate to the Unemployment Trust Fund, shall be operative only so long as such Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such Unemployment Trust Fund, from which no other State is permitted to make withdrawals. If and when such Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the Unemployment Compensation Fund of this State shall be transferred to the Treasurer of the Unemployment Compensation Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Bureau in accordance with the provisions of this Act: Provided, that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America or the

State of North Dakota. Provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The Treasurer shall dispose of securities or other properties belonging to the Unemployment Compensation Fund only under the direction of the Bureau.

§ 4. CONTRIBUTIONS.] (a) Payments. (1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Act, with respect to wages payable for employment (as defined in Section 2 (h) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the Bureau for the fund in accordance with such regulations as the Bureau may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(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 1 cent.

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

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

(2) Two and seven-tenths per centum with respect to employment during the calendar year 1938, 1939, 1940 and 1941.

(3) With respect to employment after December 31, 1941, the percentage determined pursuant to Subsection (c) of this Section.

(c) Future rates based on benefit experience. (1) The Bureau shall maintain a separate account for each employer, and shall credit his account with all the contributions which he has paid on his own behalf in excess of one per cent of his annual pay roll for each calendar year. But nothing in this Act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amount hereinafter provided, against the account of his most recent employer, except that if such individual has not earned within the completed calendar quarter and the expired portion of the uncompleted calendar quarter immediately preceding the first week of any continuous period of unemployment, wages for employment by such most recent employer equal to more than sixteen times his weekly benefit amount, such benefits may also be charged against the account of his next most recent employer, in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer shall not exceed one-sixth of the wages payable to such individual by each such

employer for employment which occurs on and after the first day of such individual's base period, but not more than \$65 per completed calendar quarter or portion thereof, which occurs within such base period; but nothing in this Section shall be construed to limit benefits payable pursuant to Section 5 of this Act. The Bureau shall by general rules prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time.

(2) The Bureau may prescribe regulations for the establishment, maintenance and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(3) The Bureau shall, for the year 1942 and for each calendar year thereafter, determine the contribution rate of each employer on the basis of such employer's actual record in the payment of contributions on his own behalf and with respect to benefits charged against his account, in accordance with the following requirements:

(i) Each employer's rate shall be 2 7-10 per centum except as otherwise provided in the following provisions. No employer's rate shall be less than 2 7-10 per centum unless there shall have been three calendar years throughout which any individual in his employ could have received benefits if eligible.

(ii) Each employer's rate for the twelve months commencing January 1 of any calendar year shall be determined on the basis of his record up to the beginning of such calendar year. If, at the beginning of such calendar year, the total of all his contributions paid on his own behalf and credited to his account for all past years exceeds the total benefits charged to his account for all such years, his contribution rate shall be—

(a) Two per centum, if such excess equals or exceeds 7½ per centum but is less than 10 per centum of his average annual pay roll.

(b) One per centum, if such excess equals or exceeds 10 per centum of his average annual pay roll.

(iii) No employer's rate for the period of twelve months commencing January 1 of any calendar year shall be less than 2 7-10 per centum, unless the total assets of the fund, excluding contributions not yet paid at the beginning of such calendar year, exceed the total benefits paid from the fund within the last preceding calendar year; and no employer's rate shall be less than 2 per centum unless such assets at such time were at least twice the total benefits paid from the fund within such last preceding year.

§ 5. BENEFITS.] (a) Payment of benefits. Beginning twenty-four months after the date when contributions first accrue under

the terms of this Act, benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Bureau may prescribe.

(b) Weekly benefit amount for total unemployment. Each eligible individual who is totally unemployed (as defined in Section 2 (m) in any week shall be paid, with respect to such week, benefits at the rate of 50 per centum of his full-time weekly wages, but not more than \$15.00 per week, nor less than either \$5.00 or three-fourths of such full-time weekly wage whichever is the lesser.

(c) Weekly benefit for partial unemployment. Each eligible individual who is partially unemployed (as defined in Section 2 (k) in any week shall be paid with respect to such week a partial benefit. Such partial benefit shall be the amount equal to the difference between his weekly benefit amount and 5-6 of his wages, as used in Section 2 (m). If such partial benefit for any week equals less than \$2.00, it shall not be payable unless and until the accumulated total of such partial benefits with respect to weeks occurring within the preceding thirteen weeks equal \$2.00 or more.

(d) Determination of full time weekly wage. (1) The full time weekly wage of any individual means the weekly wages that such individual would receive if he were employed at the most recent wage rate earned by him in employment by an employer during the period prescribed pursuant to Paragraph 3 of this Subsection and for the customary scheduled full-time weekly hours prevailing for his occupation in the enterprise in which he last earned wages in employment by an employer during the same period.

(2) If the Bureau finds that the full time weekly wage, as above defined, would be unreasonable or arbitrary or not readily determinable with respect to any individual, the full time weekly wage of such individual, shall be deemed to be one-thirteenth of his total wages in employment by employers in that quarter in which such total wages were highest during the period prescribed pursuant to Paragraph 3 of this Subsection.

(3) The full-time weekly wage of any individual shall be determined and redetermined at such reasonable times as the Bureau may find necessary to administer this Act and may by regulation prescribe. The period hereinabove referred to shall consist of the next to the last completed calendar quarter immediately preceding the date with respect to which an individual's full-time weekly wage is determined, and such of the seven immediately preceding consecutive calendar quarters as the Bureau may be (by) regulation prescribe.

(e) Duration of Benefits. The Bureau shall compute wage credits for each individual by crediting him with the wages earned by him for employment by employers during each quarter, or \$390, whichever is the lesser. Benefits paid to any

eligible individual shall be charged, in the same chronological order as such wages were earned, against one-sixth of his wage credits which are based upon wages earned during his base period and which have not been previously charged hereunder. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed whichever is the lesser of (1) 16 times his weekly benefit amount, and (2) one-sixth of such uncharged wage credits with respect to his base period.

(f) Benefits in seasonal and irregular employment.

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

(2) The Bureau shall also, prior to the time that benefits may become payable, and from time to time thereafter, ascertain and determine, or redetermine, employment in which it is customary to operate only at irregular periods, and shall fix the right to benefit and the conditions required for payment of benefits to persons having such employment, and shall modify the requirements of the right to benefit and the conditions required for the payment of benefits in such manner, that the total benefits paid to such persons will be in reasonable proportion to the total contributions of employers in such occupation or industry to the fund.

(g) Part Time Workers. (1) As used in this Sub-section the term "part-time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full-time hours prevailing in the establishment in which he is employed or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

(2) The Bureau shall prescribe fair and reasonable general rules applicable to part time workers for determining their full time weekly wage and the total wages for employment by employers required to qualify such workers for benefits. Such rules shall, with

respect to such workers, supersede any inconsistent provisions of this Act, but so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of this Act.

§ 6 BENEFIT ELIGIBILITY CONDITIONS.] An unemployed individual shall be eligible to receive benefits with respect to any week only if the Bureau finds that—

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

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

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

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

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

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

(3) Unless it occurs within the thirteen consecutive weeks preceding the week for which he claims benefits, provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment; and provided further that no individual shall be required to accumulate more than five waiting period weeks during any sixty-five consecutive week period;

(4) Unless it occurs after benefits first could become payable to an individual under this Act.

(e) He has within the first three out of the last four completed calendar quarters immediately preceding the first day of his benefit year, earned wages for employment by employers equal to not less than sixteen times his weekly benefit amount.

§ 7. DISQUALIFICATION FOR BENEFITS.] An individual shall be disqualified for benefits—

(a) For the week in which he has left work voluntarily without good cause, if so found by the Bureau, and for not more than five weeks which immediately follow such week as determined by the Bureau according to the circumstances in each case.

(b) For the week in which he has been discharged for misconduct connected with his work, if so found by the Bureau, and for not more than the five weeks which immediately follow such week as determined by the Bureau in each case according to the seriousness of the misconduct.

(c) If the Bureau finds that he has failed, without good cause,

either to apply for available, suitable work when so directed by the employment office or the Bureau or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Bureau. Such disqualification shall continue for the week in which such failure occurred and for not more than the five weeks which immediately follow such week as determined by the Bureau according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the Bureau shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable, and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

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

(b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the Bureau finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Bureau that—

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

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided further, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall for the purposes of this subsection be deemed to be a separate factory, establishment, or other premises.

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

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability under the

Workmen's Compensation Law of any State or under a similar law of the United States; or

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

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

§ 8. CLAIMS FOR BENEFITS.]

(a) Filing. Claims for benefits shall be made in accordance with such regulations as the Bureau 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 Bureau to each employer without cost to him.

(b) Initial Determination. A representative designated by the Bureau, and hereinafter referred to as a deputy, shall promptly examine the claim, and on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal, which shall make its decision with respect thereto in accordance with the procedure described in Subsection (c) of this Section, except that in any case in which the payment or denial of benefits will be determined by the provisions of Section 7 (d) of this Act, the deputy shall promptly transmit his full findings of fact with respect to that subsection to the Bureau, who, on the basis of the evidence submitted and such additional evidence as he may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection, which shall be deemed the decision of the deputy. The deputy shall promptly notify the claimant and any other interested parties of the decision and reasons therefor; the deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor. Unless the claimant or any such interested party, within five calendar days after the delivery of the deputy's notification, or within seven 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 duly filed, benefits with respect to the period prior to the final decision of the Bureau shall be paid only after such decision; PROVIDED, that if an appeal tribunal affirms a decision of a deputy, or the Bureau affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of

any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) Appeals. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Bureau, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to Subsection (e) of this Section.

(d) Appeal Tribunals. To hear and decide disputed claims the Bureau shall appoint one or more impartial appeal tribunals consisting in each case of either a salaried examiner selected in accordance with Section 111 (d) of this Act, or a body consisting of three members, one of whom shall be a salaried examiner who shall serve as chairman, one of whom shall be a representative of employers, and the other of whom shall be a representative of employees; each of the latter ten members shall serve at the pleasure of the Bureau and be paid a fee of not more than \$10.00 per day of active service on such tribunal, plus necessary expenses. No person shall participate on behalf of the Bureau in any case in which he is an interested party. The Bureau 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 hearings proceed unless the chairman of the appeal tribunal is present.

(e) Review by the Bureau. The Bureau may, on its own motion, affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Bureau shall permit such further appeals by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The Bureau may remove to itself or transfer to another appeal tribunal proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Bureau shall be heard in accordance with the requirements of Subsection (c) of this Section by the Bureau or, in the absence or disqualification of any partisan member, by the impartial member acting alone. The Bureau shall promptly notify the interested parties of its findings and decision.

(f) Procedure. The manner in which disputed claims shall be presented, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Bureau for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules

of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) **Witness Fees.** Witnesses subpoenaed pursuant to this Section shall be allowed fees as otherwise provided by law. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this Act.

(h) **Appeal to Courts.** Any decision of the Bureau in the absence of an appeal therefrom as herein provided, shall become final ten days after the date of notification thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies, as provided by this Act. The Bureau 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 employed by the Bureau and has been designated by it for that purpose, or, at the Bureau's request, by the Attorney General.

(i) **Court Review.** Within ten days after the decision of the Bureau has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the District Court of the County in which the employee claiming compensation resides, against the Bureau for the review of its decision, in which action any other party to the proceeding before the Bureau shall be made a defendant. In such action the complaint, which shall state the grounds upon which a review is sought, shall be served upon the Director of the Bureau or upon such person as the Bureau may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the complaint as there are defendants and the Bureau shall forthwith mail one such copy to each such defendant. Answers shall be filed within 30 days after the service of said complaint. With its answer, the Bureau shall certify and file with said Court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. Such actions shall be heard in a summary manner and shall be given precedence over all other civil cases. An appeal may be taken from the decision of the District Court to the Supreme Court of North Dakota, in the same manner, but not inconsistent with the provisions of this Act, as is provided in civil cases. No bonds shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Bureau shall enter an order in accordance with such determination.

(j) In any proceeding under this Act before the deputy appeal tribunal or the Bureau, a party may be represented by an agent or attorney, but no fees for services rendered by an agent shall be allowable or payable unless such agent is an attorney at law.

§ 9. PERIOD. ELECTION AND TERMINATION OF EMPLOYER'S COVERAGE.]

(a) Any employing unit which is or becomes an employer subject to this Act within any calendar year shall be subject to this Act during the whole of such calendar year.

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

(c) (1) An employing unit, not otherwise subject to this Act, which files with the Bureau its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the Bureau, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if at least thirty days prior to such 1st day of January, it has filed with the Bureau 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 Bureau a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this Act for not less than two calendar years. Upon the written approval of such election by the Bureau, such services shall be deemed to constitute employment subject to this Act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1st of any calendar year subsequent to such two calendar years only if at least thirty days prior to such 1st day of January such employing unit has filed with the Bureau a written notice to that effect.

§ 10. ADMINISTRATIVE ORGANIZATION.]

There is hereby created in the North Dakota Workmen's Compensation Bureau a division to be known as the Unemployment Compensation Division. The North Dakota State Employment Service, as created by Chapter 161 of the Session Laws of 1935, is hereby transferred together with all its records, contracts, agreements and

funds, and established as a division of the Workmen's Compensation Bureau and shall with the Unemployment Compensation Division, constitute two co-ordinate divisions of such Bureau, each of which shall be administered by a full time salaried Director, who shall be subject to supervision and direction of the Bureau. Upon passage and approval of this Act the Workmen's Compensation Bureau shall have all of the powers and duties heretofore placed in the Commissioner of Agriculture and Labor in Sub-section 5, 6, 7, 8 and 9 of Chapter 161 of the 1935 Session Laws. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate and administrative unit with respect to personnel, budgets, and duties, except insofar as the Bureau may find that such separation is impracticable because of the small size of the territory served or of the volume of work performed. The Bureau is authorized to appoint, fix the compensation of, and prescribe the duties of the Director of the Unemployment Compensation Division, provided that such appointment shall be made on a non-partisan merit basis, and to appoint, fix the compensation of, and prescribe the duties of the Director of the North Dakota State Employment Service Division in accordance with the provisions of Section 13 of this Act.

§ II. ADMINISTRATION.] (a) Duties and Powers of Bureau. The Bureau shall have power and authority to adopt, amend or rescind such rules and regulations, employ such persons, make such expenditures, require such reports, make such investigations and take such other action as it deems necessary or suitable in the administration of this Act. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the Bureau shall prescribe. The Bureau shall determine its own organization and methods of procedure in accordance with the provisions of this Act and shall have an official seal which shall be judicially noticed. Not later than the 1st day of August of each year, the Bureau 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 Bureau deems proper. Whenever the Bureau believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the Legislature and make recommendations with respect thereto.

(b) Regulations and General Special Rules. General and special rules may be adopted, amended, or rescinded by the Bureau only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or

concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Bureau and shall become effective in the manner and at the time prescribed by the Bureau.

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

(d) Personnel. Subject to other provisions of this Act, the Bureau is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his duties under this Act. The Bureau may delegate to any such person 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 Bureau shall classify positions under this Act and shall establish salary schedules and minimum personnel standards for the positions so classified. He shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examination. No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall be appointed or employed under this Act. The Bureau shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause.

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

(e) Employment Stabilization. The Bureau, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, Counties, School Districts, and the

State, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment 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.

(f) **Records and Reports.** Each employing unit shall keep true and accurate work records containing such information as the Bureau may prescribe. Such records shall be open to inspection and be subject to being copied by the Bureau or its authorized representatives at any reasonable time as often as may be necessary. The Bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Bureau or he deems necessary for the effective administration of this Act. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant, or his legal representative at a hearing before an appeal tribunal or the Bureau shall be supplied with information from such records to the extent necessary for the proper presentation of his claim.

(g) **Oaths and Witnesses.** In the discharge of the duties imposed by this Act, the chairman of an appeal tribunal or any duly authorized representative or member of the Bureau shall have power to administer oaths and affirmations, take depositions, certify to official Acts, and issue a subpoena 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.

(h) **Subpoenas.** In case of contumacy by, or refusal to obey a subpoena issued to any person, any Court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the chairman of an appeal tribunal or the Bureau or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before an appeal tribunal or the Bureau, or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the Court may be punished by said Court as a contempt thereof.

(i) **Protection Against Self-Incrimination.** No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the chairman of an appeal tribunal, the Bureau or any member thereof or any duly authorized representative of the Bureau in any cause

or proceeding before the Bureau on the ground that the testimony or evidence, documentary or otherwise required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or an (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.

(j) State-Federal Co-operation. In the administration of this Act, the Bureau shall co-operate to the fullest extent consistent with the provisions of this Act, with the Social Security Board, created by the Social Security Act, approved August 14, 1935, as amended; shall make such reports in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this Act. Upon request therefor the Bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this Act.

§ 12. RECIPROCAL BENEFIT ARRANGEMENTS.] The Bureau is hereby authorized to enter into arrangements with the appropriate agencies of other States or the Federal Government whereby individuals performing services in this and other States for a single employing unit under circumstances not specifically provided for in Section 2 (h) of this Act or under similar provisions in the unemployment compensation laws of such other States shall be deemed to be engaged in employment performed entirely within this State or within one of such other States and whereby potential rights to benefits accumulated under the unemployment compensation laws of several States or under such a law of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Bureau finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

§ 13. EMPLOYMENT SERVICE.] (a) State Employment Service. The North Dakota State Employment Service is hereby established in the Workmen's Compensation Bureau as a division thereof. The Bureau, through such division, shall establish and main-

tain free public employment offices in such number and in such places as may be necessary for the proper administration of this Act, and for the purpose of performing such duties as are within the purview of the Act of Congress entitled "An Act to Provide for the Establishment of a National Employment System and for Co-operation with the States in the Promotion of Such System, and for Other Purposes," approved June 6, 1933 (48 Stat. 113: U. S. C. Title 29, Sec. 49 (c), as amended. The said division shall be administered by a full time salaried Director, who shall be charged with the duty to co-operate with any official or agency of the United States having powers or duties under the provisions of the said Act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said Act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said Act of Congress, as amended, are hereby accepted by this State, in conformity with Section 4 of said Act, and this State will observe and comply with the requirements thereof. The North Dakota State Employment Service is hereby designated and constituted the agency of this State for the purposes of said Act. The Bureau is directed to appoint the Director, other officers, and employees of the North Dakota State Employment Service. Such appointments shall be made in accordance with regulations prescribed by the Director of the United States Employment Service.

(b) Financing. All moneys received by this State under the said Act of Congress, as amended, shall be paid into the special "Employment Service Account" in the Unemployment Compensation Administration Fund, and said moneys are hereby made available to the North Dakota State Employment Service to be expended as provided by this Section and by said Act of Congress. For the purpose of establishing and maintaining free public employment offices, the Bureau is authorized to enter into agreements with any political sub-division of this State or with any private, non-profit organization and as a part of any such agreement the bureau may accept moneys, services, or quarters as a contribution to the Employment Service account.

§ 14. UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND.] (a) Special Fund. There is hereby created in the State Treasury a special fund to be known as the Unemployment Compensation Administration Fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the Bureau. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this Act, and for no other purpose whatsoever. The fund shall consist of all moneys appropriated by this State, and all moneys received from the United States of America, or any agency thereof, including the Social Security Board and the United States Employment Service, or from any other source, for such purpose. All moneys

in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. Any balances in this fund shall not lapse at any time but shall be continuously available to the Bureau for expenditure consistent with this Act. The State Treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the Unemployment Compensation Administration Fund in an amount to be fixed by the Bureau and in a form prescribed by law or approved by the Attorney General. The premiums for such bond and the premiums for the bond given by the Treasurer of the Unemployment Compensation Fund under Section 3 of this Act, shall be paid from the moneys in the Unemployment Compensation Administration Fund.

(b) Employment Service Account. A special Employment Service account shall be maintained as a part of the Unemployment Compensation Administration Fund for the purpose of maintaining the Public Employment Offices established pursuant to Section 13 of this Act and for the purpose of co-operating with the United States Employment Service. There is hereby appropriated to the Employment Service Account of the Unemployment Compensation Administration Fund, from any money in the State Treasury not otherwise appropriated, \$33,000.00 for the biennium ending June 30, 1939. In addition, there shall be paid into such account the moneys designated in Section 13 (b) of this Act, and such moneys as are apportioned for the purposes of this account from any moneys received by this State under Title III of the Social Security Act, as amended.

#### § 15. COLLECTION OF CONTRIBUTIONS.]

(a) Interest on Past Due Contributions. Contributions unpaid on the date on which they are due and payable, as prescribed by the Bureau, shall bear interest at the rate of one per centum per month from and after such date until payment plus accrued interest is received by the Bureau. Interest collected pursuant to this subsection shall be paid into the Unemployment Compensation Fund.

(b) Collection. If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Bureau and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this Section to collect contributions or interest thereon from an employer shall be heard by the Court at the earliest possible date, and shall be entitled to preference upon the calendar of the Court over all other civil actions except petitions for judicial review under this Act and cases arising under the Workmen's Compensation Law of this State.

(c) Priorities Under Legal Dissolutions or Distributions. In the event of any distribution of an employer's assets pursuant to an

order of any Court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contribution then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than \$250.00 to each claimant, earned within four months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in Section 64 (b) of that Act (U. S. C. Title II, Section 104 (b) as amended.

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

#### § 16. PROTECTION OF RIGHTS AND BENEFITS.]

(a) Waiver of Rights Void. No agreement by any individual to waive, release or commute his rights to benefits or any other rights under this Act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ.

(b) No Assignment of Benefits: Exemptions. No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed.

No waiver of any exemption provided for in this sub-section shall be valid.

(c) **Limitation of Fees.** No individual claiming benefits shall be charged fees of any kind in any proceeding under this Act by the Bureau, its representatives, or by any Court or any officer thereof. Any individual claiming benefits in any proceeding before the Bureau or its representatives or a Court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the Bureau.

§ 17. **PENALTIES.]**

(a) Whoever violates any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars or by imprisonment for not longer than ninety days or both.

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

§ 18. **REPRESENTATION IN COURT.]**

In any civil action to enforce the provisions of this Act the Bureau and the State may be represented by any qualified attorney who is employed by the Bureau and is designated by it for this purpose or at the Bureau's request by the Attorney General.

§ 19. **NON-LIABILITY OF STATE.]** Benefits shall be deemed to be due and payable under this Act only to the extent provided in this Act and to the extent that moneys are available therefor to the credit of the Unemployment Compensation Fund and neither the State nor the Bureau shall be liable for any amount in excess of such sums.

§ 20. **SAVING CLAUSE.]** The Legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Act or by Acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this Act at any time. If for any reasons the excise tax on wages provided for in Title IX of the Social Security Act is held to be invalid by the Supreme Court of the United States or the contributions imposed under this Act are held to be invalid by a Court of last resort, or in case the Social Security Act is repealed, no further contributions shall be collected

under this Act, and no further benefits paid, and any moneys in the Unemployment Compensation Fund shall be refunded without interest and under regulations prescribed by the Bureau to each employer by whom contributions have been paid proportionately to his pro rata share. The tax imposed under this Act shall not be collected for the calendar year 1937 if this Act is not approved by the Social Security Board and the State of North Dakota certified to the Secretary of the Treasury, as provided in Section 902 and 903 of the Social Security Act, previous to July 1, 1937.

§ 21. All Acts or parts of Acts in conflict herewith are hereby repealed.

§ 22. SEPARABILITY OF PROVISIONS.] If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provisions to other persons or circumstances shall not be affected thereby.

§ 23. SHORT TITLE.] This Act shall be known and may be cited as the "North Dakota Unemployment Compensation Law."

§ 24. EMERGENCY.] This Act is declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

Approved March 16, 1937.

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## STATE INSTITUTIONS

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### CHAPTER 233

H. B. No. 107—(Godwin)

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#### COUNTY SETTLEMENTS FOR CLAIMS OF STATE INSTITUTIONS

An Act to amend and re-enact Section 2572a of the 1925 Supplement to the Compiled Laws of North Dakota for 1913, providing for the settlement of the expenses of patients in the Hospital for the Insane, the Institution for the Feeble-Minded and State Tuberculosis Sanatorium, between the various Counties, the State and such institutions, providing for disputed claims, repealing all Acts in conflict therewith, and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] Section 2572a of the 1925 Supplement of the Compiled Laws of North Dakota for 1913 is hereby amended and re-enacted to read as follows: