

THREE ALTERNATE PLANS FOR UNEMPLOYMENT  
COMPENSATION.

N.J. Social Security Commission.

974.90  
U55  
1936g

*n.g.*  
**State of New Jersey**  
**Social Security Commission**

Three Alternate Plans  
for  
**UNEMPLOYMENT COMPENSATION**

To Be Considered  
at a  
**Public Hearing**  
**December 2, 1936**  
10 A. M.

**STATE HOUSE, TRENTON**

974.90  
U55  
1936g  
Copy 3

[You are Viewing an Archived Copy from the New Jersey State Library](#)

# Public Hearing

## December 2, 1936

---

The New Jersey Social Security Commission calls a Public Hearing to be held on the second day of December, 1936, at 10 o'clock (A. M.) at the State House, Trenton, New Jersey, to consider three distinct proposals as to method for meeting the hazards of unemployment. The three proposals are set forth in this pamphlet in separate bills each preceded by a covering statement.

HARRY L. DERBY,  
*Chairman.*

### Memorandum by the Sponsor of Plan A

This Unemployment Compensation Bill is designed to accomplish the following particular objectives:

1. Substantial protection against the hazards of unemployment.
2. Reduction of unemployment.
3. Protection against diversion to other uses of the contributions of each employee and of the employer made on his account, so that the employee may receive them when unemployed.
4. To eliminate the deductions and expenses inherent in Governmental administration of unemployment compensation.
5. To remove the operations of the plan from political control.
6. To afford the fullest possible protection and reward to industrious workers.
7. To avoid discrimination among different kinds of employment.
8. To retain for this State control over employment within this State.
9. To provide a **State** plan which will retain for this **State** control over the conditions of employment and unemployment within this State.
10. To provide a plan so just that its constitutionality will not be open to question.

To accomplish these objectives this Bill provides that all monies paid by the employee under the Law inure to his individual benefit. For each dollar paid by the employee the employer is required to pay one dollar, one-half of which goes directly into the individual employees reserve fund, the other half into the plant fund or pool. When the Law is in full operation, contributions of employer and employee will total substantially 6% of employees wages.

In case of unemployment the employee is to receive a dismissal payment before commencing to draw weekly benefits. Thereafter, weekly benefits continue at the rate of two-thirds of his latest weekly pay (or more in case of low paid employees) until he has exhausted the entire amount which has been deposited by himself and his employer in his reserve account. If at that time the employee is still unemployed, he may draw at the same rate from the employers pool fund until he has drawn twice the amount which has been placed in the fund by the employer incidental to the employment of that particular employee, the maximum amount of such withdrawal from the pool fund during any one period of unemployment for any one person, however, being \$400.

It is estimated that under this plan a man beginning to work at the age of twenty and continuing to work until age of sixty-five at an average rate of \$27.50 per week would then have approximately \$5,500 from which to draw retirement benefits. In the event of his death the accumulated amount in his account would be paid to his named beneficiary or to his estate.

The plan provides that all employees, except those in government employment or under the regulation of the Federal Government, and those in church activities, are included in the plan. It will therefore be



seen that the act is broad enough to include farm and domestic labor, it having been decided that unemployment compensation if desirable for one class of labor is equally so for all others without discrimination.

The proposed plan would operate under the supervision of the State Commissioner of Banking and Insurance and the burden of administration, including collection, accounting, disbursements, transfer and reporting, falls on the employer, with the exception of the employees trust account where the burden falls on the bank as trustee and on the account. All interest and earnings on the trust funds in the employees account would inure to the individual benefit of the employee.

A brief resume of the Act is as follows:

I. PROTECTS STATE AGAINST FUTURE RELIEF CLAIMS  
(Secs. 1 (i), 2, 34).

II. CONTRIBUTIONS.

Substantially equal from employer and employee (Sec. 3).  
Rate of total contributions by employer and employee on graduated scale substantially 6% of pay (Sec. 4).

Employees contribution to be deducted from pay of employee by employer (Sec. 5).

Employers contribution to be paid out of employers money and not out of pay or pay roll (Sec. 6).

Individual employees contribution held for that employee. No pooling (Sec. 7).

Until employees reserve reaches \$20.00 all of employers contribution credited to employee. No pooling (Sec. 8).

When employees reserve over \$20.00 one-half of employers contribution goes to individual employees account. No pooling (Sec. 9).

Other half of employers contribution goes into employers reserve fund (Sec. 9). So far as employer is concerned this does not make him pool his contributions with other employers or anyone else. So far as employees of that employer are concerned this half of employers contribution is pooled for them. (See Section 11 (c)).

When employers reserve equals \$200.00 per employee employer ceases contribution to employers reserve (Sec. 10).

III. BENEFITS.

Source

From accumulated reserve funds.

- (a) From employees reserve.  
Dismissal payment up to \$20.00 (Sec. 11 (a)).  
Balance from employees reserve in weekly installments until exhausted (Sec. 11 (b)).
- (b) Then from employers reserve weekly installments equal in total to two-thirds total weekly withdrawals from employees reserve but not more than \$400.00 and not when employers reserve exhausted (Sec. 11 (c)).

Time of Payment and Rate.

On unemployment or on partial unemployment (Sec. 15 or at age of sixty-five.

After second week, dismissal payment up to \$20.00 (Sec. 1 (a)).

After fourth week weekly installments as follows:

If last pay less than \$10.00 then at rate of last pay. If last pay equal or exceed \$10.00 then \$10.00 or two-thirds last pay, whichever higher (Sec. 11 (b)).

Duration

If employee under sixty-five, until re-employed or refuses re-employment. In any event when reserve exhausted benefits end (Sec. 12, 13).

Death of Employee.

Benefits payable to beneficiary or estate (Sec. 14).

IV. ACCOUNTS.

The collection, accounting, disbursement, transfer and reporting burden and costs fall on the employer (Secs. 5 to 12, 14 to 19, 21 to 23, 26, 27) with exception of employees trust account where burden falls on bank as trustee and on the account. (Secs. 19, 20).

Profits and losses to employees trust account go to employees (Secs. 19, 20).

Profits and losses of employers trust account go to employers reserve (Secs. 22, 23).

Investments limited to savings bank class of securities, not to include any securities issued by particular employer (Sec. 20).

V. COMMISSIONER OF BANKING AND INSURANCE TO SUPERVISE ADMINISTRATION OF ALL ACCOUNTS AND INVESTMENTS. (Secs. 13, 17 to 20, 22 to 25, 27 to 31).

The Commissioner shall report annually to the Legislature (Sec. 33) and shall advise the Governor (Sec. 39, sub-div. 2 and 3).

VI. EXISTING PLANS MAY BE BROUGHT INTO CONFORMITY WITH PROPOSED BILL (Sec. 24).

VII. RESERVE FUNDS PROTECTED AGAINST EMPLOYERS DEFAULT IN ADMINISTRATION (Sec. 30 to 32).

Assignment (Sec. 25).

Taxation (Sec. 35).

Attachment, execution, etc. (Sec. 35).

VIII. UNCONSTITUTIONALITY OF PART OF ACT NOT TO EFFECT WHOLE ACT. (Sec. 36).

IX. APPROPRIATION (Sec. 37).

X. WHEN ACT BECOMES COMPULSORY.

The Act becomes immediately effective for voluntary compliance (Sec. 38).

The Act becomes compulsory when the Federal unemployment compensation and old age benefits provisions are voided and New York, Connecticut, Pennsylvania, Delaware and Maryland impose similar burdens on pay and pay roll in respect of occupations not of an intermittent or seasonal character (Sec. 39).

## PROPOSED PLAN A

AN ACT FOR THE PROTECTION OF THE STATE OF NEW JERSEY AGAINST FUTURE DEMANDS FOR RELIEF OF INDIGENCY BY REQUIRING EMPLOYERS AND EMPLOYEES TO ARRANGE FOR AND PROVIDE RESERVES AND BY OTHER MEANS.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey.

SECTION 1. Definitions: As used in this act, the following words and phrases shall have the meaning defined in this section unless the context requires that a different meaning be attributed to them.

(a) The words "reserve account" mean the separate individual and special book account to be opened by each employer for each of his employees.

(b) The words "reserve funds" include the employees deposit account, the employees trust account, the employers deposit account and the employers trust account.

(c) The words "employees deposit account" mean the deposit account to be opened by each employer for his employees in the name of that employer with any banking institution located in this State and which is an insured bank within the meaning of the Act of Congress providing for the Federal Deposit Insurance Corporation.

(d) The words "employees trust account" mean the trust account to be opened by each employer for his employees in the name of that employer when and as required by this act with a banking institution located in this State authorized to act as trustee of funds and securities deposited or lodged with it.

(e) The words "employers deposit account" mean the deposit account to be opened by each employer in the name of that employer with any banking institution located in this State and which is an insured bank within the meaning of the Act of Congress providing for the Federal Deposit Insurance Corporation.

(f) The words "employers trust account" mean the trust account to be opened by each employer in the name of that employer when and as required by this act with a banking institution located in this State authorized to act as trustee of funds and securities deposited or lodged with it.

(g) The words "contract of employment" shall include only contracts between employer and employees for employment as defined and limited by this act and shall not be construed as permitting the making of any contract containing, or the inclusion in any contract, of, any provision prohibited by any law of this State.

(h) The word "employer" includes only any person, firm, partnership, association or corporation entering into a contract for work, labor or services to be performed in the course of employment as defined in this act except the following:

- (1) The United States of America and its officers, departments, agencies and governmental instrumentalities.
- (2) The representative of a foreign sovereignty enjoying diplomatic immunity but only to the extent to which that diplomatic immunity reaches.
- (3) Churches and religious organizations; but this exception shall not apply to the secular, charitable or eleemosynary activities of churches and religious organizations.
- (4) Any State of the United States not being the State of New Jersey and the counties, municipalities, officers, departments, agencies and governmental instrumentalities of such State of the United States.
- (5) The State of New Jersey and its counties, municipalities, officers, departments, agencies and governmental instrumentalities.

(i) The word "employee" includes natural persons under sixty-five years of age, in employment as defined in this act, who shall have worked in employment, as defined

in this act for one employer at least a total of eighty hours in four consecutive weeks of work for that employer and also the employer of such employees if the employer be a natural person under sixty-five years of age.

(j) The word "employment" shall include only the performance within the State of New Jersey (or the performance outside of the State of New Jersey in a place where no tax or deduction or imposition is levied on pay roll or wages to provide benefits to such employee or his dependents in case of his death, unemployment or old age, in pursuance of a contract made within the State of New Jersey providing that wages thereunder be paid in or from this State) of work, labor or services for an employer as defined in this act where the employer retains the control and determination not only of the results to be accomplished but also of the means or methods to be used in the course of such work, labor or services.

(k) The word "pay" means the amount of money paid directly or indirectly by an employer to an employee as compensation for employment.

(l) The words "pay roll" mean the total amount of money paid directly or indirectly by an employer to all of his employees engaged in the same undertaking or activity as compensation for their employment.

(m) The word "month" means the calendar month.

(n) The word "week" means the calendar week.

(o) The word "year" means the calendar year.

SECTION 2. Every contract of employment hereafter made shall be deemed to contain provisions for the protection of the State of New Jersey against future demands for relief of indigency resulting from death, old age or involuntary unemployment, of natural persons to the extent of and subject to the provisions and limitations of this act.

SECTION 3. Except as otherwise provided in this act, each employer and all of his employees shall contribute equally to the reserve funds.

SECTION 4. The maximum total contribution of both employer and employee to the reserve funds in respect of



each employee from and after the calendar month in which this law becomes compulsory shall be not less than sixty cents per week and shall exceed that amount when the current weekly rate of pay exceeds ten dollars as follows:

In excess of \$10.00	weekly contribution	\$0.80
" " " 16.00	" "	1.20
" " " 22.00	" "	1.60
" " " 30.00	" "	2.00
" " " 40.00	" "	2.60
" " " 50.00	" "	3.40
" " " 60.00	" "	4.00

No weekly contribution in respect of one employee shall exceed four dollars:

SECTION 5. The employees contribution shall be deducted from his pay by his employer.

SECTION 6. The employers contribution shall be made by the employer but shall not be taken from pay or pay roll.

SECTION 7. The entire amount of each employees contribution shall at all times be credited to that employees reserve account and deposited in the employees deposit account.

SECTION 8. Whenever and as long as credit balance in an employees reserve account does not exceed twenty dollars the employers entire contribution based on that employees pay shall be credited to the reserve account of that employee and deposited in the employees deposit account.

SECTION 9. Whenever and as long as the credit balance in an employees reserve account exceeds twenty dollars one-half of the employers contribution based on that employees pay shall be credited to the reserve account of that employee and deposited in the employees deposit account and the other half of the employers contribution shall be deposited in the employers deposit account.

SECTION 10. At any time or times when the employer shall have in the employers deposit account and in the employers trust account a balance of two hundred dollars for

each employee then in his employ, the employer shall not make contribution to the employers deposit account.

SECTION 11. After the week in which an employee shall arrive at the age of sixty-five years or cease to be employed for any cause other than the death of the employee, the employee shall be entitled to be paid, subject to the conditions stated in Sections 12 and 13, on demand of the employee, at the following times and rates:

- (a) From the employees deposit account after the second full week of unemployment the balance of his reserve account not to exceed twenty dollars and if said reserve account does not exceed twenty dollars such payment shall be the total payment due such employee.
- (b) From the employees deposit account after the fourth full week of unemployment and so long as his reserve account shall not be exhausted a weekly payment determined as follows: If the amount of pay payable in the last weeks of employment not to exceed the four last weeks of employment averages less than ten dollars per week then the full amount of such average pay. If said average pay equal or exceed ten dollars per week then ten dollars per week or two-thirds of the average pay whichever sum is higher.
- (c) If and when the reserve account of the employee is exhausted, weekly payments shall be made from the employers deposit account at the rate at which they have been paid under paragraph (b) above. Such weekly payments shall continue until they total the lesser of the two following amounts unless the employers deposit account is sooner exhausted, (1) the equivalent of two-thirds of the excess of the employees reserve account above twenty dollars at the time when employment ceased or the employee became sixty-five years of age, or (2) the sum of four hundred dollars.

SECTION 12. When an employee, being under sixty-five years of age and unemployed, becomes re-employed and is earning pay equal to or in excess of benefits under this act, or where such unemployed employee has been offered and refused employment, as provided in Section 14, such employee shall be entitled to no further benefits because of such unemployment.

SECTION 13. When an employee, under sixty-five years of age, shall cease being employed for any cause other than the death of the employee, the employer shall notify the Commissioner and also the Department of Labor. The Department of Labor, if it shall be advised of any opportunity for employment within this State of a nature which the employee is physically capable of performing, at a rate of pay equal to three-quarters of the rate of pay averaged over the last weeks of employment not to exceed four of that employee and within fifteen miles of the last place of employment and not with the last employer and not where a strike is pending against the offering employer, shall immediately notify the unemployed employee by mail or otherwise and the prospective employer and if such employee shall fail to apply for such employment within twenty-four hours of receiving notice or having applied shall decline such employment, the Department of Labor shall so notify the Commissioner who shall prohibit the payment of further unemployment benefits to that employee and notify that employee to appear at a day and place specified to show cause why such prohibition should not be continued during that period of unemployment. If notification or knowledge to like effect shall come to the Commissioner from a source other than the Department of Labor the Commissioner shall take similar action.

SECTION 14. The employee may designate a beneficiary or beneficiaries and may from time to time change the same by notice in writing to his employer and the employer shall enter upon the reserve account of that employee the name or names of the beneficiaries. In the event that the employee die at any time while there is a balance in his reserve account, such balance shall be paid in a lump

sum to the beneficiary or beneficiaries if living and if none be living then to the estate of the employee.

SECTION 15. An employee working for an employer who, in any four consecutive weeks, shall not have worked for that employer for a total of at least eighty hours may, for the purposes of benefit under this act, consider himself to be unemployed and may demand benefits as an unemployed person.

SECTION 16. Benefits payable under this act shall be payable by checks signed by the employer except as otherwise provided in this act.

SECTION 17. Each employer shall open a reserve account in the name of and for each employee and shall credit therein all deposits made, on account of that employee, in the employees deposit account and also, when ordered by the Commissioner, a pro rata part of the net earnings of the employees trust account. The employer shall debit such account with all sums paid to the employee or his beneficiaries, and on transfer to another employer, and also, when ordered by the Commissioner, a pro rata part of the net losses of the employees trust account. No other debits or credits shall be entered in a reserve account. In respect of each employer and subject to adjustment by order of the Commissioner, the total of the reserve accounts must balance the total of the employees deposit account or accounts and the employees trust account.

SECTION 18. Each employer shall open in the employers name an employees deposit account. The Commissioner may order the employer to open several employees deposit accounts in different localities to serve the convenience of employees of that employer there working. The employer shall deposit in the employees deposit account all employee contributions and employee contributions shall not be deposited in any other account whatsoever. The employer shall also deposit in the employees deposit account such part of the employers contributions as is required by this act. Money shall be withdrawn from an employees deposit account by checks signed by the employer for the following purposes only, (1) to make payment in pursuance of this act to an employee or his bene-



ficiaries, (2) to transfer funds to the employees trust account, (3) to transfer an employees interest in the employees deposit account and employees trust account from a former employer to the employees deposit account maintained by the current employer, (4) to transfer funds out of this State in pursuance of this act. If the Commissioner shall conclude that, because of the death or insolvency of the employer or for any other cause, it will facilitate the conservation or proper disbursement of any employees deposit account he may, by written notice to the banking institution where such account is lodged, suspend the authority of the employer to draw upon the employees deposit account and himself exercise that authority so long as he, in his judgment, shall determine advisable. Each employer shall report at least once in each year to the Commissioner as of such date as the Commissioner may determine in respect of each employer and oftener if the Commissioner shall so require, giving a statement in detail of the reserve accounts and employee deposit account of that employer and his employees, and said reserve accounts and said employee deposit account shall be subject at any and all times to examination by the Commissioner and the cost of such examination shall be chargeable against the employer.

SECTION 19. Each employer shall open an employees trust account with such banking institution or institutions located in this State as are now or may hereafter be (in respect of such accounts) subject to the supervision and control of the Commissioner. The trustee of that account shall be the banking institution with which the account is opened. When the employees deposit account shall equal or exceed two thousand dollars the employer shall transfer to the employees trust account such sum as will not reduce the employees deposit account below one thousand dollars. Each of such accounts shall be considered for the purpose of investment, income, profits and losses as a unit. The property, assets and investments of each employees trust account shall be segregated from all other property, assets and investments and be kept within this State subject at all times to examination by the Commissioner.

SECTION 20. The trustee of an employees trust account shall, subject to the direction and control of the Commissioner, invest, re-invest and liquidate such trust account, provided, however, that the Commissioner shall not authorize investment in any security not authorized for savings banks in this State nor in any security in respect of which the employer opening such account or the property of that employer is obligated as maker, endorser, guarantor, security or otherwise. The trustee of the employees trust account shall report at least once in each year to the Commissioner as of such date as the Commissioner may determine in respect of each such account and oftener if the Commissioner shall so require, giving a statement in detail of the income, assets and disbursements of such trust account and such employees trust account shall be subject at any and all times to examination by the Commissioner and the cost of such examination shall be chargeable against such trust account. The Commissioner shall, in respect of any employees trust account, from time to time determine the investment income, profit and loss and in so doing may from time to time adopt any basis for the valuation of securities held in such trust account as to the Commissioner may seem best adapted to show the true value of such assets. The Commissioner having determined the amount of increase or decrease in such account, due to investment, income, profit or loss and valuation profit or loss, shall fix the percentage thereof and notify the employer who shall thereupon apply said percentage as a credit or debit on the balance of each reserve account then on the books of that employer. The Commissioner shall make like determination in respect of each employers trust account and notify the employer who shall enter the amount thereof in such account. On demand of any employer or on his own motion the Commissioner may, from time to time, order the transfer from the employees trust account to the employees deposit account of money necessary to meet withdrawals from such deposit account and may designate the securities to be liquidated in order to furnish such funds for transfer.

SECTION 21. Each employer shall open in the employers name an employers deposit account. The employer shall deposit in the employers deposit account such part of the employers contributions as is required by this act.

SECTION 22. Each employer shall open an employers trust account with such banking institution or institutions located in this State as are now or may hereafter be, in respect of such accounts, subject to the supervision and control of the Commissioner. The trustee of the employers trust account shall be the employer. The employer at his option may appoint the banking institution co-trustee. When the employers deposit account shall equal or exceed two thousand dollars the employer shall transfer to the employers trust account such sum as will not reduce the employers deposit account below one thousand dollars. Each of such accounts shall be considered for the purposes of investment, income, profits and losses as a unit. The property, assets and investments of each employers trust account shall be segregated from all other property, assets and investments and shall be kept within this State subject at all times to examination by the Commissioner and the cost of examination of the employers deposit account and the employers trust account shall be borne by the employer. The employers deposit account and the employers trust account shall be subject to like control by the Commissioner as are the employees deposit account and the employees trust account.

SECTION 23. If at any time the total balance in the employers deposit account and the employers trust account shall exceed the sum of two hundred dollars for each employee then in the employ of that employer and each former employee who has left his employ and not become employed by another employer, the employer in whose name such accounts stand may, on proof of such conditions to the Commissioner and with the Commissioner's consent, withdraw such excess to the sole use of such employer.

SECTION 24. An employer or an organization of employees which has in operation an arrangement whereby employees, as defined in this act, are guaranteed employ-

ment or they or their beneficiaries may receive benefits in case of death, old age or involuntary unemployment and who may desire to bring such arrangement into conformity with this act so that the double burden of carrying on such arrangement and conforming to this act may be lessened or avoided, may submit to the Commissioner the details of such arrangement as applicable to work, labor or services coming within this act, together with a plan for the alteration of such arrangement so as to conform to this act. Such plan shall provide for the opening of reserve accounts and may or may not provide for the transfer of the whole or any part of the assets of the arrangement or of other assets to deposit accounts and trust account and the allocation of those assets to reserve accounts of individual employees in conformity with this act.

SECTION 25. Except as otherwise provided in this act, no assignment, pledge, transfer or contract to transfer made by any employer, employee or beneficiary of any right, title or interest, present or future, in and to any reserve account, deposit account or trust account, or the proceeds thereof shall be valid and enforceable unless such assignment, pledge, transfer, or contract to transfer shall have been approved by the Commissioner. He shall not give such approval unless he is satisfied that such assignment, pledge, transfer or contract to transfer is in the interest of the employee or beneficiary and is to a public institution or instrumentality of the State or to a private, charitable or eleemosynary organization located in this State and not operated for the profit of any private individual.

SECTION 26. When an employee shall have ceased to be in the employ of his last former employer and have been for four weeks currently in the employ of another employer, as defined in this act, and shall have worked during such four weeks a total of at least eighty hours, the current employer shall notify the former employer. The former employer shall send to the current employer the reserve account of the employee or a copy thereof and if the reserve account show a credit balance to such employee the former employer shall remit the amount thereof from



the employees deposit account to the current employer who shall deposit the same in the employees deposit account standing in the name of the current employer whereupon all obligation of the former employer under this act in respect of that employee shall cease.

SECTION 27. When an unemployed employee shall not be settled within this State and the beneficiary named by that employee is not settled within this State, the employer if he be living or the beneficiary if the employee be dead may apply to the Commissioner for order directing the payment in a lump sum to the employee or to the beneficiary of the credit balance, if any, shown by the reserve account of the employee and if the Commissioner is satisfied that the applicant is the proper party he shall order such payment and upon making the same the employer shall be freed of all future obligations under this act in respect of that employee.

SECTION 28. The Commissioner, upon application to him by any employer or any employee, shall determine any disputes which may arise as to the administration of this act in which the applicant may have an interest.

SECTION 29. The Commissioner may refer any matter coming to him in pursuance of this act for investigation and recommendation to anyone connected with his department.

SECTION 30. If the Commissioner shall have cause to believe that the credits or deposits required by this act are not being made in any reserve, deposit or trust account or that monies are being improperly withdrawn from any deposit or trust account, the Commissioner is authorized to call upon the employer or trustee to make good such deficiency of deposit or excess of withdrawal and if the employer or trustee shall fail so to do the Commissioner shall institute action in his own name as Commissioner for the benefit of the deposit or trust account and the net proceeds of such action shall be deposited in such account.

SECTION 31. When this act shall have become compulsory in respect of any particular occupation and an employer shall wilfully fail or knowingly omit to perform his obligation under this act in respect of such occupation

and when the Commissioner shall certify to the Attorney General that in his opinion such situation exists, the Attorney General shall apply for and the Court of Chancery of New Jersey is empowered to grant an injunction restraining such employer from employing any or any specified persons in such occupation in this State.

SECTION 32. Any employer and any officer, agent or employee acting on behalf of such employer or on his own behalf who shall have made any deposit in an account or shall have made any deduction from the pay of any employee for the purpose of making a deposit in such account and who shall fail to segregate the sum in a separate and identifiable fund, or who, having done so shall divert or assist in or knowingly permit the diversion of any part of any such fund contrary to the provisions of this act, shall be guilty of a misdemeanor.

SECTION 33. The Commissioner shall report annually to the Legislature as to his administration of this act and as to any alterations in or additions to this act which he may deem necessary or advisable. The Commissioner of Labor shall report annually to the Legislature as to the effect of this act upon employment in this State.

SECTION 34. Neither this State nor any of its counties, municipalities, officers, departments or agencies shall give any relief on account of indigency, old age or unemployment, to any person receiving benefits under this act except to the extent that such relief benefits would (were it not for benefits payable under this act) exceed one-half of the benefits payable under this act to that person.

SECTION 35. The monies from the time when they are set aside in a separate and identifiable fund and all personal property, whether tangible or intangible, being a part of any deposit account or trust account and the income therefrom and the rights of employers, employees and beneficiaries in or in respect of any such monies, property and income, and the payments to any employee or beneficiary and the receipt thereof by any employee or beneficiary are declared to be instrumentalities of the State of New Jersey for the protection of the State against claims for the relief of indigency and such instrumentalities shall



be free and immune except as otherwise provided in this act from any and all taxes, excises, impositions, liens, charges or claims of whatsoever nature by or under the authority of the United States or of this State and such monies, rights, personal property and credits shall be free and immune from attachment, judgment, order, decree, levy or execution at the suit of any person claiming right thereto because of any claim or assignment or as a creditor of any employer or employee or otherwise. In case of the insolvency of an employer, monies set aside in a separate and identifiable fund and in any deposit or trust account shall be no part of the insolvent's estate. Deductions from pay which have accrued but have not been so set aside shall be considered as unpaid wages and shall be entitled to the same preference as unpaid wages.

SECTION 36. If any of the provisions of this act or the application thereof to any person or circumstance is held invalid on a ground not reaching other provisions, persons and circumstances, the remainder of the act and application of such provisions to other person or circumstances shall not be affected thereby except to the extent that such ground reaches such other person or circumstances. If this State or any department or officer thereof is a party to any litigation wherein the constitutional validity of this act is in any way questioned, neither the State, the department nor the officer shall interpose any objection, tending to delay or defeat the prompt, full and final determination of such constitutional question on its merits.

SECTION 37. There is hereby appropriated for the purposes of this act the sum of \$. . . . . to be paid by the treasurer of the State of New Jersey on warrant of the comptroller of the State of New Jersey from time to time only on certificate of the Commissioner that the same is currently needed to carry out the purposes of this act.

SECTION 38. This act shall take effect immediately for the purposes of voluntary compliance and may take effect later as a compulsory act requiring compliance. Voluntary compliance shall be deemed to have taken place where the employer and the individual employee agree to come under this act and the employer shall have opened

a reserve account for the employee and an employees deposit account and made deposit therein.

SECTION 39. This act shall become compulsory in respect of a particular occupation when all of the following conditions shall exist in respect of that occupation and the Governor shall have so proclaimed.

- (1) The Attorney General of this State shall have certified to the Governor that neither the pay of the employee nor the pay roll of the employer nor employing nor being employed in that occupation is the object of taxation or imposition designated in an Act of the Congress of the United States which Act stands unrepealed by the Congress or which taxation has not been declared unconstitutional by the Supreme Court of the United States.
- (2) The Commissioner shall have certified to the Governor that the States of New York, Connecticut, Pennsylvania, Delaware and Maryland have each imposed by law on employment in that occupation a burden for the purpose of providing reserves or insurance against the hazards of natural persons, engaged in such occupation, caused by involuntary unemployment, death or old age or one or more of such hazards which burden is, in respect of employment in such occupation, at least as heavy as the burden contemplated by this act in respect of such occupation.
- (3) The Commissioner shall have certified to the Governor that the occupation is not of such an intermittent or seasonal character that in his opinion more than 50% of the reserve accounts issued to employees therein would lapse in their first year because withdrawals would entirely deplete deposits.

SECTION 40. All acts and parts of acts inconsistent with this act are, to the extent of such inconsistency, repealed.

## Memorandum by the Sponsor of Plan B

### A New Jersey Employment Stabilization Law Providing for Unemployment Compensation

This plan for unemployment compensation would without question be approved by the Federal Social Security Board as it follows in essential particulars operating methods which have already met with the approval of the Federal Social Security Board when submitted by other states.

It has some of the characteristics of the so-called Indiana Plan in that it takes advantage of the two principal methods of conserving reserves, namely: (1) the employer reserve plan which, under the proposal, will receive contributions paid by the employers only; and (2) the State pool which will receive the contributions paid by the employees plus one-sixth of the employers' contributions.

This plan is predicated upon the proposition that the unemployment compensation as a social insurance method is still in an experimental stage and that any measures taken at this time in this field must be subject to the test of actual administration and subject to amendment from time to time in the light of administrative experience.

Furthermore, this plan recognizes that the hazards of unemployment in a highly industrialized state are such that periods of acute unemployment occurring at periodic intervals are unavoidable. This being so, it is believed to be necessary, from the standpoint of good public policy, to provide for meeting periods of unemployment through a plan based on the social insurance principle, namely, by the saving of contributions during periods of employment to assist in meeting the first shocks of unemployment. It is recognized that, on the basis of anything we know up to this time as to the value of unemployment benefits, they are primarily of value in meeting the ordinary emergencies of industrial lay-off and periodic unemployment. It is doubtful, particularly in the light of the experience of other countries, whether any unemployment compensation plan is likely to be adequate in severe depressional periods; in such times it will probably be necessary to provide for extended benefits based on a "means" test from general Treasury funds.

Adequate statistics on which to base estimates of the number of persons likely to be affected and an accurate estimate of the cost of any plan are frankly unavailable. The only way to obtain reliable statistics would be to make a beginning with a practical unemployment compensation plan. The length and severity of depressions are unpredictable except that we know that periods of excessive economic activity will be followed by reactions which are of proportionate severity and duration.

Plan B is based on the following considerations:

1. That the source of funds for a system of unemployment reserves in this State shall be in some part contributions by the employer in the form of a payroll tax.

2. That the source of funds for a system of unemployment reserves in this State shall be in some part contributions by workers eligible for benefits in the form of a tax on wage incomes received in eligible employments.

3. That the reserves accumulated under a system of unemployment compensation in this State shall be held in part in individual employer reserve accounts available for the payment of benefits in proper amounts and duration to all eligible persons; and further that reserves be held in part in a central pool for purpose of further protection and distribution of risks.

4. That such records of unemployment experience of individual employers of the State shall be maintained under the employment compensation system as are necessary for a later revision of the tentative merit rating provisions to be set up in the law, so that after some experience the Legislature may provide for readjustment of specific rates if this is deemed advisable.

5. That in order to establish the system of unemployment compensation in this State on a conservative basis and to withhold a reasonably large proportion of the reserves for distribution in benefits in times of depressional unemployment, the following provisions shall be embodied in the plan:

(a) The waiting period before benefits are paid to an eligible individual should be not less than four weeks within any period of fifty-two weeks.

(b) The maximum number of ordinary weekly benefits paid to an eligible individual should be not more than sixteen in any period of fifty-two weeks.

(c) The maximum ratio of ordinary benefits received to contributions paid in the case of any eligible individual shall be not higher than one week of benefits to four weeks of contributions paid during the preceding one hundred and four weeks.

(d) The maximum weekly rate of benefits paid to any eligible individual shall be not higher than fifteen dollars.

(e) An employee to be eligible for unemployment compensation shall have earned a minimum of \$200 within the preceding four completed calendar quarters.

6. That the system provide for the payment of additional benefits to an eligible individual in no greater ratio than one week of benefit to twenty weeks of contribution (against which no benefits have been debited) within the preceding 260 weeks; provided that not more than ten weeks of additional benefits be paid to any individual within any period of fifty-two weeks.

7. (a) That the charge for the administration of the unemployment compensation system in the State deductible from the contributions of the State, employers, and employees be limited to three-tenths of one per cent of the payrolls covered by the payroll tax proposed.

(b) That such additional costs as may be necessary for efficient administration be met by appropriations by the State from time to time.

#### ESTIMATED COSTS

For purposes of illustration, the following schedules of contributions are suggested:

	1936	1937	1938
Employers (payroll tax) .....	1%	2%	3%
Workers (wage tax) .....	none	1%	1½%
Total (percentage of taxable payroll)....	1%	3%	4.5%

#### Minimum estimated income derived\*:

	1936	1937	1938
Employer .....	\$10,000,000	\$20,000,000	\$30,000,000
Workers .....	.....	10,000,000	15,000,000
Total .....	\$10,000,000	\$30,000,000	\$45,000,000

\*Based on statistics compiled by Social Security Board for the current year. Income for succeeding years will vary with the level of employment activity and wages paid.



## ADMINISTRATIVE PLAN

Administration would be delegated to a board of seven citizens serving without salary and appointed for terms of seven years each by the Governor without regard to political affiliation. The first appointments would be for terms ranging from one to seven years so that one member's term would expire each year. Membership on the board should include at least three representatives of employer groups and at least three representatives of employee groups.

The Board should be empowered to fix the salary of and appoint a Commissioner who in turn would appoint members of his staff from Civil Service eligible lists.

Other duties of the board would be the establishment of general policies, approval of executive acts, etc. It would also function as an advisory body in connection with the general administration of the unemployment compensation plan and would become a final appeals tribunal empowered to review findings of the Commissioner in cases of dispute.

## WEEKLY BENEFITS VARY WITH ACTUAL EARNINGS

This bill proposes a weekly benefit varying with actual earnings; the duration of total unemployment benefits however would be fixed. Under the method proposed the weekly amount of benefits would be say 1% of the actual earnings in the preceding year. The duration would be set as for example 16 weeks of total unemployment benefits, or a corresponding amount (16% of the year's pay) for partial unemployment or total and partial unemployment benefits.

This is proposed on the theory that weekly benefits should be related to the actual average earnings over a period of time sufficiently extended to be fairly indicative of the employee's standard of living or contribution to the income of a family group. 1% of a year's pay was chosen as it is approximately 50% of average weekly income, which appears to be the generally accepted ratio in most States. The period was chosen as a year to eliminate seasonal variations, and the year is defined as the last four completed calendar quarters for economy of administration. The duration of ordinary unemployment benefits is the same for all who qualify for benefits, regardless of their past employment.

If it were desired the weekly amount can easily be increased under the proposal.

## ACHIEVES ECONOMY IN ADMINISTRATION

There is a strong argument from the standpoint of administration, simplicity, and economy, in favor of the method that this bill proposes. The ease of calculating weekly amount and duration is of special value when compared with other plans which have been proposed. There is no necessity for the employer to maintain a record of hours, days, or weeks worked, or to determine full time or normal working schedules. It is possible for the employee to compute or verify his own weekly benefit. Where as in Plan B, separate employer reserves are maintained, or provision made for records which will lead to merit rating, the charging of benefits against the reserve accounts of employers is relatively simple. Consider the importance of this one administrative device in the light of the fact that hundreds of thousands of transactions and individuals will be involved.

Moreover the data required from employers is greatly simplified. The total actual earnings for each of the four quarter-years preceding the lay-off is the only information required. These reports can be copied by the employer from data of actual wages which must be compiled by him for the old-age benefit section of the Federal Act. This would

represent a considerable saving for the administration and for the employers of the State. The value of this device should not be overlooked.

The organization necessary to establish "full-time earnings" and to handle the numerous controversies which no doubt would result from such a provision is eliminated. This avoids not only the cost of more elaborate administration but also eliminates the possibility of much ill will and constant friction which seems likely to be experienced under other proposed unemployment laws. The experience of companies which have based plans for benefits, pensions, or insurance on "full-time earnings" has shown that such a basis is unsatisfactory, and results in many "headaches."

The relative speed and accuracy of calculating benefits under this proposed plan is worthy of special consideration.

A large portion of the problem of handling part-time workers and "floaters" is solved by the proposal, for such workers will receive benefits only in proportion to their productive effort (as shown by wages paid).

Under the proposal, an employee would have to have received, say, \$200 in wages in the preceding four quarters to qualify for benefits. This would take the place of the service period required ("13 weeks in preceding 52"), and at the same time, the application of "1%" to this minimum earning, establishes automatically, a minimum weekly benefit of \$2. Such minimum benefit would be paid only to one whose earnings were only \$200 in a year, such as a clerk in a five and ten cent store, who worked only one day a week, a part-time worker (cleaning-woman in office buildings), a person who worked in employment under the Act only part of the year (and during the remainder of the year was a farmer or domestic, or unemployed and drawing benefits, or sick for a prolonged period). In any of these cases, the weekly benefit is low, but it is always in harmony with the productivity under the Act and the tax payments in the previous "year."

A bill to embody the above outlined plan would be based to a large extent on the Indiana Unemployment Compensation Act. It would have the following features in addition to those outlined elsewhere in this memorandum:

1. The Act would be known as the New Jersey Employment Stabilization Law.

2. It would provide for:

- (a) Permissive Guaranteed Employment Plans under which the employer would undertake to guarantee at least 40 weeks of 30 hours each of work in each calendar year, or its equivalent, in lieu of contributing to an unemployment reserve account.

- (b) Unemployment benefits to qualified employees as outlined above.

- (c) It would provide, further, that employer contributions be reduced to a minimum of 1% when the employer's reserve account is equal to:

1. Five times the largest amount of compensation paid from such account within any one of three calendar years immediately preceding; and

2. Not less than 12% of the employer's total payroll in the preceding calendar year.

- (d) That employer contributions be increased for 12 months by one per cent above the ordinary rate whenever ordinary benefits to any of his employees must be paid from the State pool.



(e) That, in the event the employer's reserve again becomes exhausted during the succeeding 12 months, his required contributions be increased by a further additional one per cent.

(f) Employee contributions would go into a State pool which would also receive one-sixth of employer contributions; employees would contribute one per cent when the employer contributed two per cent; one and one-half per cent when the employer contributed three per cent or more.

3. Benefits would begin to accrue at employment two years after the effective date of the Act, subject to an initial 12 weeks probationary period for a new employee in a guaranteed establishment; or total wages received in the amount of \$200 or more in the preceding four calendar quarters in an establishment operating under the reserve provisions.

4. Benefit claims would originate with the unemployed worker on his reporting to a public employment office. They would continue to be paid for the statutory period unless suitable employment could be procured.

5. Benefits for the first 16 weeks would be charged to the employer reserve so long as it were solvent; then to the State Pool; extra benefits would all be charged to the pool.

6. The Commissioner would be empowered to limit the scope of benefits for employees of seasonal industries to periods within the season of activity.

7. The Commissioner, with the approval of the Board, would be given full power to issue effective regulations and establish procedures.

8. In the event the Federal Government should fail to provide for administrative expenses the Commissioner would be authorized to use up to three-tenths of one per cent of contributions for administrative expenses.

9. The Act would provide for local appeal tribunals of three members each, one representing the Commissioner, one the employer, and one the employee group, to pass upon questions of fact or interpretation subject to further appeals to the Commissioner and the Board.

10. The Act would become inoperative in the event that Titles 3 and 9 of the Federal Act were to be repealed or otherwise become imperative.

## AN ACT TO PROVIDE FOR THE STABILIZATION OF EMPLOYMENT IN THIS STATE, ESTABLISHING UNEMPLOYMENT COMPENSATION RESERVES, PROVIDING FOR CONTRIBUTIONS THERETO, APPROPRIATIONS THEREFOR, AND PENALTIES FOR VIOLATION THEREOF.

BE IT ENACTED by the Senate and General Assembly of New Jersey:

### Section 1. *Contracts of Employment.*

Subject to the provisions of this Act every contract of employment entered into after the adoption of this Act shall include provision for unemployment compensation to be paid in the event of involuntary unemployment from an unemployment reserve fund established by this Act.

### Section 2. *Short Title.*

This act shall be known and may be cited as the "Employment Stabilization Law."

### Section 3. *Declaration of public policy of the state.*

The purposes of this Act are (1) to so regulate the relationship between employer and employee as to promote stabilization of employment in this state, (2) to alleviate the hardships of unemployment which occurs through no fault of the employee and (3) to secure for employers subject hereto, who are likewise subject to the tax imposed by Title IX of the Federal Social Security Act, the benefit of the credits upon said tax provided for in said Title IX.

### Section 4. *Definitions.*

The following words and phrases, as used in this Act, shall have the following meanings unless the context clearly requires otherwise:

(1) "*Administration Fund*" means the Unemployment Administration Fund established by this act.

(2) "*Benefit*" means the money payable to an employee as compensation for his wage losses due to unemployment as provided in this Act.

(3) "*Board*" means the Unemployment Compensation Board created by this Act.

(4) "*Calendar Quarter*" means the three calendar months ending March 31, June 30, September 30 or December 31, or the equivalent thereof as determined by the Commissioner in accordance with the general rules prescribed by him.

(5) "*Commissioner*" means the Unemployment Compensation Commissioner provided for in this Act or any person duly authorized by him to perform any of his duties under this Act.

(6) "*Contribution*" means a money payment to the State Unemployment Compensation Fund required, or permitted to be made voluntarily, by this Act.

(7) "*Eligible*" means entitled to benefits.

(8) "*Employee*" means any person employed by an employer subject to this Act and in employment subject to this Act, or who has been so employed.

(9) "*Employer*" and "*Employer subject to this Act*" mean any person who employs or has employed, or whose agent or predecessor has employed, at least four individuals in an employment subject to this Act on some day in each of twenty weeks in the calendar year immediately prior to the effective date of this Act, or who has elected to become subject to this Act with the approval of the Commissioner as hereinafter provided, or who employs at least four individuals in an employment subject to this Act on some day in each of twenty weeks in any subsequent calendar year. All persons employed by an employer in all of his several places of employment maintained within the state shall be treated as employed by a single employer for the purposes of this Act. Any employer of any person within the state not otherwise subject to this Act shall become fully subject hereto upon the filing by such employer with the Commissioner of his election to become fully sub-

ject thereto for not less than two calendar years subject to written approval of such election by the Commissioner and to the designation by the Commissioner of the date agreeable to such employer, on which or as of which said election shall take effect.

(10) "*Employer reserve account* and "*reserve account*" mean a separate account in the Unemployment Compensation Fund with respect to an employer and his employees or group of employers and their employees, in accordance with Subsection (9) of Section 4 hereof, from which benefits are payable only to individuals who were in the employ of such employer or of one of the employers comprising the group.

(11) "*Employment*" and "*employment subject to this Act*" mean any employment in its entirety in which all or the greater part of the employee's work customarily is performed within this state under any contract of hire, express or implied, written or oral where the relationship of master and servant exists. The term "*employment*" shall not, however, include:

(a) Agricultural labor;

(b) Domestic service in a private home;

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

(d) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(e) Service performed in the employ of the United States Government or of an instrumentality of the United States; including service performed on relief projects;

(f) Service performed in the employ of a State, or political subdivisions thereof, or an instrumentality of one or more states or political subdivisions including service performed on relief projects;

(g) 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; provided however, that such employing corporation, community chest, fund or foundation may elect to be subject to this Act in the manner provided in Subsection (9) of this section, in which event employment thereby is not excluded from the foregoing definition.

(h) Employment in respect of which there is in effect any law of the United States providing for unemployment compensation benefits from the Federal Government.

(i) Employment in respect of which contributions are required under an unemployment compensation law of any other state.

(j) Service performed on a commission basis for one or more employers where the individual rendering the service is master of his own time and efforts and where his compensation wholly depends on the amount of effort he elects to expend.

(12) "*Normal guaranteed account*" means the guaranteed employment account of an employer who has fulfilled his guarantee of employment in any calendar year, which on the first day of January in the succeeding year amounts to not less than twelve per centum of the total wages payable by such employer, in accordance with his guarantee, with respect to employment in the State of New Jersey in the preceding calendar year the amount of the account to be determined in the same manner as provided in this Act for determining the amount of an employer's reserve account, the term "wages" and the term "employment" having the same meaning as used in this Subsection as under Section 907 of the Federal Social Security Act.

(13) "*Normal reserve account*" means a reserve account from which compensation has been payable throughout a calendar year, and which at the commencement of the following year amounts:

(a) to not less than five times the largest amount of compensation paid from such account within any one of the three preceding calendar years; and

(b) to not less than twelve per centum of the total wages payable by the employer or employers with respect to whom such separate account is maintained with respect to employment, in the State of New Jersey, in the preceding calendar year, the term "wages" and the term "employment" having the same meaning as used in this Subsection as under Section 907 of the Federal Social Security Act.

In determining the amount of any reserve account on any date it shall be credited with such contributions only as have then actually been paid, except that when determining whether or not a reserve is normal as of any first day of January it shall also be credited with the amounts of any contributions with respect to employment during the preceding month which are paid on or before the due date thereof, and the account shall be debited with all benefits then paid or then due and payable therefrom, including the amount of any such benefits which may be in dispute and any amount transferable therefrom to the pooled account.

(14) "*Person*" means individual, partnership, association, corporation, whether domestic, or foreign, or the legal representative, trustee in bankruptcy, receiver or trustee thereof, or the legal representative of a deceased person.

(15) "*Pooled account*" means the account maintained in the Unemployment Compensation Fund as provided in Subsection 7 of Section 6 hereof, or any part thereof, in which contributions are mingled and undivided and from which compensation is payable to all eligible employees, but only after reserve accounts and guaranteed employment accounts from which the employee is entitled to be paid benefits have been exhausted.

(16) "*State*" includes the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

(17) "*Unemployment Compensation Fund*" means the



State Unemployment Compensation Fund established by this Act.

(18) "*Suitable employment*" means any employment, including employments not subject to this Act and self-employment, for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or place of last employment, and which is not detrimental to his health, safety or morals as determined by the Commissioner. No employment shall be deemed suitable, and benefits shall not be denied under this Act to any otherwise eligible employee for refusing to accept 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 employee than those prevailing for similar work in the locality; (c) as a condition of being employed the employee would either be required to join or to resign from or refrain from joining any company union or other bona fide labor organization.

(19) "*Wages*" means all remuneration for employment received from or payable by an employer, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, payments in kind, and all other remuneration paid in any medium other than cash, except such part of such remuneration received by or payable to the employee with respect to employment during any calendar year as exceeds three thousand dollars, but shall not include the employer's contribution to pension, insurance or similar employee benefit plans or other perquisites of employment.

(20) "*Waiting period*" means a period following the registration required by Subsection (1) of Section 9 hereof for which no benefits are payable during which the employee is in all other respects eligible.

(21) "*Week*" means calendar week ending at midnight Saturday or the equivalent thereof as determined by the Commissioner in accordance with general rules prescribed by him.

## Section 5. *Guaranteed Employment Plans.*

(1) *Permission to establish.*—Subject to the requirements of this Act, the Commissioner may permit any employer to establish a guaranteed employment plan covering all his employees in one or more distinct establishments, and to maintain within the Unemployment Compensation Fund for the purpose of this section a guaranteed employment account, which shall be separate from and additional to any reserve account he may have in the Unemployment Compensation Fund for employees not included in the guaranteed employment plan. As a condition of permitting a guaranteed employment plan and of maintaining within the unemployment compensation fund a guaranteed employment account, the Commissioner may require the employer in question to furnish annually such separate security or such other assurance that the employer will fulfill his guaranty under such plan as the Commissioner deems reasonable.

### (2) *Annual guarantee.*—

(a) The Commissioner shall approve and permit a guaranteed plan only when the given employer guarantees in advance, to all his employees in one or more distinct establishments, thirty hours of wages at a specified rate for each of forty separate calendar weeks within twelve consecutive months. Where an employer guarantees to his employees more than forty weeks within twelve consecutive months, for each such extra guaranteed week one hour shall be deducted, as to all guaranteed weeks, from the number of guaranteed weekly hours otherwise applicable. An employer's guaranteed employment plan shall be subject to all applicable rules of the Commissioner and shall commence January 1, 1938, or at such later date as the Commissioner may approve and under such conditions as the Commissioner may approve.

(b) An employer's guaranty shall commence for each employee whenever he has completed a probationary

period with such employer of twelve weeks of employment occurring subsequent to January 1, 1937, or to any later date as of which the employer in question first becomes subject to this Act. Such probationary period shall not be renewable with respect to the same employee. But such guaranty shall not apply to an employee who has voluntarily quitted the employer or has been discharged by the employer for misconduct, or in any week (a) in which the employee is physically unable to work, or (b) in which the employer offers suitable employment in fulfillment of his guaranty and the employee refuses the same without good cause, or (c) in which a labor dispute is in active progress in the establishment in question, or (d) in which the employee is not available for work. Any such week shall be treated as if it were a fulfilled guaranteed week. The deficiency wages payable by an employer to an employee whose guaranty is unfulfilled may be reduced by the amount of wages, other than odd-job earnings, which the employee has received from work done in any other employment, whether or not subject to this act, within the guaranteed period or could have received by accepting suitable employment as defined in Subsection 18 of Section 4, offered him when the employer himself had no work available under his guaranty.

(3) *Deficiency Wages.*—Any deficiency wages payable hereunder in fulfillment of the employer's guaranty to an employee shall be paid by the employer directly; provided that if the employer fails to make such payment they shall be paid from his guaranteed employment account which account shall be reimbursed therefor by the employer.

(4) *Benefits.*—Any employee, employed in a guaranteed establishment but laid off at or prior to the close of his above required probationary period, shall be paid from the employer's guaranteed employment account the benefits to which he should be entitled under the standard benefit provisions of this act as provided in Section 8. In the case of any employee laid off by the employer after the

fulfillment of his guaranty but prior to the commencement of the next ensuing guaranty period, such employee shall, while unemployed and eligible during such ensuing calendar year, receive from the employer's guaranteed employment account the benefits to which he would be entitled under the standard benefit provisions of this act unless the guaranty is renewed for the ensuing year. If such guaranteed employment account is exhausted, the balance of such amounts payable hereunder to employees shall be payable out of the State Fund's pooled account maintained in the State Fund.

(5) *Transfers of balances.*—If, at the time a guaranteed employment plan goes into effect with respect to the employees in any establishment, there exists a balance in a reserve account maintained in respect of such employees, said balance shall be transferred to the guaranteed employment account maintained pursuant to such guaranteed employment plan, or, if said reserve account shall have been maintained in respect of employees in the said establishment and other employees of the same employer, there shall be so transferred an equitable proportion thereof as determined by the Commissioner in accordance with the facts after giving the employer an opportunity to be heard. Said guaranteed employment account shall be liable for the amount of any benefits payable to any individual based on wages for employment in said establishment prior to the date on which such guaranteed employment plan goes into effect.

(6) *Termination of account.*—If any employer maintaining a guaranteed employment account hereunder fails to comply with the applicable requirements of this act, or terminates such account with the consent of the Commissioner, any balance remaining in the account shall be transferred to the employer's reserve account, but shall remain liable for all then unsatisfied claims against such guaranteed employment account, unless the employer has for any reason ceased to be subject to this act, in which event the provisions of Section 6, Subsection 11 shall apply.



## Section 6. *Unemployment Compensation Fund.*

(1) *Unemployment Compensation Fund.*—There is hereby created the State Unemployment Compensation Fund to be administered without liability on the part of the State beyond the amounts paid into and earned by the Unemployment Compensation Fund. This Unemployment Compensation Fund shall consist of contributions and monies paid into and received by the Unemployment Compensation Fund, as provided by this Act, of property and securities acquired by and through the use of monies belonging to the Unemployment Compensation Fund, and of interest earned upon the monies belonging to the Unemployment Compensation Fund, and shall include all monies requisitioned from the "Unemployment Trust Fund" of the United States to the Treasurer of the Unemployment Compensation Fund as hereinafter provided.

(2) *Treasurer.*—The Treasurer of the State of New Jersey shall have charge of the Unemployment Compensation Fund. He shall give bond conditioned on the faithful performance of his duties as Treasurer of the Unemployment Compensation Fund in a form prescribed by statute or approved by the Attorney General and in an amount specified by the Board. All bonds required pursuant to this section shall be furnished by a surety company operating under the laws of New Jersey, and premiums therefor shall be paid from the Unemployment Administration Fund.

(3) *Accounts.*—The State Treasurer shall maintain within the Unemployment Compensation Fund three separate accounts: (1) A clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All monies payable to the Unemployment Compensation Fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to Section 17 of this Act may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commissioner. After clearance thereof, all other monies in the clearing account shall be immediately de-

posited 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 monies in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all monies requisitioned from this State's account in the Unemployment Trust Fund. Monies in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the Unemployment Compensation Fund.

(4) *Withdrawals.*—Monies shall be requisitioned from this State's account in the Federal Unemployment Trust Fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall from time to time requisition from the Federal Unemployment Trust Fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such monies in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such monies 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 the State Comptroller. Any balance of monies requisitioned from the Federal 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 suc-



ceeding periods, or, in the discretion of the commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust fund, as provided in Subsection (3) of this Section.

(5) *Management of funds upon discontinuance of Unemployment Trust Fund.*—The provisions of Subsections 3 and 4, 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 unemployment compensation 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 monies, 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 monies, properties, or securities in a manner approved by the commission, in accordance with the provisions of this Act: Provided, That such monies shall be invested in the following readily marketable classes of securities; Bonds or other interest-bearing obligations of the United States of America, Bonds of the State of New Jersey and other securities eligible for investment of the funds of life insurance companies of this State. And 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.

(6) *Employer reserve accounts.*—There shall be maintained within the Unemployment Compensation Fund a separate reserve account and for each employer, excepting those operating exclusively under a guaranteed employment plan, and his employees. There shall be credited to each such account all amounts contributed to the State

Fund by the employer and his employees for whom the same is maintained, except so much thereof as is required to be credited to the guaranteed employment account of the employer. Each employer's reserve account shall, unless exhausted, pay to his eligible employees all their benefits duly chargeable under this Act against such reserve account. In determining when and for how long an employer's reserve account is exhausted the Commissioner shall consider only the contributions actually paid in thereto.

(7) *Pooled account.*—There shall be maintained within the State Unemployment Compensation Fund a pooled account the monies of which shall be mingled and undivided. Benefits shall be paid therefrom, within the limit of the amount therein, to all eligible employees, but only when and to the extent that the reserve accounts or guaranteed employment accounts primarily liable for the payment of such benefits have become exhausted. There shall be transferred to such pooled account and charged against the appropriate reserve or guaranteed employment accounts immediately after contributions are paid and credited to the reserve or guaranteed employment accounts, the following amounts:

(a) An amount equal to the total contributions required from employees in respect of whom reserve or guaranteed employment accounts are maintained with respect to employment prior to January 1, 1939 and one-sixth of the total contributions of each employer.

(b) During 1939 and each succeeding calendar year, in addition to amounts provided for in (a), amounts sufficient to restore the pooled account to an amount which the Unemployment Compensation Board shall annually fix in December of each year to be the normal pooled account for the succeeding year.

To determine the state-wide rate of transfers from the reserve accounts and guaranteed employment accounts to the pooled account, the total quota to be added to the pooled account during the succeeding

calendar year, less interest and fines credited thereto and less anticipated credits as provided for in Subsection (a) of this Section shall be divided by the state-wide total payroll with respect to employment in such year by employers having reserve accounts or guaranteed employment accounts and the percentage so determined, which for the purposes of these transfers shall in no case exceed one percent, shall be applied to the payroll of each employer having a reserve account or guaranteed employment account for each month of the succeeding year.

There shall also be credited to the pooled account balances in reserve accounts and guaranteed employment accounts as provided in Subsection (11) of this Section, together with all realized earnings, gains on investments in the State Fund, all interest paid on overdue contributions and all fines collected under this Act. Any losses on investments which may occur shall be charged against the pooled account.

(8) *Guaranteed employment accounts.*—There shall be maintained within the Unemployment Compensation Fund a separate guaranteed employment account for each employer permitted to establish a guaranteed employment plan. There shall be credited to such account all amounts contributed by the employer to the Unemployment Compensation Fund with respect to employment in a guaranteed establishment.

(9) *Joint accounts.*—Whenever two or more employers file an application with the Commissioner to mingle their single reserve accounts or single guaranteed employment accounts in a joint group reserve or joint group guaranteed employment account in the Unemployed Compensation Fund, as if they constituted a single employer, the Treasurer shall maintain such joint account as if it were a single employer's account, subject to such general rules for the establishment, conduct and dissolution of joint accounts as the Commissioner may prescribe.

(10) *Voluntary Contributions.*—Any employer may at any time make voluntary payments, additional to the con-

tributions required under this Act, to his reserve account or guaranteed employment account in the Unemployment Compensation Fund, pursuant to general rules established by the Commissioner.

(11) *Balances in Closed Accounts.*—Any balance remaining in the reserve account or guaranteed employment account of an employer, or group of employers for whom a joint account is maintained, one year after such employer or group of employers has for any reason ceased to be subject to this Act, and after all claims against said account shall have been finally determined and paid, shall be credited to the pooled account, except such part thereof as the Commissioner shall in such case apportion to any successor employer's reserve or guaranteed employment account.

(12) *Successive employer's reserve accounts.*—Any employer who acquires his organization, trade or business in whole or in part from an employer for whom a reserve account or guaranteed employment account has been maintained shall immediately notify the Commissioner thereof, and shall succeed to the position of such last mentioned employer with respect to the resources and liabilities of such reserve account or guaranteed employment account in proportion to the extent of such acquisition as determined for the purposes of this Act by the Commissioner after appropriate notice and opportunity to be heard, as if no change with respect to such last mentioned employer's reserve account or guaranteed employment account had occurred.

#### Section 7. *Contributions in lieu of Guaranteed Employment.*

(1) *Employer's Standard Rate.*—Each employer subject to this Act may, in lieu of compliance with Section 6, elect to make contributions to an Unemployment Reserve Account with respect to employment, equal to the following percentages of the total wages paid by him:

(a) Ten and eight tenths per centum with respect to employment during the month of December, 1936;



(b) Two per centum with respect to employment during the calendar year 1937;

(c) Three per centum with respect to employment after December 31, 1937.

(2) *Commencement and termination of contributions.*—Each employer who becomes subject to this Act by reason of the employment by him of four or more persons on some day in each of twenty calendar weeks in the year 1936 or any subsequent year shall pay said tax or contribution with respect to the employment of his employees from and after the first Monday succeeding the last of said twenty weeks. Any employer who is or has become subject to this Act and who thereafter does not employ as many as four individuals in an employment subject to this Act on a day in each of twenty weeks within a calendar year may so report to the Commissioner, and upon a finding of said facts by the Commissioner and his approval shall thereupon cease to be subject to the Act as of the first day of January following said year, and not before, for all purposes; provided, however, that the employer shall remain liable for the contributions required hereunder with respect to employment prior to said first day of January.

(3) *Report and time of payment.*—Each employer subject to this Act with respect to employment in any calendar month or equivalent period as determined by the Commissioner in accordance with the general rules prescribed by him shall, on or before the last day of the succeeding month or period, report to the Commissioner the amount of his payroll for such calendar month or period and the amount of his contribution based thereon and required hereunder, and shall pay said contribution to the Unemployment Compensation Fund, together with the contributions of his employees based thereon.

(4) *Rates of contribution based on benefit experience.*—Contributions required by Subsection (1) of this Section shall be reduced to not less than one per centum or the rate thereof shall be increased when and as in this Subsection (4) provided:

(a) If the reserve account of an employer or group of employers is normal as of the first day of January in the year 1940, or in any year thereafter, a contribution of one per centum with respect to employment during such year shall be payable to such reserve account.

(b) If the guaranteed employment account of an employer is normal as of the first day of January in any year, a contribution of one per centum with respect to employment during such year shall be payable to such guaranteed employment account.

(c) If in any month benefits are payable to any employee from the pooled account because his employer's reserve account, or guaranteed employment account, if any, shall have become exhausted, such employer shall contribute with respect to employment during such month and the succeeding eleven months, the amount required by Subsection (1) of this Section and in addition thereto an amount equal to one per centum of so much of such employer's payroll for said twelve months as constitutes the basis of his contributions to such exhausted account, subject, however, to the provisions of subparagraph (a) and (b) of this Subsection.

(d) If in any of said twelve months with respect to which an employer is required to make the additional contribution provided for in the preceding subparagraph, after the first two months thereof, benefits are payable to any of his employees from the pooled account because the employer's reserve account or guaranteed employment account shall have become exhausted, such employer shall contribute in respect of employment during the month when benefits are so payable from the pooled account and the succeeding eleven months, the amount specified in the preceding paragraph, and a further additional amount equal to one per centum of so much of such employer's payroll for said last mentioned twelve months as constitutes the basis of his contribution to such exhausted account, subject, however, to the provisions of subparagraphs (a) and (b) hereof.

(5) *Rate of employee's contribution.*—Each employee shall contribute to the Unemployment Compensation Fund an amount equal to a percentage of his wages during any period for which his employer is required to make contributions of 2% or more hereunder, which percentage shall be one percent if the employer's rate of contribution is two percent, and one and one-half percent if the employer's rate of contribution is three percent or more.

(6) *Withholding of employees' contributions.*—Each employer shall withhold in trust the amount of his employees' contributions from their wages at the time such wages are paid, shall show such deduction on his payroll records, and shall transmit all such contributions to the Unemployment Compensation Fund on or before the last day of the month succeeding that in which such contributions are so withheld. If any employer fails to deduct the contributions of any of his employees at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for some one of the next succeeding three payroll periods, he alone shall thereafter be liable for such contribution, and such contribution shall be treated as employer's contributions required from him. Employee contributions held by an employer prior to the payment thereof to the Unemployment Compensation Fund as herein provided shall be exempt from garnishment, attachment, execution or any other remedy for the collection of debts.

(7) *Fractional part of a cent.*—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.

(8) *Interest on past due contributions.*—Contributions unpaid on the date on which they are due and payable shall bear interest at the rate of three-fourths of one per centum per month from and after such date until payment plus accrued interest has been made, which interest shall be paid by the employer in respect both to his own and his employees' contributions.

(9) *Priorities.*—In the event of any distribution of an employer's assets pursuant to an order of any court under

the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages and compensation under the Workmen's Compensation Act. 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. Code, Title II, Section 104 (b), as amended).

(10) *Adjustments.*—If more or less than the correct amount of contributions is paid with respect to employment during any period, and such error was without fraudulent intent, adjustments shall be made without interest and in accordance with regulations prescribed by the Commissioner, in computing contributions due and payable with respect to employment during subsequent contribution periods, or if such adjustments cannot be so made, then by collecting the amount of any deficient contributions in the manner prescribed in subsection (11) of this Section, or by repaying the amount of any excessive contributions as provided in Section 17 hereof.

(11) *Collections.*—If after due notice any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action by the Attorney General or counsel employed by the Commissioner with the approval of the Board in the name of the State of New Jersey on relation of the Commissioner 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 on the calendar of the court over all other civil actions.

#### Section 8. *Benefits.*

(1) *Payment of Benefits.*—From and after two years after the first day of the first period with respect to which



contributions are required benefits shall become payable from the State Fund to any employee who thereafter is or becomes eligible for benefits, and shall be paid through the public employment offices of this state, or such other agency, which may be an employer, as shall be approved by the Commissioner, and by the Federal Social Security Board, at such time and in such manner as the Commissioner may prescribe.

(2) *Benefit for unemployment.*—Each eligible individual who is totally or partially unemployed in any week shall be paid, with respect to such week, a weekly benefit amount equal to one per centum of his total wages not to exceed \$1,500 earned during the most recent four completed calendar quarters, subject to the limitation in Subsection (4) of this Section, less any amount earned as remuneration for services during such week.

(3) *Maximum total benefits.*—The maximum amount of benefits which an individual may receive for total and partial unemployment occurring in any four consecutive calendar quarters including the current uncompleted calendar quarter shall be sixteen per centum of the wages which he has earned in the most recent four completed calendar quarters, but not including wages in excess of fifteen hundred dollars earned in said period; provided that if any unemployed individual shall refuse suitable employment when offered to him, he shall be deemed for the purposes of this Subsection to have received his weekly benefit amount for the week in which he so refuses such employment and for each of the three subsequent weeks.

(4) *Charging of benefits.*—An individual's benefits shall be charged against the reserve accounts of his employers in the inverse chronological order in which employment occurred. The maximum benefits chargeable against an employer's reserve account shall be sixteen per centum of the wages earned from such employer by such employee within the most recent four completed calendar quarters. The liability of each employer's reserve account shall be limited to the amount therein. Benefits shall be charged against the pooled account only if and when the reserve account against which benefits are chargeable is exhausted.

(5) *Seasonal employment.*—Whenever in any industry or class of employment it is customary to operate only during a regularly recurring period or periods of less than one year in length, then the right to benefits based on wages received for employment therein shall apply only to unemployment occurring in the longest seasonal period or periods which the best practice of such industry or class of employment will reasonably permit. The Commissioner shall ascertain and determine or re-determine after investigation and due notice, such seasonable period or periods for each such industry or class of employment. Until such determination by the Commissioner no employment shall be deemed seasonal.

(6) *Deductions from benefits.*—If any employee who is otherwise entitled for any week to benefits in an amount determined in accordance with the foregoing provisions of this section shall be entitled to receive for such week from the United States or from any political subdivision or instrumentality thereof, any state, the District of Columbia, or any territory of the United States, or under any workmen's compensation act or other law, or from his employer, any other payments by way of pension, old-age benefit, aid or compensation to persons incapacitated, unemployed, aged or needy, or suffering from any physical ailment or disability, other than amounts payable as damages, or pursuant to an award for permanent disability under any workmen's compensation act, the amount or amounts which such employee is so entitled to receive shall be deducted from the amount of benefits to which he would otherwise be entitled hereunder for such week, and he shall be entitled to such amount only as benefits hereunder as equals the excess, if any, of the benefits which he would otherwise be entitled to receive hereunder over such said other amount or amounts which he is so entitled to receive.

#### Section 9. *Benefit eligibility conditions.*

An employee who in any week earns nothing or less than an amount equal to the amount of his weekly benefit for total unemployment and who satisfies the following con-

ditions, shall be eligible for benefits with respect to such week to the extent provided in this Act:

(1) He shall have registered and shall have filed a claim for benefits, in the manner and form, within the time and at the employment office or other place prescribed by the Commissioner, and shall not in any week subsequent to such registration have earned an amount equal to the amount of his weekly benefit for total unemployment.

(2) He has earned two hundred dollars of wages in the most recent four completed calendar quarters.

(3) Prior to any week for which he claims benefits, he shall have been totally or partially unemployed for a waiting period of four weeks with respect to which he received no benefits but during which he was eligible for benefits in all other respects. Such four weeks of total or partial unemployment need not be consecutive but shall be accumulated over the period of twenty-six consecutive weeks preceding any week for which he claims benefits; provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of total unemployment; and provided further that such four weeks of unemployment occur after the expiration of two years from the date when this act takes effect; and provided further that the individual has earned wages after said time.

(4) He shall be physically able to work.

(5) His failure to earn an amount equal to the amount of his weekly benefit for total unemployment shall be due to lack of work in his usual occupation or any other occupation for which he is reasonably fitted, including employments not subject to this Act.

(6) He shall be available for work and shall have inquired for work at the employment office designated by the Commissioner with such frequency and in such manner as the Commissioner may by regulations prescribe; provided that failure to comply with this condition may be excused by the Commissioner upon a showing of good cause for such failure.

(7) He shall not have refused to accept suitable employment, as herein defined, when offered to him since his last day of employment.

(8) His failure to earn an amount equal to the amount of his weekly benefit for total unemployment shall not be directly due to a strike or other labor dispute still in active progress in the establishment where he was last employed.

(9) He shall have reported in such manner and at such times as the Commissioner may require any employment, including self-employment and employments not subject to this act, which he has had in such week, and any amounts deductible under Subsection (6) of Section 8 hereof.

(10) He shall not have voluntarily quitted or have been discharged for misconduct from any employment in respect of which he claims benefits.

(11) He shall not have reached age 65.

#### Section 10. *Settlement of Benefit Claims.*

(1) *Filing.*—Benefit claims shall be filed at the employment office or other place, within the time and in the form prescribed by general regulations of the Commissioner, but no benefits shall be allowed unless claim therefor is filed within six months after cessation of the most recent employment in respect of which such benefits are claimed.

(2) *Notification of Employer.*—Immediately upon the filing of a claim for benefits the Commissioner shall notify each employer whose reserve or guaranteed employment account is or may be liable for payment of benefits thereon of such claim and shall request each such employer to furnish such facts as may be necessary to a determination of the claim and shall afford each such employer an opportunity to be heard.

(3) *Initial Determination.*—The Commissioner or a staff member designated by him shall promptly determine whether or not the claim is valid and, if valid, the amount of benefits apparently payable thereunder, and he shall give due notice of such determination to the person claiming the benefits and to each employer against whose reserve account or guaranteed employment account any part of said benefits are chargeable, or would be chargeable if such reserve account or guaranteed employment account were not exhausted. Benefits shall be paid or denied in ac-



cordance with such determination unless a party in interest appeals from such determination to an appeal tribunal within five calendar days after such notice is given.

(4) *Appeal tribunal.*—An appeal tribunal shall consist of three persons, all of whom shall be present at any session thereof, and shall have power to hear appeals and decide disputed claims. One of such persons shall be a full time salaried examiner who shall serve as chairman. Another of said persons shall be an employer or representative of employers or his alternate. Another of said persons shall be an employee or representative of employees or his alternate. But no person shall hear any case in which he is directly an interested party. Members of appeals tribunals other than the examiner shall be paid in accordance with a per diem schedule which may be established and published from time to time by the Commissioner.

(5) *Appeals.*—Appeals shall be promptly decided, after affording all parties in interest reasonable opportunity to be heard, by such appeal tribunal as the Commissioner may designate for this purpose. The parties shall be duly notified of the decision of such tribunal and the reasons therefor, which shall be final unless a further appeal is taken to a Court of appropriate jurisdiction on a question of law as provided elsewhere in the statutes of this State.

(6) *Procedure.*—The manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings shall be governed by general rules established by the Commissioner. Such rules need not conform to common law or statutory rules of evidence or other technical rules of procedure, for determining the rights of the parties. 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.

(7) *Oaths and witnesses.*—In the discharge of their duties under this section the Commissioner, or any designated member of his staff shall have power to administer oaths to persons appearing before them, take

depositions, certify to official acts, and by subpoenas, served in the manner in which court subpoenas are served, compel attendance of witnesses and the production of books, papers, documents, correspondence, memoranda and other records necessary or convenient to be used by them in connection with any disputed claim. Witness fees and other expenses involved in proceedings under this section shall be paid to the extent necessary, at rates specified by general rules of the Commissioner from the Unemployment Administration Fund.

(8) *Due Notice.*—Any notice required to be given by this section shall be deemed to have been duly given if and when delivered to the person to whom the notice is directed or left at or mailed postage-paid to such person's residence or last known address, if he be the person claiming the benefits, or his place of business, if he has an employer.

(9) *Enforcement of Subpoenas.*—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commissioner or the appeal tribunal, as the case may be, may invoke the aid of a Court of appropriate jurisdiction in requiring the attendance and testimony of witnesses and the production of books, papers, documents, correspondence, memoranda and other records. Such court may issue an order requiring such person to appear before the Commissioner or person designated by him, or before the appeal tribunal, there to produce records, if so ordered, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, documents, correspondence, memoranda or other records, if in his power so to do, in obedience to the subpoena of the Commissioner, a member of his staff, or an appeal tribunal shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than fifty dollars or to imprisonment for a term of not more than five days, or both.

(10) *Incriminating Evidence.*—No person shall be excused from attending and testifying or from producing

books, papers, correspondence, memoranda and other records pertinent to the matter in question in any investigation or inquiry by or upon any hearing before the commissioner, designated member of his staff, or appeal tribunal when ordered to do so under authority of the Commissioner, or the appeal tribunal, upon the ground that the testimony or evidence, book or document, required by him may tend to incriminate him by subjecting him to a penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which under oath after claiming his privilege, he shall by order have testified or produced documentary evidence, except for perjury committed in giving such testimony or forgery committed by him in such documentary evidence.

#### Section 11. *Court Review.*

Within ten days after the date of the decision of the appeal tribunal any party aggrieved by such decision may appeal to the Court of Common Pleas of the County in which the employee lives or was employed, by filing a notice of appeal with the respondent, with the appeal tribunal and with the Clerk of the Court of Common Pleas. Such notice of appeal shall briefly describe the decision and shall state the intention of the party to appeal therefrom. The appellant shall within fifteen days after the filing of the notice of appeal send to the Clerk of the said Court of Common Pleas a transcript of the record and testimony in said cause, which transcript shall be prepared by the said appellant and submitted to the appeal tribunal for certification. Within ten days after the filing of said transcript the Judge of the Court of Common Pleas, upon the application of appellant, shall fix a time and place for the hearing of such appeal, at least ten days notice of which shall be served upon the respondent by the appellant. The trial of such appeal shall be based exclusively on the transcript of the record and testimony and at the time fixed by the hearing argument may be presented by each side to the said Judge who shall in a summary manner

decide the merits of the controversy, and the decision of the Court of Common Pleas on any such appeal shall be conclusive and binding. This determination shall be filed in writing with the Clerk of the Common Pleas Court. Subsequent proceedings thereon shall only be for the recovery of monies thereby determined to be due; provided, that nothing herein contained shall be construed as limiting the jurisdiction of the Supreme Court to review questions of law and fact on certiorari. Any such appeal may be dismissed by the Judge of the Court of Common Pleas if the transcript of the record and testimony is not transmitted, or if the appeal is not prosecuted in accordance with the provisions of this Act.

#### Section 12. *Unemployment Compensation Board.*

(1) *Organization.*—There is hereby created a Board of seven members to be known as the Unemployment Compensation Board who shall be appointed by the Governor subject to Senate confirmation within fifteen days after the effective date of this Act, at least three of whom shall be employers or representatives of employers and at least three of whom shall be employees or representatives of employees. The members of the Board thus appointed shall serve as designated by the Governor at the time of appointment; one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, one for a term of six years, and one for a term of seven years. At the expiration of such initial terms, appointment shall be made for a term of seven years in each case. They shall serve without salary. Any vacancy in the Board created by death, resignation, or removal, shall be filled by appointment of the Governor for the unexpired portion of the term of the member so resigning, dying or removed. The Governor may at any time, after a fair public hearing, remove any member of the Board for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office.



(2) *Powers and Duties.*—The Board shall have the following powers and duties:

- (a) To designate its chairman annually.
- (b) To appoint an Unemployment Compensation Commissioner who shall hold office at the pleasure of the Board and shall fix his salary. He shall give his full time to the duties of this office.
- (c) To study and investigate the operation of this Act, and advise and consult with the Commissioner.
- (d) To promote, so far as practicable, the reduction and prevention of unemployment.
- (e) To make rules and regulations governing its own procedure.
- (f) To transmit to the Governor annually by the thirty-first day of March the report required annually hereunder from the Commissioner, together with its own report and such recommendations as it may deem proper.
- (g) To cause to be printed in proper form for distribution to the public its annual report to the Governor and the annual report of the Commissioner and any other material the Board deems relevant and suitable, and to furnish the same to any person upon application and payment therefor; and such printing and availability upon application shall be deemed sufficient publication of the same.

(3) *Quorum.*—Any four members of the Board shall constitute a quorum to transact business. No vacancy shall impair the rights of the remaining members of the Board to exercise the powers of the Board so long as a quorum remains.

### Section 13. *Administration.*

(1) *Duties and powers of Commissioner.*—It shall be the duty of the Commission to administer this Act except in so far as duties prescribed herein are specifically im-

posed upon the Unemployment Compensation Board, and to that end the Commissioner shall have the following duties and powers:

(a) To make and enforce all rules and regulations necessary or suitable for the carrying out of this Act, except such rules and regulations as the Board is specifically herein empowered to make.

(b) To appoint and to fix the compensation of members of his staff in accordance with an organization plan which he shall prepare with the advice of the Board and which shall be revised from time to time as the Board may approve; such plan shall provide for employment of all persons necessary and shall be the basis for the annual budget. He shall appoint members of his staff from Civil Service eligible lists. The Commissioner, with the approval of the Board, shall make any expenditures reasonably necessary in the discharge of his functions hereunder, and is hereby authorized to draw vouchers upon the Administration Fund for the same and for any expenses properly incurred by the Board upon a requisition duly made by the Commissioner in accordance with an annual budget approved by the Board.

(c) To draw vouchers upon the Unemployment Compensation Fund and the appropriate accounts therein for the payment of benefits and for the payment of deficiency wages as provided in Subsection (3) of Section 5 hereof.

(d) To perform the duties specifically imposed on him by this Act.

(e) To delegate to other persons any of the powers conferred upon him by this act so far as reasonably necessary to effectuate and consistent with its purposes, subject to approval of the Board.

(f) To cause to be printed in proper form for distribution to the public the text of this Act and the general rules and regulations established by him and by the Board hereunder and to furnish the same to any person upon application therefor; and such print-

ing and availability upon application shall be deemed a sufficient publication of the same.

(g) To keep such records of contributions as are necessary for the proper administration of this Act or advisable for a proper understanding of its operations.

(h) To require any employer subject to this Act to furnish on demand the employment records of claimants for benefits so far as necessary for the determination of their claims.

(i) To make such reports in such form and containing such information as the Federal Social Security Board may, from time to time, require and to comply with such provisions as said Federal Social Security Board may, from time to time, find necessary to assure the correctness and verification of such reports.

(j) To make available upon request 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 unemployment compensation and a statement of such recipient's rights to further compensation under this Act.

(k) Annually at the close of each fiscal year to submit to the Board as promptly as may be practical a report covering the administration and operation of this act during the preceding fiscal year and any other matters deemed by him to be relevant thereto together with such recommendations as he may deem proper.

(l) To accept any sums allotted or apportioned to the state made available by or received under any act of Congress for use in administering State unemployment compensation or State public employment offices.

(m) To make a study of the problem of providing reciprocal services with other states which would facilitate the carrying out of this Act and similar Acts of other states and to enter into agreements with duly authorized unemployment compensation officers of other States for the mutual advantage of citizens of this and other states.

(2) *Employment records to be kept by employer.*—Every employer shall keep a true and accurate employment record for each of his employees showing:

(a) The wages, as defined, herein, paid to him;

(b) Such other information as may be necessary for the proper administration of this Act. Such records shall be open to inspection by the Commissioner or his authorized representative at any time during ordinary business hours or at such other times as may be agreed upon between the Commissioner or his representative and the employer.

(3) *Employment records to be furnished by employer.*—Each employer shall furnish promptly to the Commissioner any information requested by the Commissioner and necessary to the determination of any claim for benefits and of the payments to be made thereon.

(4) *Confidential nature of information furnished to Commissioner.*—The information furnished to the Commissioner by employers, pursuant to this Act, shall be for the exclusive use and information of the Commissioner and the Board in discharge of their duties, and shall not be open to the public, nor admissible in evidence in any action or special proceeding other than one arising out of the provisions of this act. Such information may be tabulated and published in statistical form for the use and information of state departments and the public but only in such form that the name of the employer or other significant facts about an employer or any employee shall be reasonably protected.

(5) *Representation in court.*—On request of the Commissioner the Attorney General shall represent the Commissioner and the state in any court action relating to this act or to its administration and enforcement, except as special counsel may be designated by the Commissioner with the approval of the Board and except as otherwise provided in this act.

(6) *State-Federal Cooperation.*—The Board and the Commissioner are hereby authorized and directed, in the



discharge of their respective functions under this act, to cooperate in all necessary respects with the appropriate agencies and departments of the Federal Government, in the administration of unemployment compensation and of free public employment offices.

(7) *General Rules.*—The general rules and regulations adopted by the Commissioner with the approval of the Board for the administration of this Chapter shall be duly recorded in their minutes and be filed with the Secretary of State and deposited in the State Library and shall thereupon have the force and effect of Law. Such rules may be amended, altered and repealed in the same manner as herein provided for their adoption.

#### Section 14. *Employment Service.*

(1) *Acceptance of Wagner-Peyser Act.*—The State hereby accepts the provisions of the Wagner-Peyser Act, approved June 6, 1933, entitled, "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," in conformity with Section 4 thereof, and will observe and comply with the requirements of said Act of Congress.

(2) *State Employment Service.*—There is hereby created under the Commissioner, a division to be known as the "New Jersey State Employment Service," which shall be affiliated with the United States Employment Service. The said division is hereby designated and constituted the agency of this state for the purposes of said Wagner-Peyser Act. The said division shall be administered by a Director who is hereby given full power to cooperate with all authorities of the United States having powers or duties under the said Act of Congress, and to do and perform all things necessary to secure to this state the benefits of said Act of Congress in the promotion and maintenance of a system of public employment offices. The existing free public employment offices of the state shall be transferred to the jurisdiction of said division; and upon such transfer all duties and powers conferred by law upon any other

department, agency or officer relating to the establishment, maintenance and operation of free public employment offices shall be vested in such division. The employment bureau of the New Jersey Department of Labor is hereby abolished and all its records are hereby directed to be transferred to said New Jersey State Employment Service. This subsection shall take effect June 30, 1937.

(3) *Employment Service Account and Appropriations thereto.* There shall be maintained in the Administration Fund a special "Employment Service Account" exclusively for the maintenance and administration of the New Jersey State Employment Service, all the expenses of which shall be paid from said account. All monies made available by or received by this State under said Wagner-Peyser Act shall be paid into said account and are hereby appropriated and made available to the New Jersey State Employment Service for the maintenance and administration thereof. The unexpended balance of all monies heretofore appropriated from the General Treasury of the State of New Jersey to be expended for the purposes of maintaining and operating the heretofore existing Employment Bureau of the New Jersey Department of Labor shall be transferred to said Special Employment Service Account, and the Governor is authorized to and shall include in his annual budget message such sum as shall be required and the Legislature shall include in the Annual Appropriation Act the amount required to be expended for the purposes thereof, and sufficient to match an equal sum available to New Jersey on a matched fund basis from the United States Employment Service under the provisions of said Wagner-Peyser Act. Any funds received from the said United States Employment Service are hereby appropriated in addition to any sums otherwise appropriated to this division.

#### Section 15. *Protection of rights and benefits.*

(1) *Waiver of rights void.*—No agreement by an employee to waive his right to benefit or any other right under this act shall be valid. No agreement by an employee or by employees to pay all or any portion of the contribu-

tions required under this act from employers shall be valid. No employer shall make or require any deduction from wages to finance the contributions required of him.

(2) *Limitation of fees.*—No employee shall be charged fees of any kind by the Commissioner or his representatives in any proceeding under this act. The Commissioner shall fix the amount of any fee for services rendered to an employee in the prosecution of a claim for benefits and no fees not so fixed may be charged therefor.

(3) *No assignment or garnishment of benefits.*—Benefits which are due or may become due under this act shall not be assignable or subject to attachment or levy before payment, but this provision shall not affect the survival thereof; and when awarded, adjudged, or paid shall be exempt from all claims of creditors, and from levy, execution and attachment or other remedy now or hereafter provided for recovery or collection of debt, which exemption may not be waived.

#### Section 16. *Penalties.*

(1) Whoever wilfully makes a false statement or representation as to a material fact to obtain or increase any benefit or other payment under this act, either for himself or for any other person, shall upon conviction be punished by a fine of not more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or both such fine and imprisonment; and each such false statement or representation shall constitute a separate and distinct offense.

(2) Any employer or his agent who wilfully makes a false statement or representation as to a material fact to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required of such employer under this act, or who wilfully fails or refuses to make any such contribution or other payment or to furnish any reports duly required hereunder or to appear or testify or produce records lawfully required hereunder, or who makes or requires any deduction from wages to pay all or any portion of the contributions required from em-

ployers, shall upon conviction be punished by a fine of not more than two hundred dollars, or by imprisonment in the county jail not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation, and each day of such failure or refusal, and each such deduction from wages shall constitute a separate and distinct offense. But no person shall be deemed to have wilfully failed or refused to make any payment or do any act required hereunder during the time when any injunction is in effect against the enforcement of such payment or act, or any proceeding or action at law or in equity is pending to test the legality of any payment sought to be exacted hereunder.

(3) Any violation of any provisions of this act for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment.

(4) On complaint of the Commissioner the fines specified or provided in this section may be collected by the state in an action for debt.

#### Section 17. *Refunds.*

In the event that a person subject to this Act erroneously makes a contribution not required or in excess of that required by this Act, such contribution or the excess thereof shall be refunded to him if an adjustment in accordance with Section 7, subsection (10) cannot be made. Refunds shall be made by the Treasurer on vouchers drawn by the Commissioner on the appropriate account or accounts in the State Fund.

#### Section 18. *Unemployment Administration Fund.*

(1) There is hereby created the "Unemployment Administration Fund," to consist of all monies received by the State or by the Commissioner for the administration of this Act. This fund shall be handled by the State Treasurer



as other state monies are handled; but it shall be expended solely for the purposes herein specified, and its balance shall not lapse at any time but shall remain continuously available to the Commissioner for expenditure consistent herewith on his requisition. All Federal monies allotted or apportioned to the state by the Federal Social Security Board or other agency for the administration of this Act shall be paid into this fund.

(2) In the event the Federal Government should fail to furnish administrative expenses for the Unemployment Compensation Administration Fund as provided in Title 3 of the Social Security Act of 1935, or if funds so provided are insufficient to meet the required expenses of administration as approved by the Unemployment Compensation Board in its annual budget, the Commissioner is hereby authorized and directed to draw upon the Treasurer for any deficiency in the Administration Fund but not to exceed in total an amount equal to three-tenths of one per cent of total payrolls upon which contributions are received under this Act.

#### Section 19. *Saving Clause.*

The Legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal.

#### Section 20. *Separability of Provisions.*

If any provision of this Act including but not limited to the provisions for a pooled account and for transfers and credits thereto and payments therefrom, or if the application of any provision of this Act to any person or circumstance is declared invalid by the Supreme Court of New Jersey or by the Supreme Court of the United States of America, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

#### Section 21. *Termination of Act.*

This Act shall cease to be operative one year after any termination of the effectiveness of Titles 3 or 9 of the Federal Social Security Act of 1935; and contributions required under any of its provisions shall thereafter cease to be required. In the event this Section becomes effective the Free Public Employment Service shall thereafter operate under provisions of law in effect prior to adoption of this Act.

#### Section 22. *Effective Date.*

This Act shall take effect from the date of its approval by the Governor.

#### *Statement.*

The purpose of this Act is to provide for stabilization of employment, create an Unemployment Compensation Board, permit guaranteed employment plans, establish unemployment reserve accounts and require contributions to the same, transfer the State Employment Service to the Unemployment Compensation Board, and make necessary appropriations in order to comply with Titles 3 and 9 of the Federal Social Security Act.

**Memorandum by the Sponsor of Plan C**  
**Draft of Federal-State Pooled Unemployment Compensation**  
**Bill Meeting Federal Social Security Board**  
**Requirements**

Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern, requiring immediate appropriate action to prevent its spread and lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by a system of pooling of interests 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.

Only by combining or "pooling" all contributions can equitable and adequate unemployment benefits be provided at a minimum cost. A separate insurance reserve for each firm hiring as few as 8 employees or a separate reserve for each worker covered would mean thousands, tens of thousands or hundred of thousands of scattered reserves. Any such segregation would prove wasteful, inequitable and complicated to administer.

In private insurance all premiums are paid into a single pool or reserve. One reserve for all contributions reduces the cost of insurance and prevents the reserve from being drained dry by a few fires, a few deaths or a few accidents. If fire insurance reserves were segregated by cities or boroughs and a large fire broke out in a locality, that locality's segregated reserve would be insufficient to pay the policy holders the sums promised them in their policies.

To require that a fire insurance company set up thousands of separate reserves—one for each locality or one for each firm insured—would be absurd. Complete pooling is the essence of sound private insurance. It is essential for sound unemployment insurance.

Only with full pooling will insured wage-earners who are equally worthy receive the same unemployment benefits in every area and occupation in the State. Without full pooling industrious workers will suffer as those first laid off use up the firm's tiny, separate reserve. Complete pooling is necessary if the workers of this State are to be adequately protected. Complete pooling is essential if relief costs are to be reduced to a minimum and property taxpayers are to be spared a large relief bill.

In state after state, the Commissions, after thorough study, have rejected all plans requiring thousands of separate reserves. In making their decisions, Alabama, California, Indiana, District of Columbia, Louisiana, Mississippi, Oregon, Rhode Island, South Carolina, Washington, Texas, Ohio, New York, New Hampshire, and Massachusetts have been guided by extensive studies of past experience rather than by theory, while only two states, Wisconsin and Utah, have set up employer reserve funds without employee contributions. Special studies of employment and payroll records of numerous firms in various states over 10-year periods prove that a single-pool plan is less expensive and will provide more adequate benefits.

From an analysis of the personnel records of 14 Ohio concerns, the

Bureau of Business Research of Ohio State University found that a payroll tax of 2½% would have provided full benefits to all unemployed workers under a single, pooled reserve, whereas even with a 3% payroll tax, 8 of the 14 concerns would have been unable to pay their disemployed workers full benefits. The reduction in relief costs by complete pooling is obvious.

Of the workers now under approved plans of unemployment insurance, over 87% are covered by State laws providing for complete pooling in a single, State-wide reserve. Non-pooled plans are found only in the West where the ratio of unemployment per working population is much lower than in this State. Only 3 States in the country had a higher rate of unemployment than New Jersey from 1930 through 1933.

According to Federal estimates, about 40% of the workers in New Jersey who would be covered by a State plan for unemployment compensation were unemployed during the most severe years of this depression. Since employment in such a large section of our industry fluctuates widely with booms and depressions, any provision short of complete pooling in a single fund will not afford sufficient protection to the workers and the property taxpayers of this State.

The primary function of real insurance is to spread the risk. Any scattered-reserve scheme violates that principle. Schemes which set up thousands of separate reserves do not diminish insecurity by diffusing the risk. They concentrate and enhance the risk both to the employer and the employee.

Under separate, employer-reserve schemes, unemployment insurance contributions are reduced in good times and increased in bad times. At the very time the employer is suffering most from depression, his unemployment tax burden may be doubled or trebled, thereby unstabilizing his business and causing more unemployment.

With a single, unified reserve, an unemployed worker gets his benefits whatever happens to his last employer. In a separate, company-reserve scheme, both the worker's job and his employment benefits depend upon the good fortune of a single employer hiring as few as eight workers. Any misfortune or business reverses that the employer encounters, may leave the employee without a job and without unemployment benefits either.

Employer-reserve plans are put forward on the ground that they reward employers who stabilize their employment. But such employers can be rewarded under a plan with a single, State-wide reserve. This bill provides for merit rating of New Jersey employers, which goes into effect after there has been a period of experience under the bill. Then firms with good experience will have their rate of contributions reduced from 3% to 1%.

A single-reserve plan with merit rating provides the advantages that are claimed for multiple reserve schemes, yet has none of the disadvantages here discussed that are inherent in any scheme providing for scattered and segregated reserves.



## SHORT TITLE

SECTION 1. This Act shall be known and may be cited as the "Unemployment Compensation Law."

## DECLARATION OF STATE PUBLIC POLICY

SEC. 2. As a guide to the interpretation and application of this Act, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. 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 require the enactment of this measure, 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.

## BENEFITS

SEC. 3. (a) *Payment of Benefits.*—Twenty-four months after the date when contributions first accrue under this Act, benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the commission may prescribe.

(b) *Weekly Benefit Amount for Total Unemployment.*—

Each eligible individual who is totally unemployed (as defined in section 19 (1) in any week shall be paid with respect to such week, benefits (computed to the next highest multiple of twenty cents) at the rate of fifty 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 his 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 19 (j)), in any week shall be paid with respect to such week a partial benefit. Such partial benefit shall be an amount (computed to the next highest multiple of 20 cents) equal to the difference between his weekly benefit amount (as defined in section 19 (q) and five-sixths of his wages (as defined in section 19 (n)) for such week.

(d) *Ratio Provisions and Duration of Benefits.*—Benefits shall be paid each unemployed and eligible individual, with respect to his total or partial unemployment:

(1) In the ratio of one-fourth of his weekly benefit amount to each uncharged week of employment occurring, except as otherwise provided in section 4 (e), within the one hundred and four consecutive weeks preceding the first week in any continuous period of unemployment, except that his aggregate benefits thus payable within any period of fifty-two consecutive weeks shall not exceed fifteen times his weekly benefit amount; and after such individual has exhausted his rights to benefits under this provision.

(2) In the ratio of one-twentieth of his weekly benefit amount to each uncharged week of employment occurring within the two hundred and sixty consecutive weeks preceding the first week in any continuous period of unemployment.

(e) *Charging of Benefits Against Past Weeks of Employment.*—Each individual's benefits shall be limited in accordance with the ratio provisions of subsection (d) of this section and shall be charged against those of his weeks of employment, against which benefits have not previously been charged hereunder, in the inverse chronological order in which such weeks occurred. In no event shall any one calendar week be chargeable as more than one week of

employment (as defined in section 19 (p)). If during any one calendar week an individual has rendered services for more than one employer, his benefits shall be chargeable only against the week of employment for the employer by whom the plurality of his wages for such week was payable. If the amount chargeable against a particular week of employment under the provisions of subsections (d) (1) or (d) (2) of this section equals, respectively, less than one-fourth or less than one-twentieth of the weekly benefit amount, the manner in which and the extent to which such week of employment shall be charged shall be in accordance with general rules prescribed by the commission.

(f) *Determination of Full-Time Weekly Wage.*—The “full-time weekly wage” of any individual means the product obtained by multiplying his “hourly rate of earnings” by his “full-time weekly hours”, both of which shall be determined and redetermined at reasonable intervals in accordance with rules prescribed by the commission.

(1) An individual’s “full-time weekly hours” shall be determined as follows: There shall be added together the hours worked by the individual in all those weeks of employment, occurring within the fifty-two weeks preceding the first week in any continuous period of unemployment, in which he worked thirty hours or more. Such total hours shall be divided by the number of weeks, and the resulting weekly average shall constitute the individual’s full-time weekly hours, until a subsequent determination is made. If the application of the above method would be unreasonable or arbitrary as applied to a particular individual, the “full-time weekly hours” for such individual shall be determined in accordance with fair and reasonable methods prescribed by the commission.

(2) An individual’s “hourly rate of earnings” shall be determined by dividing his total wages for all his weeks of employment during which he was employed for at least his full-time weekly hours, occurring within the thirteen weeks preceding the first week in any continuous period of unemployment, by the total number of hours of employment within such weeks; the quotient so obtained shall be his hourly rate of earnings until a subsequent determina-

tion is made: *Provided*, That if the application of such method of determination would be unreasonable or arbitrary as applied to a particular individual, the “hourly rate of earnings” of such individual shall be determined in accordance with fair and reasonable methods prescribed by the commission.

(3) The commission may, after fair notice and opportunity to be heard, determine the full-time weekly hours customarily worked, or the hourly rate of earnings customarily received (or both), by individuals employed in any trade or industry or any type of employment therein, in this State, in any part of this State, or in any establishment in this State. Such determination shall be made and published in accordance with the provisions of this Act for general rules. Thereafter, until such determination is amended or rescinded, such weekly hours or such hourly rate of earnings, shall be deemed to be the full-time weekly hours or the hourly rate of earnings, or both, of any individual employed in such trade or industry or type of employment or establishment for the greater part of his working time occurring within the fifty-two consecutive weeks preceding the first week in any continuous period of unemployment: *Provided*, That upon showing of good cause therefor, the commission may exempt any such individual from the application of such determination if it finds that the application thereof to him would be impracticable or inequitable.

## BENEFIT ELIGIBILITY CONDITIONS

SEC. 4. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that—

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

(b) He has made a claim for benefits in accordance with the provisions of section 6 (a) of this Act.

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

(d) Prior to any week for which he claims benefits for



total unemployment, he has been totally unemployed for a waiting period of two weeks with respect to which he received no benefits but during which he was eligible for benefits in all other respects, except for the requirements of subsections (b) and (e) of this section, and was not disqualified for benefits under any provision of section 5 of this Act. Such two weeks of total unemployment need not be consecutive, but shall be accumulated over the period of thirteen consecutive weeks preceding any 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 such two weeks of total unemployment occur after benefits first could become payable to any individual under this Act.

(e) He has had at least thirteen weeks of employment within the fifty-two consecutive weeks preceding the first week in any continuous period of unemployment; provided that if the commission finds that during such period of fifty-two weeks or the period of one hundred and four weeks provided in section 3 (d) any individual has been incapable of work because of some physical or mental disability, or has been engaged for the greater part of his working time in any week in self-employment or in performing services not subject to this Act, such period of fifty-two weeks for the purposes of this subsection or the said period of one hundred and four weeks for the purposes of subsection (d) or section 3, or both such periods, as the case may require, shall be extended by the duration of such incapacity, self-employment or services. No such extension shall exceed fifty-two additional weeks.

#### DISQUALIFICATION FOR BENEFITS

SEC. 5. An individual shall be disqualified for benefits—

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

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

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

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects of 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 work (new work) under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona-fide labor organization. (d) For any week with respect to which the commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the

factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that—

(1) He is not participating in or financing 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*, 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 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 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.

### CLAIMS FOR BENEFITS

SEC. 6. (a) *Filing*.—Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed

statements shall be supplied by the commission to each employer without cost to him.

(b) *Initial Determination*.—A representative designated by the commission, 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 or to the Board of Review which shall make its determinations 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 5 (d) of this Act, the deputy shall promptly transmit his full finding of fact with respect to that subsection to the Board of Review which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. Unless the claimant or any such interested party, within five calendar days after the delivery of such 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 determination of the Board of Review shall be paid only after such determination: *Provided*, That if an appeal tribunal affirms a decision of a deputy, or the Board of Review 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 oppor-



tunity 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 Board of Review, 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 commission shall establish one or more impartial appeal tribunals 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 two members shall serve at the pleasure of the commission and be paid a fee of not more than Twenty Dollars (\$20.00) per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The Chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the Chairman of the appeal tribunal is present.

(e) *Board of Review.*—The Board of Review 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 Board of Review shall permit such further appeal 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 Board of Review may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Board of Review shall be heard by a quorum thereof

in accordance with the requirements in subsection (c) of this section. The Board of Review shall promptly notify the interested parties of its findings and decision.

(f) *Procedure.*—The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with the rules prescribed by the Board of Review 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 upon a disputed claim 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 at a rate fixed by the commission. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expenses of administering this Act.

(h) *Appeal to Courts.*—Any decision of the Board of Review in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Board of Review as provided by this Act. The Board of Review shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney, who is a regular salaried employee of the Board of Review and has been designated by it for that purpose, or at the Board of Review's request, by the Attorney General.

(i) *Court Review.*—Within ten days after the decision of the Board of Review has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the Circuit Court of New Jersey, against the Board of Review for the review of its decision, in which action any other party to the proceeding before the Board of Review shall be made a defendant. In such

action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the Board of Review or upon such person as the Board of Review 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 petition as there are defendants and the Board of Review shall forthwith mail one such copy to each such defendant. With its answer, the Board of Review 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. The Board of Review may also, in its decretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the Board of Review 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. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this State. An appeal may be taken from the decision of the Circuit Court of New Jersey to the Supreme Court of New Jersey, in the same manner, but not inconsistent with the provisions of this Act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Board of Review and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Board of Review shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the Board of Review shall so order.

## CONTRIBUTIONS

SEC. 7. (a) *Payment*.—(1) On and after January 1, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is sub-

ject to this Act, with respect to wages payable for employment (as defined in section 19 (g)) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulation as the commission 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 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 of Contribution*.—Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(1) Ten and eight-tenths per centum with respect to employment during the calendar month of December, 1936;

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

(3) Two and seven-tenths per centum with respect to employment during the calendar years 1938, 1939, 1940, 1941; and

(4) 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*.—The commission shall maintain a separate account for each employer, crediting his account with all the contribution which he has paid on his own behalf during each calendar year, and charging his account with all amounts paid within such year as benefits which, under section 3 of this Act, were charged against weeks of employment in his service. But nothing in this Act shall be construed to grant any employer or individuals in his service prior claims or rights to the amount paid by him to the unemployment compensation fund either on his own behalf or on behalf of such individuals. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto under this Act, irrespective of the source of such contributions. The commission shall, for the year 1942, and for each calendar year thereafter, classify employers



in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such experience. The commission shall determine the contribution rate of each employer in accordance with the following requirements:

(1) Each employer's rate shall be  $2\frac{7}{10}$  per centum, unless and until there shall have been three calendar years throughout which an individual in his employ could have received benefits if unemployed and eligible.

(2) 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, for all past years exceeds the total benefits charged to his account for all such years, his contribution rate shall be—

(A) One and eight-tenths per centum, if such excess equals or exceeds  $7\frac{1}{2}$  but is less than 10 per centum of his average annual pay roll (as defined in section 19 (a) (2));

(B) Nine-tenths of 1 per centum, if such excess equals or exceeds 10 per centum of his average annual pay roll. If the total of his contributions, paid on his own behalf for all past periods or for the past sixty consecutive calendar months, whichever period is more advantageous to such employer for the purposes of this paragraph, is less than the total benefits charged against his account during the same period, his rate shall be  $3\frac{6}{10}$  per centum, unless such employer shows to the satisfaction of the commission that such experience was due to an act of God, fire, or other catastrophe or act of civil or military authority, directly affecting the place in which individuals were employed by him, in which case his rate shall be  $2\frac{7}{10}$  per centum.

(3) 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  $1\frac{8}{10}$  per centum unless such assets at such time were at least twice the total benefits paid from the fund within such last preceding year.

(1) *Contribution By Workers.*—Each worker shall contribute to the fund 1 per centum of his wages paid by an employer with respect to his employment which occurs after December 31, 1936, and after such employer has satisfied the conditions set forth in section 19 (f) of this Act with respect to becoming an employer. Each employer shall, notwithstanding any provisions of law in this State to the contrary, withhold in trust the amount of his worker's contributions from their wages at the time such wages are paid, shall show such deduction on his pay-roll records, shall furnish such evidence thereof to his workers as the commission may prescribe, and shall transmit all such contributions in addition to his own contributions, to the commission in such manner and at such times as the commission may prescribe. If any employer fails to deduct the contributions of any of his workers at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next succeeding pay-roll period, he alone shall thereafter be liable for such contributions, and for the purposes of section 14 hereof, such contributions shall be treated as employer's contributions required from him. As used in this Act, except when the context clearly requires otherwise, the term "contributions" shall include the contributions of workers pursuant to this section.

(2) If an individual does not receive any wages from the employing unit which for the purposes of this Act is treated as his employer, or receives his wages from some other employing unit, such employer shall nevertheless be liable for such individual's contributions in the first instance; and after payment thereof such employer may deduct the amount of such contributions from any sums payable by him to such employing unit, or may recover the amount of such contributions from such employing unit or in the absence of such an employing unit, from such individual, in a civil action for debt, provided proceedings therefor are instituted within three months after the date

on which such contributions are payable. The commission shall prescribe rules whereby such an employing unit may recover the amount of such contributions from such individuals in the same manner as if it were the employer.

(3) Every employer who has elected to become an employer subject to this Act or to cease to be an employer subject to this Act, pursuant to the provisions of section 8, shall post and maintain printed notices of such election on his premises, of such design, in such numbers, and at such places as the commission may determine to be necessary to give notice thereof to persons in his service.

(4) Contributions by workers, payable to the commission as herein provided, shall be exempt from garnishment, attachment, execution, or any other remedy for the collection of debts.

#### PERIOD, ELECTION, AND TERMINATION OF EMPLOYER'S COVERAGE

SEC. 8. (a) Any employing unit which is or becomes an employer subject to this Act within any calendar year shall be subject to this Act during the whole of such calendar year.

(b) Except as otherwise provided in subsection (c) of this section, an employing unit shall cease to be an employer subject to this Act only as of the 1st day of January of any calendar year, if it files with the commission, prior to the 5th day of January of such year, a written application for termination of coverage, and the commission finds that there were no twenty different days, each day being in a different week within the preceding calendar year, within which such employing unit employed eight or more individuals in employment subject to this Act. For the purpose of this subsection, the two or more employing units mentioned in paragraph (2) or (3) or (4) of section 19 (f) shall be treated as a single employing unit.

(c) (1) An employing unit, not otherwise subject to this Act, which files with the commission its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such

election by the commission, became 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 commission a written notice to that effect.

(2) Any employing unit for which services that do not constitute employment as defined in this Act are performed, may file with the commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this Act for not less than two calendar years. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this Act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 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 commission a written notice to that effect.

#### UNEMPLOYMENT COMPENSATION FUND

SEC. 9(a) *Establishment and Control.*—There is hereby established as a special fund, separate and apart from all public monies or funds of this State, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this Act. This fund shall consist of (1) all contributions collected under this Act, together with any interest thereon collected pursuant to section 14 of this Act; (2) all fines and penalties collected pursuant to the provisions of this Act; (3) interest earned upon any monies in the fund; (4) any property or securities acquired through the use of monies belonging to the fund; and (5) all earnings of such property or securities. All monies in the fund shall be mingled and undivided.

(b) *Accounts and Deposit.*—The State Treasurer shall



be ex-officio, treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the commission and shall issue his warrants upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three separate accounts: (1) A clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All monies payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 14 of this Act may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commission. After clearance thereof, all other monies 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 monies in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all monies requisitioned from this State's account in the unemployment trust fund. Monies in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the commission and in a form prescribed by law or approval by the Attorney General. Premiums for said bond shall be paid from the administration fund.

(c) *Withdrawals*.—Monies shall be requisitioned from this State's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall from time to time requisition from the unemployment trust

fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such monies in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such monies in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of a member of the commission or its duly authorized agent for that purpose. Any balance of monies requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) *Management of Funds Upon Discontinuance of Unemployment Trust Fund*.—The provisions of subsections (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 monies, properties, or securities therein, belonging to the unemployment compensation fund of this State shall be transferred to the treasurer of the unem-

ployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such monies, properties, or securities in a manner approved by the commission, in accordance with the provisions of this Act: *Provided*, That such monies shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America and of the State of New Jersey: *And 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 commission.

## UNEMPLOYMENT COMPENSATION COMMISSION

SEC. 10. (a) *Organization*.—There is hereby created a commission to be known as the Unemployment Compensation Commission of New Jersey. The commission shall consist of three members, who shall be appointed by the Governor within ninety days after the passage of this Act, or after any vacancy occurs in its membership. During his term of membership on the commission no member shall engage in any other business, vocation, or employment or serve as an officer or committee member of any political party organization, and not more than two members of the commission shall be members of the same political party. Each member shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of enactment of this Act shall expire, as designated by the Governor at the time of appointment, one at the end of two years, one at the end of four years, and one at the end of six years after the date of enactment of this Act. The Governor may at any time, after notice and hearing, remove any com-

missioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(b) *Divisions*.—The commission shall establish two coordinate divisions: the New Jersey State employment service division created pursuant to section 12 of this Act, and the unemployment compensation division. Each division shall be responsible for the discharge of its distinctive function. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commission may find that such separation is impracticable.

(c) *Board of Review*.—There is hereby created a Board of Review consisting of three members appointed by the Governor for terms of six years, except that the terms of the members first taking office shall be two, four, and six years, respectively, as designated by the Governor at the time of appointment, and except that vacancies shall be filled by appointment by the Governor for the unexpired term. Each member shall be paid from the unemployment administration fund a fixed salary at the rate of Ten Thousand Dollars (\$10,000.00) per year. The Governor may at any time, after notice and hearing, remove any member for cause.

(d) *Salaries*.—Each commissioner shall be paid from the unemployment compensation administration fund a fixed monthly salary at the rate of Ten Thousand Dollars (\$10,000.00) per year.

(e) *Quorum*.—Any two commissioners shall constitute a quorum. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission.

## ADMINISTRATION

SEC. 11 (a) *Duties and Powers of Commission*.—It shall be the duty of the commission to administer this Act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations



shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the commission shall prescribe. The commission 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 February of each year, the commission shall submit to the Governor a report covering the administration and operation of this Act during the preceding calendar year and shall make such recommendations for amendments to this Act as the commission deems proper. Such report shall include a balance sheet of the monies in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the legislature, and make recommendations with respect thereto.

(b) *Regulations and General and Special Rules.*—General and special rules may be adopted, amended, or rescinded by the commission 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 commission and shall become effective in the manner and at the time prescribed by the commission.

(c) *Publication.*—The commission shall cause to be printed for distribution to the public the text of this Act, the commission's regulations and general rules, its annual reports to the Governor, and any other material the com-

mission deems relevant and suitable and shall furnish the same to any person upon application therefor.

(d) *Personnel.*—Subject to other provisions of this Act, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis, subject to Civil Service regulations. The commission shall not employ or pay any person who is an officer or committee member of any political party organization. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this Act, and may in its discretion bond any person handling monies or signing checks hereunder.

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

(f) *Employment Stabilization.*—The commission with the advice and aid of its advisory councils, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State

in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(g) *Records and Reports*.—Each employing unit shall keep true and accurate employment records, containing such information as the commission may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commission deems necessary for the effective administration of this Act. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant at a hearing before an appeal tribunal or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission who violates any provision of this section shall be fined not less than \$20.00 nor more than \$200.00, or imprisoned for not longer than ninety days, or both.

(h) *Oaths and Witnesses*.—In the discharge of the duties imposed by this Act, the chairman of an appeal tribunal and any duly authorized representative or member of the commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Act.

(i) *Subpoenas*.—In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission or its duly authorized representative, shall have jurisdiction to issue

to such person an order requiring **such person** to appear before a commissioner, the commission, or **its** duly authorized representative, there to **produce evidence** if so ordered or there to give testimony **touching the matter** under investigation or in question; **and** any **failure** to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall **without** just cause fail or refuse to attend and **testify** or to **answer** any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in **his** power so to do, in obedience to a subpoena of the commission shall be punished by a fine of not less than \$200.00 or **by** imprisonment for not longer than sixty days, or by **both** such fine and imprisonment, and each day **such violation** continues shall be deemed to be a separate offense.

(j) *Protection Against Self-Incrimination*.—No person shall be excused from attending and **testifying** or from producing books, papers, correspondence, memoranda, and other records before the commission or in obedience to the subpoena of the commission or any member **thereof** or any duly authorized representative of the commission in any cause or proceeding before the commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate **him** or subject him to a penalty or forfeiture; but **no** individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or **thing** concerning which he is compelled, after having claimed his privilege against self-incrimination, to **testify** or **produce** evidence, documentary or otherwise, except that **such** individual so testifying shall not be exempt from prosecution and punishment for perjury committed **in** so **testifying**.

(k) *State-Federal Cooperation*.—In the administration of this Act, the commission shall **cooperate to** the fullest extent consistent with the provisions of this Act, with the Social Security Board, created by the Social Security Act, approved August 14, 1935, as amended; shall **make** such reports, in such form and containing **such information** as the Social Security Board may from **time to time** require, and shall comply with such provisions as the Social Se-



curity Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under title III of the Social Security Act for the purpose of assisting in the administration of this Act.

Upon request therefor the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this Act.

### EMPLOYMENT SERVICE

SEC. 12. (a) *State Employment Service*.—The New Jersey State Employment Service is hereby transferred to the commission as a division thereof, which shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Act and for the purpose of performing such duties as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U. S. C., title 29, Sec. 49 (c), as amended. The said division shall be administered by a full-time salaried director, who shall be charged with the duty to cooperate 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 commission is directed to appoint the director, other officers, and employees of the New Jersey State Employment Service. Such appointments shall be made in accordance with regulations pre-

scribed by the Director of the United States Employment Service.

(b) *Financing*.—All monies 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 monies are hereby made available to the New Jersey State Employment Service to be expended as provided by this section and by said Act of Congress. For the purpose of establishing and maintaining free public employment offices, said division is authorized to enter into agreements with any political subdivision of this State or with any private, nonprofit organization, and as a part of any such agreement the commission may accept monies, services, or quarters as a contribution to the employment service account.

### UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND

SEC. 13 (a) *Special Fund*.—There is hereby created in the State treasury a special fund to be known as the unemployment compensation administration fund. All monies which are deposited or paid into this fund are hereby appropriated and made available to the commission. All monies 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 monies appropriated by this State, and all monies 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 monies in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commission for expenditure consistent with this Act. The State treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties, in connection with

the unemployment compensation administration fund in an amount to be fixed by the commission and in a form prescribed by law or approved by the Attorney General. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under Section 9 of this Act, shall be paid from the monies 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 12 of this Act and for the purpose of cooperating 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 on January 1, 1937 Sixty-seven thousand and five hundred Dollars (\$67,500.00) and annually thereafter on the 1st of July, the sum of One hundred and thirty-five thousand Dollars (\$135,000.00). In addition there shall be paid into such account the monies designated in Section 12 (b) of this Act, and such monies as are apportioned for the purposes of this account from any monies received by this State under title III of the Social Security Act, as amended.

## COLLECTION OF CONTRIBUTIONS

SEC. 14. (a) *Interest on Past-Due Contributions*.—Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of 1 per centum per month from and after such date until payment plus accrued interest is received by the commission. Interest collected pursuant to this subsection shall be paid into the 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 commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date 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, contributions 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 six 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, Sec. 104 (b)), as amended.

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



## PROTECTION OF RIGHTS AND BENEFITS

SEC. 15. (a) *Waiver of Rights Void.*—No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offence, be fined not less than \$100.00 nor more than \$1,000.00 or be imprisoned for not more than six months, or both.

(b) *Limitation of Fees.*—No individual claiming benefits shall be charged fees of any kind in any proceeding under this Act by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the Board of Review 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 Board of Review. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than \$50.00 nor more than \$500.00, or imprisoned for not more than six months, or both.

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

## PENALTIES

SEC. 16. (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, either for himself or for any other person, shall be punished by a fine of not less than \$20.00 nor more than \$50.00, or by imprisonment for not longer than thirty days, or by 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 reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this Act, 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 punished by a fine of not less than \$20.00 nor more than \$200.00, or by imprisonment for not longer than sixty 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 rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than \$20.00 nor more than \$200.00 or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this Act while any conditions for the receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this Act or shall be liable to repay to the commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in Section 14 (b) of this act for the collection of past-due contributions.

### REPRESENTATION IN COURT

SEC. 17. (a) In any civil action to enforce the provisions of this Act the commission and the State may be represented by any qualified attorney who is a regular salaried employee of the commission and is designated by it for this purpose or at the commission's request, by the Attorney General.

(b) All criminal actions for violation of any provision of this Act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the Attorney General of the State; or, at his request and under his direction, by the Prosecuting Attorney of any county in which the employer has a place of business or the violator resides.

### NONLIABILITY OF STATE

SEC. 18. 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 monies are available therefor to the credit of the unemployment compensation fund, and neither the State nor the commission shall be liable for any amount in excess of such sums.

SEC. 19. As used in this Act, unless the context clearly requires otherwise:

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

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

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

(c) "Commission" means the Unemployment Compensation Commission established by this Act.

(d) "Contributions" means the money 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, 1935, had in its employ one 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. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of Section 19 (f) or Section 8 (c) of this Act, the employing unit shall for all the purposes of this Act be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of Section 19 (f) or Section 8 (c) of this Act shall alone be liable for the contributions measured by wages payable to individuals in his employ, and



except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of Section 19 (f) or Section 8 (c) of this Act, may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of any 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 employment.

(f) "Employer" means:

(1) Any employing unit which for some portion of a day, but not necessarily simultaneously, 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 employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

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

(5) Any employing unit which, having become an employer under paragraph (1), (2), (3), or (4), has not, un-

der Section 8, ceased to be an employer subject to this Act; or

(6) For the effective period of its election pursuant to Section (8) (c) any other employing unit which has elected to become fully subject to this Act.

(g) "Employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied, which service (1) is performed in this State by an individual exclusive, however, of any service within this State which is incidental to the individual's service performed elsewhere; or (2) is performed elsewhere, but is incidental to an individual's service in this State, provided contributions are not required and paid with respect to such services performed elsewhere under an unemployment compensation law of any other State; but the term 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) Service performed in the employ of any other State or its political subdivisions, or of the United States Government, or of an instrumentality of any other State or States or their political subdivisions or of the United States.

(3) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress: PROVIDED, That the Commission is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in Section 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;

(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.

(h) "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.

(i) "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.

(j) "*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 ( $6/5$ ) of the weekly benefit amount he would be entitled to receive if totally unemployed and eligible.

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

(l) "*Total Unemployment.*"—An individual shall be deemed "totally unemployed" in any week during which he performs no services with respect to which wages are payable to him. An individual's weeks of total unemployment shall be deemed to commence only after his registration pursuant to Section (4) (a) of this Act.

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

(n) "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 average amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the commission.

(o) "Week" means calendar week, ending at midnight Saturday, or the equivalent thereof as determined in accordance with regulations prescribed by the commission.

(p) "Week of employment" means each week occurring after December 31, 1937, within which an individual performs any employment for an employing unit which has satisfied the conditions set forth in Section 19 (f) with respect to becoming an employer subject to this Act, but does not include any week in which the plurality of such individual's total working hours are performed without this State, with respect to which plurality of total working hours, contributions are required and paid under an unemployment compensation law of some other State, or compensation is payable under an unemployment compensation law of the United States.

(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.

#### SAVING CLAUSE

SEC. 20. 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.



## SEPARABILITY OF PROVISIONS

SEC. 21. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

## EFFECTIVE DATE

SEC. 22. This Act shall take effect upon passage.