

CHAPTER 443—H. F. No. 1530

An act relating to unemployment compensation, amending the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 4337-22, 4337-23, 4337-24, 4337-25, 4337-26, 4337-27, 4337-28, 4337-30, 4337-31, and 4337-32.

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

Section 1. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-22, is hereby amended so as to read as follows:

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

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

(2) "Average annual payroll" 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 industrial commission of the state of Minnesota.

D "Contributions" means the payments to the state unemployment compensation fund required by this act.

E "Employing Unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. *Notwithstanding* any inconsistent provision of this act *whenever* any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of Section 2 (f) or Section 9 (c) of this act,

the employing unit shall for all the purposes of this act be deemed to employ each such contractor or subcontractor and individuals in his employ for each day during which such contractor, subcontractor, and individual, is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of Section 2 (f) of this act shall alone be liable for the employer's contributions measured by wages payable to individuals in his employ. Each individual employed to perform or assist in performing the work of any agent or individual employed by an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act whether such individual was hired or paid directly by such employing unit or by such agent or individual, provided the employing unit had actual or constructive knowledge of such work.

F "Employer" means:

(1) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive, within the year 1936 has or had in employment eight or more individuals (irrespective of whether the same individuals are or were employed in each such day) and, for any calendar year subsequent to 1936, an employing unit which, for some portion of a day, in each of twenty (20) different weeks, whether or not such weeks are or were consecutive, and *whether or not all of such weeks of employment are or were within the state of Minnesota*, within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day.)

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

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

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise),

and which, if treated as a single unit with such other employing units or interests or both, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraph (1), (2), (3), or (4), has not, under Section 9, ceased to be an employer subject to this act; or

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

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

H (1) Subject to the other provisions of this subsection "employment" means service, including service in inter-state commerce, or otherwise performed for wages or under any contract of hire, written or oral, express or implied, where the relationship of master and servant exists.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if: (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

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

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

tal to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be "employment" subject to this act unless and until it is shown to the satisfaction of the commission that the relationship of master and servant does not exist as specified in subdivision 1 hereof or (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and (b) such service in either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall not include:

(a) 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;

(b) 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, *except that if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, then, to the extent permitted by Congress, and from and after the date as of which such permission becomes effective, all of the provisions of this act shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services.*

(c) *Service performed after June 30, 1939, for an employer determined to be subject to the railroad unemployment insurance act by the agency or agencies empowered to make such determination by an act of congress; and service as an employee representative determined to be subject to said act by said agency or agencies; and service with respect to which unemployment compensation is payable under any other 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 or acts of congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 10 (d) and 10 (m) 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 or acts of congress, acquired rights to benefits under this act;

(d) Agricultural labor;

(e) Domestic service in a private home;

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

(g) 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;

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

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

(j) *Service performed in the employ of any farmers' cooperative association dealing exclusively with agricultural or dairy products or farmers' mutual insurance company, not included in the definition of employer under section 907 of the social security act.*

(k) *Services performed subsequent to December 31, 1939, outside of the corporate limits of a city, village, or borough of 10,000 population or more, as determined by the most recent United States census, for an employer who has paid all contributions due and payable for employment during all past periods and who is not subject to Title IX of the Federal Social Security Act, as now in force or hereafter amended, provided the services of all of such employer's employes are performed outside of such corporate limits. For the purpose of this provision service shall be deemed to be performed outside of such corporate limits if (1) performed entirely outside of such corporate limits; or (2) performed both outside and within such*

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

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

J "Fund" means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

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

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

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 values of remuneration payable in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the 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 "Weekly benefit amount"—An individual's "weekly benefit amount" with respect to any particular week of total unemployment means the amount of benefits computed in accordance with the provisions of section 5 of this act, which he would be entitled to receive for such week, if totally unemployed and eligible.

Q "Benefit year" with respect to any individual means the 52 consecutive week period beginning with the first day of the first week with respect to which *the individual files a valid claim for benefits. Any claim for benefits made in accordance with the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-28(a) shall be deemed to be a valid claim for the purposes of this subsection if the individual has earned the wage credits for employment by employers required under the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 4337-26 E and F as amended by this act.*

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

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

T "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe."

Sec. 2. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-23, is hereby amended to read as follows:

"4337-23. Employment compensation fund established.—

A There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the 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 moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided.

B The state treasurer shall be ex-officio the treasurer and custodian of the fund, who shall administer such fund in accordance with the directions of the 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 moneys 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 moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund, and shall be used exclusively for the payment of benefits as provided in this act. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any banks 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 approved by the attorney general. Premiums for said bond shall be paid from the administration fund.

(C) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the 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 moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account

and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter-signature of a member of the commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the 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) Notwithstanding any requirements of the foregoing subsections of this section, the commission shall, prior to whichever is the later of (1) thirty days after the close of this session of the legislature and (2) July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in the unemployment trust fund established and maintained pursuant to section 904 of the social security act as amended, to the railroad unemployment insurance account, established and maintained pursuant to section 10 of the railroad unemployment insurance act, an amount hereinafter referred to as the preliminary amount; and shall, prior to whichever is later of (1) thirty days after the close of this session of the legislature and (2) January 1, 1940, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account an additional amount, hereinafter referred to as the liquidating amount. The social security board shall determine both such amounts after consultation with the railroad retirement board and the commission. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contribution collected from "employers" (as the term "employer" is defined in section 1 (a) of the Railroad Unemployment Insurance Act) and credited to the unemployment compensation fund bears to all contributions theretofore collected under this act and credited to the unemployment compensation fund. The liquidating amount shall consist of the

total amount of contributions collected from "employers" (as the term "employer" is defined in section 1 (a) of the railroad unemployment insurance act) pursuant to the provisions of this act during the period July 1, 1939, to December 31, 1939, inclusive."

Sec. 3. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-24, is hereby amended to read as follows:

"4337-24. Contributions from employers.—A. (1) On and after January 1, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in section 2 (H) accruing 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 regulations as the commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in his employ. No rule of the commission shall be put in force which will permit the payment of such contributions at a time or under conditions which will not allow the employer to take credit for such contribution against the tax imposed by title IX of the social security act.

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

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

(1) Nine-tenths of one per centum with respect to employment during the calendar year 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 year 1938, 1939, 1940; and

(4) With respect to employment after December 31, 1940, two and seven-tenths per centum, except as may be otherwise determined by the commission pursuant to subsection (c) of this section, except that no contributions shall accrue or become payable for the calendar year 1940 with respect to employment by an employer of less than eight individuals during the calendar year 1939 (as defined in 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-22 F (1) for the

year 1936) who has been subject to this act for the calendar year 1938 and 1939, and no beneficiary wages (as defined in subsection (c) (2) of this section) have resulted during the calendar year 1939; provided that such employer has, prior to January 31, 1940, paid all contributions due and payable for employment during all past periods, and provided further that such employer is not liable or does not become liable for the tax for the year 1940 under title IX of the federal social security act;

(C) (1) The commission shall, for the year 1941 and for each calendar year thereafter, determine the contribution rate of each employer after three calendar years immediately preceding, throughout which any individual in his employ could have received benefits if eligible. Each employer's rate shall be determined in accordance with the requirements hereinafter provided.

(2) "Beneficiary wages", for the purpose of this section, means wages paid or payable by an employer for employment to an employee during his base period, except that with respect to wages paid or payable by an employer to an employee during his base period for seasonal employment as defined in subsection (D) of 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-25, "beneficiary wages" shall mean the proportion of wages paid or payable by an employer to an employee for seasonal employment during his base period which is allowed to the employee as wage credits under the provisions of subsection (C) of 1938 Supplement to Mason's Minnesota Statutes of 1927, section 4337-25. "Beneficiary wages" as defined in this subsection shall be treated as though they had been paid or payable or computed from wages paid or payable in the calendar year in which such employee's benefit year commenced and benefits are paid or payable; provided, however, that in the event funds are not made available for determining the beneficiary wages for the calendar year 1938 prior to the effective date of this subsection, then the beneficiary wages of each employer for the calendar year 1938 shall be deemed to be the average of his beneficiary wages for the calendar years 1939 and 1940.

(3) The total "beneficiary wages" of any employer for a given calendar year shall be the total of the beneficiary wages (as defined in subsection (C) (2) of this section) paid or payable by him for employment to all of his employees and former employees who commenced a benefit year and to whom benefits are paid or payable in such calendar year.

(4) The "beneficiary wage ratio" of each employer for the year 1941 and for each calendar year thereafter shall be a percentage equal to the total of his beneficiary wages for the three immediately preceding completed calendar years divided by his total taxable payroll for the same three years on which all contributions have been paid to the commission prior to January 31 of the calendar year with respect to which his beneficiary wage ratio is determined.

(5) The commission shall, for the year 1941 and for each calendar year thereafter, determine the average contribution rate to be applied to the total, current, employers' payroll for employment. Such average contribution rate shall be determined on the basis of the ratio of the total assets of the fund, excluding contributions not yet paid at the beginning of such calendar year, to the average (one-third) of the total amount of benefits paid during the three calendar years immediately preceding, and in accordance with the following schedules

Ratio of total assets of fund to benefits paid, as defined above, and set forth below.	Average annual contribution rate, to be applied to the total current taxable payroll.
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When amount in fund is equal to or more than:

3½ times average benefits paid	1.50
3 times, but less than 3½ times average benefits paid	1.75
2½ times, but less than 3 times average benefits paid	2.00
2 times, but less than 2½ times average benefits paid	2.25
1½ times, but less than 2 times average benefits paid	2.50
Amount in fund less than 1½ times average benefits paid	2.75

(6) The commission, after having determined the average contribution rate for the current calendar year, shall:

(a) prepare a schedule of contribution rates for the current calendar year including and centered about the average contribution rate and such rates shall be graduated in equal number above and below the average rate in differentials of one-fourth of one per cent, commencing with a minimum rate of one-half of one per cent;

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

(c) assign a contribution rate to each payroll category in accordance with the schedule of rates for the current calendar

year commencing with one-half of one per cent and classify employers in accordance with their beneficiary wage ratios, commencing with the lowest ratio;

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

(7) Each employer's contribution rate for the year 1941 and for each year thereafter shall be the rate applicable to the payroll category to which his payroll has been allocated except if such rate applicable to the payroll category to which his payroll has been allocated exceeds 3.2 per cent, his contribution rate shall be 3.2 per cent; provided, however, that no employer's contribution rate shall be less than 2.7 per cent unless such employer has paid all contributions due and payable by him.

(D) The commission shall maintain a separate account for each employer, and shall credit his account with all the contributions which he has paid on his own behalf. But nothing in this Act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals.

Sec. 4. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-25, is hereby amended so as to read as follows:

"4337-25. Benefit payable—When.—A. Beginning January 1, 1938, benefits shall become payable from the fund; provided that wages earned for services defined in 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-22 H (b) (c) as amended by this act, irrespective of when performed, shall not be included for purposes of determining eligibility under 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-26 E and F as amended by this act or weekly benefit amount under subsection B of this section for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under

subsection (c) of this section on basis of such wages. All benefits shall be paid through employment offices, in accordance with such regulations as the commission may prescribe.

B (1) An individual's "weekly benefit amount" shall be an amount equal to 1/25th of his total wage credits for employment by an employer or employers during that quarter of his base period in which such total wage credits were highest, except that if such amount is more than \$15.00, the weekly benefit amount shall be deemed to be \$15.00, or if less than \$5.00, shall be paid at the rate of \$5.00 per week; provided, however, that this latter provision shall not be construed so as to increase the total maximum amount payable for the duration of a benefit year, and if such weekly benefit amount is not a multiple of \$1.00 shall be computed to the next higher multiple of \$1.00.

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

C. Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (1) 16 times his weekly benefit amount, and (2) one-third of the wage credits earned by him in employment by an employer or employers during his base period, provided that such total amount of benefits, if not a multiple of \$1.00, shall be computed to the next higher multiple of \$1.00. For the purpose of this section, wage credits shall be counted as "wages for employment by employers" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer from whom such wages were earned has satisfied the conditions of 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-22 F or Section 4337-29 C as amended by this act with respect to becoming an employer.

As used in this act, the term 'wage credits' means the amount of wages paid or payable by an employer for employment to an employee during his base period, except that with respect to wages paid or payable by an employer to an employee during his base period for seasonal employment as defined in subsection D of this section 'wage credit' shall mean the proportion (computed to the next highest multiple of five per cent) of such wages which the customary period of opera-

tion determined as provided in subsection D of such seasonal employment bears to a calendar year.

D (1) 'Seasonal employment' means employment in any industry or any establishment or class of occupation in any industry which is engaged in activities relating to the first processing of seasonally produced agricultural products in which, because of the seasonal nature thereof, it is customary to operate only during a regularly recurring period or periods of less than 26 weeks in any calendar year. The commission shall, after investigation and hearing, determine and may thereafter from time to time redetermine such customary period or periods of seasonal operations. Until the effective date of such determination by the commission, no employment shall be deemed seasonal.

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

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

sion, such decision shall be final, and benefits shall be paid or denied in accordance therewith.

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

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

Sec. 5. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-26, is hereby amended so as to read as follows:

"4337-26. Who are eligible to receive benefits.—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 to an employment office, or agent of such office, in accordance with such regulations as the commission may prescribe; except that the commission may by regulation waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this act; provided that no such regulation shall conflict with 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-25 A as amended by this act;

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

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

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

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

(2) unless the individual was eligible for benefits with as provided in 1938 Supplement to Mason's Minnesota Stat-

utes of 1927, Sections 4337-26 and 4337-27 as amended by this act except for the requirements of this subsection and of subsection G of 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-27 as amended by this act;

(3) unless it occurs within the benefit year, which includes the week with respect to which he claims payment of benefits;

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

E He has during his base period earned wage credits for employment by employers equal to not less than 30 times his weekly benefit amount.

F He has during that quarter in which his total wages were highest in his base period earned wage credits for employment by employers equal to not less than \$75.00."

Sec. 6. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-27, is hereby amended so as to read as follows:

"4337-27. Who are disqualified from benefits:

An individual shall be disqualified for benefits:

A. For voluntarily discontinuing his most recent employment without good cause attributable to the employer, if so found by the commission. Benefits paid on wage credits earned for employment with such employer shall not be considered in determining any individual employer's future contribution rate under 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-24, subsection C as amended by this act.

B. If he has been discharged for misconduct connected with his most recent employment, if so found by the commission. Benefits paid on wage credits earned for such employment shall not be considered in determining any individual employer's future contribution rate under 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-24, subsection C as amended by this act.

C. If it is shown to the satisfaction of the commission that such individual's unemployment was caused by separation from employment pursuant to a rule of such individual's most recent employer whereby any female in the employ of such employer shall be dismissed upon acquiring a marital status; provided, however, that such rule shall have been in effect and posted in a conspicuous place in each establishment

of the employer's place of business not less than 6 months immediately preceding the date such individual filed a valid claim for benefits, and provided, further, that such employer shall notify the commission of the existence of said rule in his establishment within four (4) days after the dismissal of such employe from employment, except that this disqualification shall not apply to a female who constitutes the main support of an immediate member of her family.

D. 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 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 for securing local work in his customary occupation, and the distance of the available work from his residence.

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

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

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

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

E. 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 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 the dispute; and provided further, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall for the purposes of this subsection be deemed to be a separate factory, establishment, or other premises.

F. For the week with respect to which he is receiving or has received remuneration in the form of—

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability under the workmen's compensation law of any state or under a similar law of the United States; or

(3) Old-age benefits under Title II of the social security act; as amended, or similar payments under any act of Congress;

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

G. *For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.*"

Sec. 7. Law amended.—The 1938 Supplement to Mason's Statutes of 1927, Section 4337-28, is hereby amended so as to read as follows:

"4337-28. Claims for benefits.—A. 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. The commission shall promptly examine the claims for benefits made pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates. Notice of any determination, together with the reasons therefor, shall be promptly given the claimant; and notice of any determination under which the claimant is held to be eligible for benefits shall be given to all other interested parties to such determination, including the claimant's most recent employing unit, provided that the commission may dispense with giving notice to any such party, parties, or employing unit and such party, parties, or employing unit shall not be entitled to such notice, if it has either (1) in writing waived notice, or (2) failed to indicate prior to the determination, if and as required by regulations of the commission, that the claimant may be disqualified for such benefits. Unless the claimant or such other interested party, parties, or employing unit or units within ten calendar days after the delivery of such notification, or within 12 calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is filed, benefits with respect to the period prior to the final decision of the commission, on appeal, shall be paid only after such decision; provided that, except in respect to cases arising under 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-27, subsection E as amended by this act, if an appeal tribunal affirms an initial determination or the commission affirms a decision of the appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, such benefits so paid shall not be considered in determining any individual employer's future contribution rate under 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-24, subsection C as amended by this act.

C. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify, or set aside the initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ten days after the date of notification or mailing of such

decision, further appeal is initiated pursuant to subsection (e) of this section.

D. In order to assure the prompt disposition of all claims for benefits, the commission shall establish one or more impartial appeal tribunals consisting of a salaried examiner, who shall serve as chairman, and two additional members, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee of not more than \$10.00 per day of active service on such tribunal plus necessary expenses. The commission shall by regulation prescribe the procedure by which such appeal tribunals may hear and decide disputed claims, subject to appeal to the commission. 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 a hearing before an appeal tribunal proceed unless the chairman of such tribunal is present. There shall be no charges, fees, transcript costs or other costs imposed upon the the employee in prosecuting his appeal.

E. The commission 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. In any case in which a claim for benefits has been *allowed or denied* an appeal shall be allowed before the commission and an opportunity for a fair hearing granted. The commission shall promptly notify the interested parties of its findings and decision.

F. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with the regulations prescribed by the commission for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be reduced to writing, but need not be transcribed unless the disputed claim is further appealed.

G. Witnesses subpoenaed pursuant to this section shall be

allowed fees at a rate fixed by the commission. Such fees shall be deemed a part of the expense of administering this act.

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

I. Within 20 days after the filing of any decision of the commission or within ten days after any such decision has become final, any party aggrieved thereby may secure judicial review thereof by taking an appeal from such decision to the supreme court of the state of Minnesota in the same manner provided for the taking of appeals in civil cases.

J. In any proceeding under this act before an appeal tribunal or the commission, a party may be represented by an agent or attorney, but no individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the appeal tribunal, the commission, or its representatives, or by any court or any officers thereof. Any individual claiming benefits in any proceedings before the commission or its representatives or a court may be represented by counsel or other duly authorized agent except that said agent in any court proceedings under this act must be an attorney at law; but no such counsel shall either charge or receive for such services more than an amount approved by the commission and no fees shall be collected from an individual claiming benefits by any agent unless he is an attorney at law."

Sec. 8. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-30, (f) and (1), is hereby amended so as to read as follows:

"4337-30. Commissioner shall appoint state advisory council.—(f) The commission shall appoint a state advisory council and may appoint such local advisory councils as it deems advisable, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representatives because of their vocation, em-

ployment, or affiliation, 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.

(1) In the administration of this act, the commission *may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law* and 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 security board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with regulations prescribed by the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the social security act for the purpose of assisting in the administration of this act.

Upon request therefor, the 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 right to further benefits under this act."

Sec. 9. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-31, is hereby amended to read as follows:

"4337-31. May make arrangement with other states and federal government.—A. The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in Section 2.F of this act, or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states, and whereby potential rights to benefits accumulated under the unem-

ployment compensation laws of several states or under such a law of the Federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

B. The commission is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government (1) whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for the purposes of 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 4337-25 and 4337-26 E and F as amended by this act, provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this act upon the basis of such wages or services as the commission finds will be fair and reasonable as to all affected interests, and (2) whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the commission finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 4337-23 and 4337-25 C as amended by this act, but no reimbursement so payable shall affect any employer's account for the purposes of 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-24 as amended by this act. The commission is hereby authorized to make to other state or federal agencies and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section."

Sec. 10. Law amended—Employing units shall keep records.—1938 Supplement to Mason's Minnesota Statutes of 1927, section 4337-30 subsection (h) is hereby amended to read as follows:

(h) Each employing unit shall keep true and accurate work 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 or obtained from any individual pursuant to the administration of this act except to the extent necessary for the presentation of a claim shall be held confidential and shall not be published or be open to public inspection in any manner revealing the individual's or employing unit's identity, *except that, upon request therefor, the commission may, in its discretion, furnish such information to any other department of this state charged with the compilation of statistical matter or the administration of a recognized compensation, relief, or welfare law of this state or any other department of this state for the purpose of performing its public duties, and 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; provided, however, that any such information so furnished to any such department or individual shall be held confidential and shall not be published or be open to public inspection, except with respect to statistical summaries. Any individual who violates any provision of this subsection shall be subject to the penalties provided for in this act.*

Sec. 11. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-32, is hereby amended so as to read as follows:

"4337-32. Shall maintain free public employment offices.—
A. The commission shall establish and maintain under the division of employment 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 provisions of said act of Congress, as amended, are hereby accepted by the state, in conformity with Section 4 of said act and this state will observe and comply with the requirements thereof.

B. All moneys received by this state under the said act of Congress, as amended, shall be paid into the special "employment service account" in the unemployment compensation ad-

ministration fund, and said moneys are hereby made available to the commission for the Minnesota state employment service to be expended as provided by this section and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, the commission 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 moneys, services, or quarters as a contribution to the employment service account.

C. The commission may cooperate with or enter into agreements with any agency of the United States charged with the administration of an unemployment compensation law, with respect to the establishment, maintenance, and use of free public employment offices, free employment service and unemployment compensation division facilities and may make the state's records relating to the administration of this act available to any such agency of the United States and may at the expense of such agency furnish copies of such records as such agency deems necessary for its purposes, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service or unemployment compensation division account. Moneys received from such agency for services, facilities, or copies of records shall be paid into the unemployment compensation administration fund and credited to the employment service or unemployment compensation division account thereof.

Sec. 12. Provisions severable.—The provisions of this act shall be separable, and if any provision or the application of any provision hereof shall be held unconstitutional or invalid, it shall not affect any other provision or application hereof.

Sec. 13. Rights and benefits under act.—This act shall take effect and be in force from and after its passage, unless otherwise specifically provided therein, but shall not affect the rights to benefits of any individual for whom a benefit year has been established in accordance with provisions of law in force prior to the effective date of this act, and until the expiration of said benefit year so established, the rights to benefits of any such individual shall be in accordance with the provisions of law in force at the time of commencement of such benefit year, unless otherwise specifically provided therein; provided, however, that waiting period credits established within a period commencing 13 weeks immediately preceding the effective date of this act and ending two weeks after such

effective date, shall have like effect as if established within the first two weeks immediately following such effective date.

Approved April 22, 1939.

CHAPTER 444—H. F. No. 675

An act relating to signs advertising intoxicating liquors and non-intoxicating malt liquors; and providing penalties for violations thereof.

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

Section 1. Certain intoxicating liquor signs prohibited.—No sign of any kind printed, painted, electric or illuminated, advertising intoxicating liquors or non-intoxicating malt liquors containing not more than 3.2 per cent of alcohol by weight, shall be permitted on the exterior of, or immediately adjacent to, any premises licensed to sell said beverages, or any or all of them at retail nor shall any such exterior signs be permitted upon or adjacent to the public streets and highways of this state or in a position where such sign will be visible to travelers upon such streets or highways.

Sec. 2. Signs must be removed—Exceptions.—Any such sign now or hereafter placed upon premises, or immediately adjacent thereto, licensed to sell said beverages, or any or all of them, shall be removed on or before the expiration of a period of 90 days next following the passage of this act. Provided, however, that any sign, costing in excess of \$1,000.00, and constructed of such shape and design as to fit a particular location, need not be removed.

Sec. 3. Limit to size of interior signs.—No sign of any kind printed, painted, electric or illuminated, advertising intoxicating liquor or non-intoxicating malt liquor containing not more than 3.2 per cent of alcohol by weight, shall be permitted in or upon the interior of any premises licensed to sell said beverages, or any or all of them, which sign shall exceed 18 inches by 27 inches, or 486 square inches in size.

Sec. 4. Provisions severable.—The various provisions of this Act, and the clauses, phrases and sentences thereof, shall be severable, and if any part or provision thereof shall be held to be invalid, it shall not be construed as invalidating any other portion thereof.

Sec. 5. Violation a misdemeanor.—Any persons who vio-