

EXPENDITURES

The amount paid for school houses, sites and furniture.
The amount paid for apparatus and fixtures.
The amount paid for teacher's wages.
The amount paid for services and expenses of school officers.
The amount paid for redemption of bonds.
The amount paid for interest on bonds.
The amount paid for incidental expenses.
The cash on hand at the close of the school year.

Such report shall include such other items as may be required by the district board, or the Superintendent of Public Instruction, and shall be upon and in conformity with the blanks furnished him for that purpose.

§ 2. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 17, 1941.

SOCIAL SECURITY

CHAPTER 261

S. B. No. 117—(Committee on Insurance)

NORTH DAKOTA UNEMPLOYMENT COMPENSATION ACT

An Act to amend and re-enact Sections 2, 4, 5, 6, 7, 8, 9, 12 and 17, of Chapter 232, Laws of North Dakota for 1937, as amended by Chapter 215, Laws of 1939, the same being known as the North Dakota Unemployment Compensation Law; providing for definitions of the terms used in said Act; providing a definition of agricultural labor; providing for included and excluded services; providing for the payment of contributions into an Unemployment Compensation Fund; providing for contribution rates based upon a system of experience rating; providing for the payment of benefits to unemployed individuals and specifying the amount and duration thereof; providing conditions of eligibility for benefits; providing for the disqualification of individuals under certain circumstances; providing the procedure for making claims for benefits and the determination thereof; providing procedure for appeals; providing for the period, election and termination of coverage for employers; providing for a system of reciprocal arrangements with other States and with the United States; providing penalties for violations of the Unemployment Compensation Law; providing prohibiting the disclosure of information; and providing for the reimbursement of funds in certain circumstances.

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

§ 1. AMENDMENT.] That Section 2 of Chapter 232, Laws of

North Dakota for 1937, as amended by Chapter 215, Laws of North Dakota for 1939, be amended and re-enacted so as to read as follows:

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

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

D. "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 first files a valid claim for benefits and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with Section 6 of this Act shall be deemed a valid claim for the purpose of this subsection if the individual has been paid the wages for insured work required under Section 6 (e) of this Act.

E. "Bureau" means the Board of Commissioners of the Workmen's Compensation Bureau, consisting of three members, appointed for terms of six years.

F. "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, including, 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.

G. "Contributions" means the money payments required by this Act to be made into the North Dakota Unemployment Compensation Fund by any employing unit on account of having individuals in its employ.

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 in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had one or more individuals performing services for it within this State.

(1) All individuals performing services within this State for any employing unit which maintains two or more separate estab-

lishments within this State shall be deemed to be performing services for a single employing unit for all the purposes of this Act.

(2) Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of section 2 (i) of this Act, the employing unit shall for all the purposes of this Act be deemed to employ each individual in the service of each such contractor or subcontractor for each day during which such individual is engaged solely in performing such work; except that each such contractor or subcontractor who is an employer by reason of section 2 (i) of this Act shall alone be liable for the employer's contributions measured by wages to individuals in his service.

(3) Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit shall be deemed to be engaged 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 person, provided the employing unit had actual or constructive knowledge of the work.

I. "Employer" means:

(1) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty different calendar weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year (and for the purpose of this definition if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week), 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; or which required a part of the organization, trade, or business of another which at the time of such acquisition was an employer subject to this Act provided such other would have been an employer under paragraph (1) of this subsection if such part had constituted its entire organization, trade or business.

(3) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit if the employment record of such individual or employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit an employer subject to this Act under paragraph (1) of this subsection; or

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

(5) Any employing unit not an employer by reason of any other paragraph of this subsection for which services in employment are 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 services performed for such employing unit shall constitute employment for the purposes of this Act only to the extent that such services constitute employment with respect to which such Federal tax is payable.

(6) 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

(7) 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.

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

K. (1) "Employment" means any service performed prior to the effective date of this amendment, which was employment as defined in this section prior to such date, and subject to the other provisions of this sub-section, service performed after the effective date of this amendment, 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.

(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; or (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) (a) Services covered by an election pursuant to section 9 of this Act, and

(b) Services covered by an arrangement pursuant to section 12 of this Act between the Bureau and the Agency charged with the administration of any other State or Federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this State, shall be deemed to be employment if the Bureau has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(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 or under any contract of hire shall be deemed to be employment subject to this Act irrespective of whether the common-law relationship of master and servant exists 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—

(a) Agricultural labor as defined in paragraph 8 of this subsection;

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

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

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

(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 twenty-one in the employ of his father or mother;

(f) Service performed in the employ of the United States Government or an instrumentality of the United States exempt under

the Constitution of the United States from the contributions imposed by this Act, except that 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 fund under a State unemployment compensation law, 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 Bureau from the fund in the same manner and within the same period as is provided in Section 15 (d) of this Act with respect to contributions erroneously collected.

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

(II) Service performed in the employ of any other State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more other States or their political subdivisions to the extent that the instrumentality is, with respect to such service exempt 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) (i) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101 of the Federal Internal Revenue Code, if

(a) the remuneration (remuneration) for such service does not exceed \$45, or

(b) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association;

(c) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university.

(ii) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1) of the Federal Internal Revenue Code.

(iii) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (a) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (b) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses.

(iv) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if

(a) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and

(b) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(v) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101 of the Federal Internal Revenue Code, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed \$45 (exclusive of room, board, and tuition);

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

(vii) Service performed 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;

(viii) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service per-

formed by such individual for such person is performed for remuneration solely by way of commission; or

(ix) 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.

(j) Service covered by an arrangement between the Bureau and the Agency charged with the administration of any other State or Federal unemployment compensation 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.

(7) Included and Excluded Service. If the services performed during one-half or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services 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 thirty-one 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 services performed in a pay period by an individual for the person employing him, where any of such service is excepted by section 2 (k) (6) (h).

(8) Agricultural Labor. The term "agricultural labor" includes all service performed—

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting 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.

(b) 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, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of maple sugar or maple sirup or any commodity defined as an agricultural commodity in section 15 (g) of the Federal 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 oper-

ation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(d) 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 and 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 animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

L. "Employment office" means a free public employment office or branch thereof operated by this or any other State as a part of a State-controlled system of public employment offices or by a Federal agency charged with the administration of an unemployment compensation program or free public employment offices.

M. "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.

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

O. "Unemployment." An individual shall be deemed "unemployed" with respect to any week during which he performs no services and with respect to which no wages are payable to him, or with respect to any week of less than fulltime work if the wages payable to him with respect to such week are less than his weekly benefit amount. The Bureau shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the Bureau deems necessary.

P. "Wages" means all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his work from persons other than his employing unit shall be treated as wages received from his employing unit. The reasonable cash value of remuneration 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; provided that the term "wages" shall not include:

(1) For the purposes of Section 4 and of section 6 (e) of this Act, 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, is paid to such individual by such employer with respect to employment occurring during such calendar year and after the First day of January, 1940.

(2) The amount of any payment with respect to services performed after the First day of January, 1940, to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for 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 individual in its employ (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 premiums (or contributions to premiums) paid by his employing unit, 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 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 services with such employing unit:

(3) The payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under section 1400 of the Federal Internal Revenue Code with respect to services performed after July 1, 1941, or

(4) Dismissal payments after July 1, 1941, which the employing unit is not legally required to make.

Q. "Week" means such period of seven consecutive days, as the Bureau may by regulation prescribe. The Bureau may by regulation prescribe that a week shall be deemed to be "in," "within," or "during" that benefit year which includes the greater part of such week.

R. "Weekly Benefit For Unemployment." 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 the wages (if any) 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.

§ 2. AMENDMENT.] That Section 4 of Chapter 232, Laws of

the State of North Dakota for 1937. be amended and re-enacted to read as follows:

§ 4. CONTRIBUTIONS.]

A. PAYMENTS.

(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 for employment. 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 such employer's employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

B. RATE AND BASE OF CONTRIBUTIONS.

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

(a) One and eight-tenth per centum with respect to employment occurring during the calendar year of 1937.

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

(2) Each employer shall pay contributions equal to 2.7 per centum of wages paid by him during the calendar year 1941, and during each calendar year thereafter, with respect to employment occurring after January 1, 1941, except as otherwise provided at subsection (c) of this section.

(3) With respect to employment after December 31, 1941, the percentage shall be 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 paid by him since January 1, 1937. 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.

(2) Benefits paid to an individual 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 wages paid to the individual by such employer bear to the total amount of base-period wages paid to the individual by all his base-period employers.

(3) The standard rate of contributions payable by each employer shall be 2.7 per centum.

(4) No employer's rate shall be reduced below the standard rate for any succeeding calendar year unless and until his account has been chargeable with benefits throughout the 36-consecutive-calendar-month period ending on December 31 of the preceding calendar year.

(5) The Bureau shall, for the year 1942, and each calendar year thereafter, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such benefit experience. Each employer's rate for any calendar year shall be determined on the basis of his record as of January 1 of each succeeding calendar year. If, as of the date such classification of employers is made, the Bureau finds that any employing unit has failed to file any report required in connection therewith, or has filed a report which the Bureau finds incorrect or insufficient, the Bureau shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to the Bureau at the time, and notify the employing unit thereof by registered mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report as the case may be, within fifteen days after the mailing of such notice, the Bureau shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increase but not to reduction, on the basis of subsequently ascertained information.

(6) For the purposes of this subsection 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 Bureau finds that:

(a) 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

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

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

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

(7) Variations from the standard rate of contributions shall be determined in accordance with the following requirements:

(a) If the total of all an employer's contributions paid on or before January 31 of any year subsequent to December 31, 1941, with respect to wages paid by him prior to the first day of January of the preceding calendar year, exceeds the total benefits which

were chargeable to his account and were paid on or before December 31 of said preceding year with respect to weeks of unemployment compensated prior to such first day of January, his contribution rate for the ensuing calendar year shall be:

(i) 2.7 per centum if such excess is less than $7\frac{1}{2}$ per centum of his average annual pay roll:

(ii) 2 per centum if such excess equals or exceeds $7\frac{1}{2}$ per centum but is less than 10 per centum of his average annual pay roll;

(iii) 1 per centum if such excess equals or exceeds 10 per centum of his average annual pay roll.

(b) If the total benefits chargeable against an employer's account for all periods prior to January 1 of the preceding calendar year (including benefits paid on or before such January 1, with respect to weeks of unemployment compensated prior to such January 1), exceeds the total contributions paid by such employer for the same period (including contributions paid on or before January 31 with respect to wages paid prior to January 1 of the same year), his contribution rate for the ensuing calendar year shall be 2.7 per centum.

(c) No employer's rate for the period of twelve months commencing January 1 of any calendar year shall be less than $2\frac{7}{10}$ 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.

(8) As used in this subsection.

(a) The term "annual pay roll" means the total amount of wages for employment paid by an employer during a 12-month period ending on December 31 of any calendar year, and the term "average annual pay roll" means the average of the annual pay rolls of an employer for the last 3 preceding 12-month periods.

(b) the term "base-period wages" means the wages paid to an individual during his base period for insured work;

(c) the term "base-period employers" means the employers by whom an individual was paid his base-period wages.

(9) The Bureau shall promptly notify each employer of his rate of contributions as determined for each ensuing year not later than March 31 of such ensuing year. Such contributions to be computed pursuant to the terms of this section. Such determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to his last known address or in the absence of mailing, with 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth his reasons therefor. If the Bureau grants such

review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to section 8 of this Act except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination or decision or to any other proceedings under this Act in which the character of these services was determined. The employer shall be promptly notified of the Bureau's denial of his application, or of the Bureau's redetermination, both of which shall become final unless within 15 days after the mailing of notice thereof to his last known address or in the absence of mailing, within 15 days after the delivery of such notice, a petition for judicial review is filed in the District Court of Burleigh County. In any proceeding before the Court under the terms of this subsection said proceedings shall be in accordance with the provisions with respect to court review as found at section 8 herein.

§ 3. AMENDMENT.] That Section 5 of Chapter 232, Laws of 1937, as amended by Chapter 215, Laws of North Dakota for 1939, be amended and re-enacted to read as follows:

§ 5. PAYMENT OF BENEFITS.]

A. Beginning twenty-four months after the date when contributions first accrued under this Act, benefits shall become payable from the fund; provided all benefits shall be paid through employment offices in accordance with such regulations as the bureau may prescribe.

B. (1) BENEFIT AMOUNT.] An individual's weekly benefit amount shall be the amount appearing in column B in the table in this subsection on the line on which, in column A of such table, there appear the total wages paid to such individual for insured work in that quarter of his base period in which such total wages were highest.

Column A. Wages earned in highest quarter of base period	Column B Weekly benefit amount	Column C. Qualifying wages in base period	Column D Maximum total benefits in benefit year
\$37.50-130.00	\$5.00	\$150.00	\$80.00
130.01-156.00	6.00	180.00	96.00
156.01-182.00	7.00	210.00	112.00
182.01-208.00	8.00	240.00	128.00
208.01-234.00	9.00	270.00	144.00
234.01-260.00	10.00	300.00	160.00
260.01-286.00	11.00	330.00	176.00
286.01-312.00	12.00	360.00	192.00
312.01-338.00	13.00	390.00	208.00
338.01-364.00	14.00	420.00	224.00
364.01-and over	15.00	450.00	240.00

(2) Weekly Benefit for Unemployment—Each eligible individual who is unemployed with respect to 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 the wages (if any) payable to him with respect to such week which is in excess of \$3. Such benefit, if not a multiple of \$1 shall be computed to the next higher multiple of \$1.

C. Duration of Benefits. Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to 16 times his weekly benefit amount.

D. Notwithstanding any other provisions of this Act the Bureau may by regulation prescribe that the existence of unemployment, eligibility for benefits and the amount of benefits payable shall be determined, in the case of any otherwise eligible claimant who, within a week of unemployment is separated from, or secures, work on a regular attachment basis, for that portion of the week occurring before or after such separation from or securing of work, provided such rules are reasonably calculated to secure general results substantially similar to those provided by this Act with respect to weeks of unemployment.

§ 4. AMENDMENT.] That Section 6 of Chapter 232, Laws of North Dakota for 1937, as amended by Chapter 215, Laws of North Dakota for 1939, be amended and re-enacted to read as follows:

§ 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 made a claim for benefits with respect to such week in accordance with such regulations as the Bureau may prescribe.

(b) He has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the Bureau may prescribe, except that the Bureau may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act; provided that no such regulation shall conflict with Section 5 (a) of this Act.

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

(d) He has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purposes of this subsection:—

(1) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits, provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment.

(2) If benefits have been paid with respect thereto.

(3) Unless the individual was eligible for benefits with respect thereto as provided in sections 5 and 6 of this Act, except for the requirements of this subsection and of subsection (e) of Section 7.

(e) He has during his base period earned wages for insured work equal to not less than thirty times his weekly benefit amount.

§ 5. AMENDMENT.] That Section 7 of Chapter 232, Laws of the State of North Dakota for 1937, as amended by Chapter 215, Laws of North Dakota for 1939, be amended and re-enacted to read as follows:

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

(a) For the week in which he has left his work voluntarily without good cause, and for not more than seven consecutive weeks of unemployment which immediately follow such week as determined according to the circumstances in each case.

(b) For the week in which he has been discharged for misconduct connected with his work and for not more than the ten consecutive weeks of unemployment which immediately follows such week as determined in each case according to the seriousness of the misconduct.

(c) If 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. Such disqualification shall continue for the week in which such failure occurred and for not more than the seven consecutive weeks of unemployment which immediately follow such week as determined according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual and in determining the existence of good cause for voluntarily leaving his work under Subsection (a) of this section, there shall be considered among other factors and in addition to those enumerated in paragraph (2) of this subsection the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, the length of his unemployment, his prospects for obtaining work in his customary occupation, the distance of available work from his residence and prospects for obtaining local work.

(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 it is found that his 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 that—

(1) He is not participating in 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 directly interested in the dispute; provided, 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; and provided further, that there shall not be deemed to be a stoppage of work in any factory, establishment, or other premises unless there shall be a substantial stoppage of work in each of said factory, establishment, or other premises.

(e) For any 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 the State of North Dakota, or any other State, or under a similar law of the United States; or

(3) Primary insurance benefits under Title II of the Social Security Act, as amended, or similar payments under any similar Act of Congress of the United States;

(4) Retirement pensions or other gratuities or bonuses from an employer, paid after termination of employment on account of prior length of service or disability not compensated under the Workmen's Compensation Law of North Dakota.

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. Provided further, that in the case of lump sum payments, as to items (1) and (4) of this subsection, such payment shall be prorated by weeks on the basis of the most recent weekly wage of the individual;

(f) For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another State or of the United States; Provided, that if the appropriate agency of such other State or of the United States finally determines that he is not entitled to such unemployment benefits, this ineligibility condition shall not apply.

(g) For any week of unemployment if such individual is a student. For the purpose of this subsection, the term "student" shall mean an individual registered for full attendance at, and regularly attending, an established school, college or university or has so attended during the most recent school term;

(h) For any week in which he is partially or totally unemployed by reason of a disciplinary suspension of not more than thirty days by his employer for misconduct connected with his employment, and the Bureau so finds;

(i) For any week after the employment of a female individual has been discontinued on account of marriage, but only with respect to wage credits earned prior to her marriage;

(j) For one year succeeding to the day upon which a claimant becomes subject to any of the penalties provided at Section 17 herein; such disqualification to be imposed upon conviction of any of the offenses stated in said Section 17. Should the Bureau, however, have reasonable cause to believe that any of the offenses mentioned in Section 17 of this Act have been committed by any such claimant, it shall, in its discretion, suspend all payments of benefits until the fact with respect thereto has been established:

(k) For the purpose of this Section, the waiting period prescribed in Section 6 (d) this Act shall be required to be served after the expiration of the disqualification herein mentioned.

(1) No action for slander or libel, either civil or criminal, shall

be predicated upon information furnished by any employer to the Unemployment Compensation Division in connection with the imposition of any of the disqualifications hereinbefore set forth;

§ 6. AMENDMENT.] That Section 8 of Chapter 232, Laws of North Dakota for 1937, shall be amended and re-enacted to read as follows:

§ 8. CLAIMS FOR BENEFITS.]

A. Posting of Information. Each employer shall post and maintain in places readily accessible to individuals in his employ printed statements concerning benefit rights, claims for benefits and such other matters relating to the administration of this Act as the Bureau may by regulation prescribe. Each employer shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits when and as the Bureau may by regulation prescribe. Such printed statements and other materials shall be supplied by the Bureau to each employer without cost.

B. Filing of Claim. Claims for benefits shall be made in accordance with such regulations as the Bureau may prescribe.

C. Determinations.

(1) IN GENERAL. A determination upon a claim filed pursuant to section 6 (b) shall be made promptly by an examiner and shall include a statement as to whether and in what amount claimant is entitled to benefits for the weeks with respect to which the determination is made and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under section 5 of this Act, and if so, the first day of the benefit year, his weekly benefit amount, and the maximum total amount of benefits payable to him with respect to such benefit year.

(2) DETERMINATIONS IN LABOR DISPUTE CASES. Whenever any claim involves the application of the provisions of section 7 (d) of this Act, the examiner handling the claim shall, if so directed by the Bureau, promptly transmit such claim to the Appeals Referee for the purpose of making a determination upon the issues involved under that section or upon such claims. The Appeals Referee shall make the determination thereon after such investigation as he deems necessary, and after affording the parties entitled to notice an opportunity for a fair hearing in accordance with the provisions of this section with respect to hearings and determinations of the appeal tribunals. The parties shall be promptly notified of the determination, together with the reasons therefor in the event of denial of the claim, and such determination shall be deemed to be the final decision on the claim, unless within seven days after the mailing of notice to a party's last known address, or, in the absence of such mailing,

within ten days after the delivery of such notice, appeal is filed with the Bureau.

(3) **REDETERMINATIONS.** The Bureau may reconsider a determination whenever it finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to such determination but not considered in connection therewith, have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation of fact, but no such redetermination shall be made after one year from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. If the amount of benefits is increased upon such redetermination an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in this section. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to review in connection with an appeal by the claimant from any determination upon a subsequent claim for benefits which may be affected in amount or duration by such redetermination. Subject to the same limitations and for the same reasons, the Bureau may reconsider the determination in any case in which the final decision has been rendered by the appeal tribunal, or a court, and may issue a revised decision.

In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

(4) **NOTICE OF DETERMINATIONS.** Notice of a determination upon a claim shall be promptly given to the claimant by delivery thereof or by mailing such notice to his last known address. In addition, notice of any determination which involves the application of the provisions of Section 7 of this Act, together with the reasons therefor, shall be promptly given in the same manner to the last employing unit by whom claimant was employed: Provided that the Bureau may dispense with the giving of notice of any determination to any employing unit and such employing unit shall not be entitled to such notice if it has failed to indicate prior to the determination, if and as required by regulation of the Bureau, that such employing unit was claimant's base period employer, as defined in this Act, and that the claimant may be ineligible or disqualified under any provisions of this Act.

D. Appeals.

(1) **APPEAL TRIBUNALS.** To hear and decide appealed claims, the Bureau shall appoint one or more impartial appeal examiners, to be known as the appeal tribunal. Each such tribunal shall consist

of a referee, selected in accordance with the provisions of this Act, or a body composed of three members, one of whom shall be a referee, who shall serve as chairman, and who shall be a salaried full time member of the staff of the Unemployment Compensation Division, and 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 may be selected without regard to section 11 of this Act, and who shall serve at the pleasure of the Bureau and be paid a fee of ten dollars per day of active service on such tribunal plus necessary expenses. 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 or his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(2) **FILING AND HEARING.** The claimant or any other party entitled to notice of a determination as herein provided, may file an appeal from such determination with the appeal tribunal within seven days after the date of mailing of the notice to his last known address or if such notice is not mailed, within seven days after the service of such notice.

Unless the appeal is withdrawn with its permission or is removed to the Bureau, the appeal tribunal, after affording the parties reasonable opportunity for a fair hearing, shall make findings and conclusions and on the basis thereof affirm, modify, or reverse such determination: Provided, however, that whenever an appeal involves a question as to whether services were performed by claimant in employment or for an employer, the tribunal shall give special notice of such issue and of the pendency of the appeal to the employing unit and to the Bureau, both of whom shall thenceforth be parties to the proceeding and be afforded a reasonable opportunity to adduce evidence bearing on such question.

The parties shall be promptly notified of such tribunal's decision and shall be furnished with a copy of the decision and the findings and conclusions in support thereof and such decision shall be final unless, within seven days after the date of mailing of notice thereof to the party's last known address, or in the absence of such mailing, within seven days after the delivery of such notice, further review is initiated pursuant to paragraph (3) of this subsection.

(3) **REVIEW BY THE BUREAU.** The Bureau may, on its own motion, within the time specified in paragraph (2) of this subsection, initiate a review of the decision of the appeal tribunal or may allow an appeal from such decision on application filed within such time by any party entitled to notice of such decision. An appeal filed by such parties shall be allowed as of right if such decision was not unanimous or, if the examiner's determination was not affirmed by the appeal tribunal. Upon review on its own motion or upon ap-

peal, the Bureau may on the basis of the evidence previously submitted in such case, or upon the basis of such additional evidence as it may direct be taken, affirm, modify or reverse the findings and conclusions of the appeal tribunal. The Bureau may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before such appeal tribunal. Any proceeding so removed to the Bureau prior to the completion of a fair hearing shall be heard by said Bureau in accordance with the requirements of this subsection with respect to proceedings (proceedings) before an appeal tribunal. The Bureau shall promptly notify the parties to any proceeding before it of its decision, including its findings and conclusions in support thereof, and such decision shall be final unless within seven days after the mailing of notice thereof to the party's last known address, or, in the absence of such mailing, within seven days after the service of such notice, a proceeding for judicial review is initiated pursuant to paragraph (7) of this subsection: Provided, however, that upon denial by the Bureau of an application for appeal from the decision of the appeal tribunal, the decision of the appeal tribunal shall be deemed to be a decision of the Bureau within the meaning of this paragraph for purposes of judicial review and shall be subject to judicial review within the time and in the manner provided for with respect to decisions of the Bureau, except that the time for initiating such review shall run from the date of notice of the order by the Bureau denying the application for appeal.

(4) PROCEDURE. The Bureau and appeal tribunal shall not be bound by common-law or statutory rules of evidence or by technical rules of procedure, but any hearing or appeal before such tribunals shall be conducted in such manner as to ascertain the substantial rights of the parties. The Bureau shall adopt reasonable regulations governing the manner of filing appeals and the conduct of hearings and appeals, consistent with the provisions of this Act. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings, thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided that in the judgment of the appeal tribunal having jurisdiction of said proceeding, such consolidation would not be prejudicial to any party. No person shall participate on behalf of the Bureau in any case in which he has a direct or indirect interest. A record shall be kept of all testimony and proceedings before the Bureau or in connection with any appeal, but the testimony need not be transcribed unless further review is initiated. Witnesses subpoenaed pursuant to this section shall be allowed fees at the rate specified by law and the fees of such witnesses subpoenaed either by the Bureau or on behalf

of any party to said appeal, shall be deemed part of the expense of administering this Act.

(5) **CONCLUSIVENESS OF DETERMINATIONS AND DECISIONS.** Except insofar as reconsideration of any determination is had under the provisions of subsection (c) of this section, any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal under this subsection which has become final, shall be conclusive for all the purposes of this Act as between the Bureau, the Claimant, and all employing units who had notice of such determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in this section, any determination, redetermination or decision as to rights to benefits shall be conclusive for all the purposes of this Act and shall not be subject to collateral attack by any employing unit, irrespective of notice.

(6) **RULE OF DECISION.** The final decisions of the Bureau or of an appeal tribunal, and the principles of law declared by it in arriving at such decisions, unless expressly or impliedly overruled by a later decision of the Bureau or by a court of competent jurisdiction, shall be binding upon the Bureau and any appeal tribunal in subsequent proceedings which involve similar questions of law, provided, however, that if in connection with any subsequent proceeding the Bureau or an appeal tribunal has serious doubt as to the correctness of any principle so declared he may certify his findings of fact in such case, together with the questions of law involved, to the Bureau, which, after giving notice and reasonable opportunity for hearing upon the law to all parties to such proceeding, shall thereupon certify to the Bureau, or the said appeal tribunal, and such parties its answer to the questions submitted. If the question thus certified to the Bureau arises in connection with a claim for benefits, the Bureau in its discretion may remove to itself the entire proceedings on such claim, and, after proceeding in accordance with the requirements of this subsection with respect to proceedings before an appeal tribunal, shall render its decision upon the entire claim. Any decision made under this paragraph after removal of the proceedings upon a claim to the Bureau, shall have the effect of a decision under paragraph (3) of this subsection and shall be subject to judicial review within the same time and to the same extent.

(7) **JUDICIAL REVIEW.** Within the time specified in paragraph (3) of this subsection, the Bureau, or any party to proceedings before the Bureau, may obtain judicial review thereof by filing in the District Court of Burleigh County a petition for review of such decision and in such proceeding any other party to the proceeding before the Bureau shall be made a party respondent. The petition for review shall be verified and shall state the grounds upon which such review is sought. The Bureau shall be deemed to be a party to any

such proceeding. If the Bureau is a party respondent the petition shall be served upon it by leaving with it, or its chairman, or any other representative as it may designate for that purpose, as many copies of the petition as there are respondents. With its answer, or petition, the Bureau shall certify and file with the court a verified copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the Bureau's findings, conclusions and decision therein. Upon the filing of a petition for review by the Bureau or upon the service of the petition upon it, the Bureau shall forthwith send by registered mail to each other party to the proceeding a copy of such petition, and such mailing shall be deemed to be completed service upon all such parties. In any proceeding under this subsection the findings of the Bureau as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Additional evidence may be received by the court in its discretion. Such proceedings shall be heard by the court and shall be given precedence over all other civil cases except cases arising under the Workmen's Compensation Statute of this State. An appeal may be taken from the decision of the District Court of Burleigh County to the Supreme Court of the State of North Dakota in the same manner, as is otherwise provided by law in civil cases. Upon the final termination of such judicial proceeding, the Bureau shall enter an order in accordance with the mandate of the Court.

(8) REPRESENTATION. The Bureau shall be a party entitled to notice in any proceeding involving a claim for benefits before the Bureau or an appeal tribunal. In any proceeding for judicial review pursuant to paragraph (7) of this subsection the Bureau may be represented by the attorney employed by the Bureau and designated by it for that purpose.

E. PAYMENT OF BENEFITS. Benefits shall be promptly paid in accordance with a determination or redetermination except that, if such determination or redetermination is upon the first claim with respect to a benefit year, or if the record of the proceeding on the claim indicates that a disqualification has been alleged or may exist, such benefits shall not be paid prior to the expiration of the period for appeal. If pursuant to a determination or redetermination benefits are payable in any amount as to which there is no dispute, such amount of benefits shall be promptly paid regardless of any appeal. The commencement of a proceeding for judicial review pursuant to this section shall not operate as a supersedeas or stay unless the Bureau shall so order and the filing of a petition for judicial review shall not authorize the Bureau or any court to direct the denial of any benefits which would have been payable under the Bureau's decision. In the event any benefits are paid to any individual by reason of a determination or redetermination, or decision of an Appeals Tribunal or of the Bureau, or of any court and which said determina-

tion or decision is later reversed, no employer's account shall be charged with such benefits so paid pursuant to such erroneous decision, but benefits shall not be paid for any subsequent weeks of employment involved in such reversal.

F. RECOVERY AND RECOUPMENT. Any person who, by reason of his fraud, has received any sum as benefits under this Act to which he was not entitled shall, in the discretion of the Bureau, be liable to repay such sum to the Bureau for the fund or, if the existence of such fraud has been found by a court of competent jurisdiction or in a redetermination proceeding, to have such sum deducted from any future benefits payable to him under this Act. If any person, other than by reason of his fraud, has received any sum as benefits under this Act to which under a redetermination or decision pursuant to this section, he has been found not entitled, he shall not be liable to repay such sum but shall, in the discretion of the Bureau, be liable to have such sum deducted from any future benefits payable to him with respect to the benefit year current at the time of such receipt; provided, however, that no such recoupment from future benefits shall be had if such sum was received by such person without fault on his part and such recoupment would defeat the purpose of this Act or would be against equity and good conscience. In any case in which under this subsection a claimant is liable to repay to the Bureau any sum for the fund, such sum shall be collectable with interest by civil action in the name of the Bureau, and any interest collected under the terms of this section shall be added to the Unemployment Compensation Benefit Fund of the State of North Dakota.

§ 7. AMENDMENT.] That Section 9 of Chapter 232, Laws of North Dakota for 1937, shall be amended and re-enacted to read as follows:

§ 9. PERIOD, ELECTION AND TERMINATION OF EMPLOYER COVERAGE.

(a) Except as provided in subsection (c) of this section, any employing unit which is or becomes an employer subject to this Act within any calendar year shall be deemed to be an employer during the whole of such calendar year.

(b) Except as otherwise provided in subsection (c) of this Section, an employing unit shall cease to be an employer subject to this Act only as of the first day of January of any calendar year, and only if it files with the Bureau, during 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 calendar week within the preceding calendar year, within which such employing unit employed eight or more individuals in employment subject to this Act. For the purposes of this subsection, the two or more employing units mentioned in paragraph (2) or (3) or (4) of section 2 (I) shall be treated as a single employing unit;

Provided, however, that during January of any calendar year, the Bureau may, on its own motion, file an application for termination of coverage on behalf of any employer who during the preceding year was liable for contributions under the terms of this Act, but who

- (1) has removed from the state;
 - (2) has discontinued the business conducted by them at the time they became liable under the terms of this Act;
 - (3) has become adjudged bankrupt or has become insolvent;
- and, such applications for termination of coverage filed by the Bureau on its own motion, as herein provided, shall be acted upon in exactly the same manner as though said application had been filed by said employer himself.

(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 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 during January of such year 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 with respect to which payments are not required under an employment security law of any other State or of the Federal Government, and which are performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment by an employer 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 1 of any calendar year subsequent to such two calendar years, only if during January of such year such employing unit has filed with the Bureau a written notice to that effect.

§ 8. AMENDMENT.] That Section 12 of Chapter 232, Laws of North Dakota for 1937, as amended by Chapter 215, Laws of North Dakota for 1939, be amended and re-enacted to read as follows:

§ 12: Reciprocal Arrangements.

A.—The Bureau is hereby authorized to enter reciprocal arrangements with appropriate and duly authorized agencies of other states or of the Federal Government or both, whereby:

- (1) Services performed by an individual for a single employing unit, for which services are continually performed in more than

one state, shall be deemed to be services performed entirely within any one of the states:

i—In which any part of such individual's service is performed;
or

ii—In which such individual has his residence; or

iii—In which the employing unit maintains a place of business provided there is in effect as to such services, an election, approved by the agency charged with the administration of such state's Unemployment Compensation Law, pursuant to which all the services performed by such individual for such employing unit, are deemed to be performed entirely within such state;

(2) Potential rights to benefits accumulated under the unemployment compensation 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 Bureau 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 unemployment compensation 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 services 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 services, 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 Bureau finds will be fair and reasonable as to all affected interests; and

(4) Contributions due under this Act with respect to wages for insured work shall for the purposes of Section 15 of 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 unemployment compensation 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 Bureau 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 purpose of sections 5 and 3 of this Act. The Bureau 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 unemployment compensation 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 Bureau is therefore authorized to make such investigations, 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 it deems necessary or appropriate to facilitate the administration of any such unemployment compensation 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 unemployment compensation or public employment service law.

§ 9. AMENDMENT.] That Section 17 of Chapter 232, Laws of North Dakota for 1937 is hereby amended and re-enacted to read as follows:

§ 17. Penalties.]

A. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this Act or under the Unemployment Compensation Law of any State or of the Federal Government, either for himself or for any other person, shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100.00), or by imprisonment for not longer than ninety (90) days, or both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

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 to reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or to reduce any contribution or other payment required from an employing unit under this Act or under the Unemployment Compensation Law of any State or of the Federal Government, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100.00), or by imprisonment for not to exceed ninety (90) days, or by both such fine and imprisonment; and each such false statement or representation

or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

C. Any person who shall willfully violate any provision of this Act or any order, rule, or regulation thereunder, the violation of which is made unlawfully or the observance of which is required under the terms of this Act, and for which a penalty is neither prescribed in this Act nor provided by any other applicable statute, shall be guilty of a misdemeanor and shall be subject to punishment as prescribed at subsection B herein; and each day such violation continues shall be deemed to be a separate offense.

D. If an employee or Appeals Referee, or member of an Appeals Tribunal, or a member of the Workmen's Compensation Bureau, or any employee of said Bureau, in violation of the provisions of Section 25 herein, makes any disclosure of information obtained from any employing unit or individual in the administration of this Act, or if any person who has obtained any list of applicants for work, or of claimants or of recipients of benefits under this Act, shall use or permit the use of such list for any political purpose, he shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100.00), or imprisonment for not longer than ninety (90) days, or both said fine and imprisonment.

§ 10. AMENDMENT.] That Chapter 232, Laws of North Dakota for 1937, as amended by Chapter 215, Laws of 1939, shall be amended by the addition thereto of Section 25, to read as follows:

§ 25. Disclosure of Information.] Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of this Act and determinations 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 Unemployment Compensation Division, 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 Bureau 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 Unemployment Compensation 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, therefore, the Bureau 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 rights to further benefits under this Act. The Bureau 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.

§ 11. AMENDMENT.] That Chapter 232, Laws of North Dakota for 1937, as amended by Chapter 215, Laws of 1939, shall be further amended by the addition thereto of Section 26, which shall read as follows:

§ 26. Reimbursement of Funds.] The State of North Dakota recognizes its obligation to replace and hereby pledges the faith of this State that funds will be provided in the future and applied to the replacement of, any moneys received after July 1, 1941, from the Social Security Board under Title III of the Social Security Act, any unencumbered balances in the Unemployment Compensation Administration Fund as of that date, any moneys thereafter granted to this State pursuant to the provisions of the Wagner-Peyser Act, and any moneys made available by the State or its political subdivisions and matched by such moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, which the Social Security Board finds have, because of any action or contingency been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary for the Social Security Board for the proper administration of this Act. Such moneys shall be promptly replaced by moneys appropriated for such purpose from the general funds of this State to the Unemployment Compensation Administration Fund for Expenditure as provided at Section 14 of this Act. The Bureau shall promptly report to the Governor, and the Governor to the Legislature, the amount required for such replacement. This Section shall not be construed to relieve the State of North Dakota 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.

(b) All monies in the Administration Fund hereinbefore mentioned, received from the United States, or any agency thereof, or which may be appropriated by this State for any of the purposes herein described, shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board of the United States, or any other Agency of the United States succeeding thereto, for the proper and efficient administration of this Act.

(c) Nothing in this Act, or any part thereof, shall be construed to authorize any refund of monies due and payable under the law and regulations in effect at the time such monies were paid.

§ 12. Transition.] Wages payable to an individual for insured work performed prior to January 1, 1941, shall, for the purposes of Section 5 (b) (1), Section 6 (e) and 2 (c) of the Unemployment Compensation Law, as amended by this Act, be deemed to be wages paid within the calendar quarter with respect to which such wages were paid.

§ 13. Repeal.] All Acts or parts of Acts in conflict herewith are hereby repealed.

§ 14. Separability of Provision.] 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.

Approved March 17, 1941.

CHAPTER 262

H. B. No. 258—(Fitch)

UNEMPLOYMENT COMPENSATION TO PERSONS IN MILITARY AND NAVAL SERVICE

An Act Preserving the rights to benefits under the North Dakota Unemployment Compensation Act to persons entering the military or naval service of the United States during the period of such service; repeal; declaring an emergency.

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

§ 1. Notwithstanding any inconsistent provisions of Chapter 232, Laws of 1937, as amended, the benefit rights of trainees, as that term is hereinafter defined, shall be determined in accordance with the following provisions of this Act. Except as herein otherwise provided, all other provisions of Chapter 232, Laws of 1937, as amended, shall continue to be applicable in connection with such benefits.

§ 2. A. The term "military service" as used in this Act, 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 thirty days or less shall not be deemed to be active service in such force during such period.

B. The term "trainee" as used in this Act means an individual who entered military service after October 1, 1940, and who continued such service for not less than sixty consecutive days and whose military service was terminated on or before March 31, 1943.

§ 3. With respect to any trainee, the first benefit year following the termination of his military service, shall be the one year period beginning on the day next following the date of such termination, except as otherwise provided at Section 4 B hereof.

§ 4. A. With respect to a benefit year as defined in Section 3 herein, the base period of a trainee shall be the four completed calendar quarters prior to his entry into military service, plus any uncompleted calendar quarter prior to such entry.

B. With respect to a trainee who had a benefit year current at the time of his entry into the military service, said trainee may at his option either:

(1) Elect to draw the remainder of the benefits to which he was entitled, and in which case the benefit year provided for at Section 3 herein, shall consist of a period commencing with the day after the termination of his military service and continuing for as long a period as the benefit year being served at the time of his entry into service had to run at the time of such entry, or

(2) Elect to commence the benefit year provided for at Section 3 herein, with a base period consisting of the last four completed calendar quarters prior to his entry into the military service, plus any uncompleted calendar quarter prior to such entry; provided, however, that the trainee mentioned in this paragraph electing to begin the new benefit year, as herein provided, shall not have considered in the base period mentioned herein any wage credits heretofore used in computing benefits payable to said trainee prior to his entry into the military service.

§ 5. The provisions of Section 7, Chapter 232, Laws of 1937, shall not be applied to any 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 his entry into such service.

§ 6. The provisions of this Act shall not be construed to waive the requirement for a waiting period, as otherwise provided in Chapter 232, Laws of 1937, as amended, for the payment of benefits, nor any other requirement of Chapter 232, Laws of 1937, as amended, with respect to the filing of claims, except as herein otherwise expressly provided.

§ 7. 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 Section 3 of this Act, until he has exhausted all of his rights to such payments from the United States.

§ 8. All Acts and parts of Acts in conflict herewith are hereby repealed.

§ 9. EMERGENCY.] Inasmuch as an emergency is now declared to exist with respect to persons being inducted into the military service of the United States, this Act shall be in full force and effect from and after its passage and approval.

Approved March 17, 1941.