ECONOMIC SECURITY ACT

SATURDAY, FEBRUARY 9, 1935

UNITED STATES SENATE COMMITTEE ON FINANCE,
Washington, D. C.

The committee met pursuant to call, at 10:10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison, chairman, presiding.

The CHAIRMAN. I submit for the record a letter from Dr. Witte, Executive Director Committee on Economic Security, transmitting for the consideration and study of the Committee two model State unemployment-insurance bills, suggestions for a State old-age assistance law, and accompanying explanatory statements.

COMMITTEE ON ECONOMIC SECURITY,
Washington, February 9, 1935.

Hon. PAT HARRISON,
Chairman Finance Committee of the United States Senate,
Washington, D. C.

DEAR SENATOR HARRISON: While Dr. William M. Leiserson, a member of the technical board of this committee, was testifying on the pending Economic Security Act, your committee expressed a wish that the model State unemployment-insurance bill which we were preparing should be submitted to your committee for purposes of the record.

We have now completed two model State unemployment-insurance bills, one for a pool-fund system and the other for a plant account system. These two bills with an accompanying explanatory statement are enclosed herewith.

We have also prepared suggestions for a State old-age-assistance law. This is, likewise, being transmitted to you herewith.

Whether you desire all of this material to be included in the record I do not know, but as your committee expressed a wish to have this submitted, I am doing so herewith.

Very truly yours,

COMMITTEE ON ECONOMIC SECURITY,
EDWIN E. WITTE,
Executive Director.

PRELIMINARY DRAFT OF A SUGGESTED STATE UNEMPLOYMENT COMPENSATION ACT

(With completely pooled fund)

The Federal measure for economic security (now pending in Congress) gives every State both opportunity and urgent reason for enacting a State unemployment-compensation law in 1935.

The Federal security measure permits employers to credit (against the Federal pay-roll tax) their contributions under any State unemployment-compensation law which meets certain minimum Federal standards.

Each State which passes such a law promptly will be able to set up a State unemployment-compensation fund, thus using for State purposes that money which would otherwise be paid into the Federal Treasury by the State's employers.

To assist each State in enacting a suitable law, assuring its employers of the Federal tax credit, the President's Committee on Economic Security has had two model State bills prepared after months of study and discussion.

These bills are very carefully drafted to meet all the requirements of the Federal measure, including: (*a*) Standards for granting tax credits to employers; and (*b*) standards for granting Federal money to pay the administrative costs of such State laws.

(1) The attached model bill is of the "pooled fund" type. Under this type of bill all contributions are paid into a single, undivided fund (with no segregation of the amounts paid in by each employer). Benefits will be paid from such pooled fund to any and all eligible employees. Provisions for varying employer contribution rates to some extent, based on their employment and benefit experience, may be incorporated in such a bill if the State so desires.

(2) An alternative model bill of the "reserves" type is being prepared and will be sent to you shortly. Under this type of bill, part of the total contributions paid into the State fund will be "pooled"; but the major part of each employer's contributions will be segregated (within the fund) into separate employer accounts, and benefits will be paid from an employer's account only to his own eligible employees. After several years of contribution and benefit payments, each employer's contribution rate will depend on his actual employment and benefit experience.

Wide latitude is thus left the several States in many respects (*a*) as to the general type of unemployment compensation law to be adopted, with two types of model bill suggested, and also (*b*) as to many other important questions (amount and duration of benefits, etc.).

It is suggested, however, that each State executive or legislator who plans to make any change in either of the model bills (prepared by the Committee on Economic Security) might do well to write the committee for advice on the vital question: "Would the proposed change prevent the State law from qualifying for (*a*) Federal tax credits to employers, and (*b*) Federal aid for State administration?"

By thus writing the Committee on Economic Security, each State can be advised whether the proposed changes (*a*) will meet Federal requirements and (*b*) are consistent, or conflict with other provisions of the "model bill" itself.

The Committee's address is 1734 New York Avenue, Washington, D. C.

TOPICAL OUTLINE OF BILL

Section 1. Short title.

Section 2. Declaration of public policy of the State.

Section 3. Definitions: (1) Benefit, (2) commission, (3) contributions, (4) eligibility, (5) employee, (6) employer, (7) employment, (8) employment office, (9) full-time weekly wage, (a) hourly rate of earnings, (b) full-time weekly hours, (10) fund, (11) partial unemployment, (12) pay roll, (13) total unemployment, (14) unemployment administration fund, (15) wages, (16) waiting-period unit, (17) week, (18) week of employment.

Section 4. Unemployment compensation fund: (1) Fund, (2) withdrawals, (3) treasurer, (4) deposit.

Section 5. Contributions: (1) Payment, (2) standard rate of contributions, (3) 1936 and 1937 contribution rates, (4) future rates, based on benefit experience, or (4) study of contribution rates, (5) employee contributions.

Section 6. Benefits: (1) Payment of benefits, (2) weekly benefits for total unemployment, (3) weekly benefits for partial unemployment, (4) 1-to-4 ratio of benefits to employment, (5) maximum weeks of benefit in any year, (6) lump-sum benefit option, (7) additional benefits (1-to-20 ratio).

Section 7. Benefit eligibility conditions: (1) Employment requirement, or (1) probationary-service period, (2) availability and registration for work, (3) waiting period, (4) during trade disputes, (5) voluntary leaving, (6) discharge for misconduct, (7) refusal of suitable employment, (8) employees barred from benefits by wage disqualification.

Section 8. Settlement of benefit claims: (1) Filing, (2) initial determination, (3) appeals, (4) appeal tribunals, (5) procedure, (6) commission review, (7) appeal to courts, (8) oaths and witnesses.

Section 9. Court review. (Not drafted because of difference in State courts, etc.)

Section 10. Unemployment Compensation Commission: (1) Organization, (2) salaries, (3) quorum.

A Bill Relating to Unemployment Compensation Providing Penalties and Making Appropriations

SECTION 1. SHORT TITLE

This act shall be known and may be cited as the "Unemployment compensation law."

SECTION 2. DECLARATION OF PUBLIC POLICY OF THE STATE

NOTE.—The sponsor of a State bill will probably wish to draft the statement of public policy. The following statement is appropriate and may be used if desired, but this precise wording is not essential to conform to the proposed Federal legislation.

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. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus 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 workers of this State require the enactment of this measure for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

SECTION 3. DEFINITIONS

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

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

(2) "Commission" means the unemployment compensation commission established by this act, or its authorized representative.

NOTE.—If another administrative agency than that suggested herein is used, the name of such agency should be abbreviated and defined, and when the word "commission" appears, the abbreviated name of such agency should be substituted.

(3) "Contributions" means the money payments to the State unemployment compensation fund required by this act.

(4) *Eligibility.*—An employee shall be deemed "eligible" for benefits for any given week of his partial or total unemployment (occurring subsequent

to any required waiting period) only when he is not disqualified by any provision of this act from receiving benefits for such week of unemployment.

(5) "Employee" means any person employed by an employer subject to this act and in employment subject to this act.

(6) "Employer" means any person, 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, including[1] this State and any municipal corporation or other political subdivision thereof, who or whose agent or predecessor in interest has employed at least four persons in employment subject to this act within each of 13 or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January 1 of the calendar year in which such employment occurs. In determining whether an employer (of any person in the State) employs enough persons to be an "employer" subject hereto, and in determining for what contributions he is liable hereunder, he shall, whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in the absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general commission rules. All persons thus employed by an employer (of any person) within the State, 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; provided, moreover, that where any person, 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, either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the State, all such enterprises shall be treated as a single "employer" for the purposes of this act. Any employer subject to this act shall cease to be subject hereto only upon a written application by him and after a finding by the commission that he has not within any calendar week within the last completed calendar year employed four or more persons in employment subject hereto. Any employer (of any person within the State) not otherwise subject to this act shall become fully subject hereto, upon filing by such employer with the commission of his election to become fully subject hereto for not less than 2 calendar years, subject to written approval of such election by the commission.

(7) "Employment" means any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all States, including the District of Columbia). In the case of all other persons employed partly in this State and partly in other States, the term "employment" shall include the employment of such persons to the extent prescribed by general rules adopted by the commission. Except as provided in any reciprocal benefit arrangement made pursuant to this act, "employment" shall not include any employment included in any unemployment compensation system established by an act of Congress.

Nor shall the term "employment" apply to—[2]

(*a*) Employment on a governmental relief project approved by the commission;

[1] The inclusion of the State and local governments as employers is not required in the proposed Federal legislation. Congress does not have the power to tax the pay rolls of State and local governments, and obviously could not require State and local governments to contribute to a State unemployment compensation act. It is suggested, however, that State and local employees be covered, except those in the employments exempted in paragraphs (a) to (d) of the "employment" definition below.

[2] The last sentence and exemptions (*a*) to (*d*) should be omitted if State and local governments are excluded from the "employer" definition (6) above.

(*b*) Employment as an elected or appointed public officer;
(*c*) Employment by a governmental unit on an annual salary basis;
(*d*) Employment as a teacher in a public school, college, or university.

(8) "Employment office" means that free public employment office (operated by the State) or branch thereof nearest to the employee's place of residence or employment, unless otherwise prescribed by the commission.

(9) An employee's "full-time weekly wage" means the weekly earnings such employee would average from his employment if employed at the "hourly rate of earnings" and for the "full-time weekly hours" applicable to such employee.

(*a*) The applicable "hourly rate of earnings" shall be determined by averaging the employee's actual earnings for at least 100 hours of employment by his most recent employers.

(b) An employee's "full-time weekly hours" shall mean the standard maximum weekly hours which can lawfully be worked by the employee (in the employment in question) under the applicable Federal code of fair competition or under any applicable State code or law specifying lower maximum weekly hours. Where there is no code or law applicable, the commission shall determine the employee's full-time weekly hours by averaging his weekly hours for all calendar weeks (in at least the past 3 months) in which he worked 30 hours or more, or by such equitable method as the commission may by general rule prescribe for determining a full-time standard of not less than 30 weekly hours for benefit purposes. In the case of any employee who is found by the commission, at the time be becomes eligible for benefits to be unable by reason of physical disability or by reason of continuing personal obligations (other than employment) to work half the full-time weekly hours which prevail in such establishment for full-time employees, the commission shall determine his full-time weekly hours for benefit purposes by averaging his weekly hours for all weeks (in at least the past 3 months) in which he worked.

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

(11) "Partial unemployment": An employee shall be deemed "partially unemployed" in any calendar week of partial work if he fails to earn in wage (and/or any other pay for personal services, including net earnings from self-employment) for such week at least $1 more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible.

(12) "Pay roll" means the total amount of all wages payable by the employer to his employees, commencing with wages payable for employment occurring after employer becames newly subject to this act.

(13) "Total unemployment": An employee shall be deemed "totally unemployed" in any calendar week in which he performs no wage-earning services whatsoever and for which he earns no wages (and no other pay for personal services, including net earnings from self-employment), and in which he cannot reasonably return to any self-employment in which he has customarily been engaged.

(14) "Unemployment administration fund" means the unemployment compensation administration fund established by this act.

(15) "Wages" means every form of remuneration for employment received by a person from his 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 similar advantages.

(16) "Waiting-period unit" means a period (for which no benefits are payable but during which the employee is in all other respects eligible) consisting of either 1 week of total unemployment or 2 weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this act.

(17) "Week" means calendar week.

(18) "Week of employment" means each calendar week (occurring at least 1 year after contributions first become generally due under this act from employers then subject hereto and occurring after any probationary period or periods required hereunder) within which the person in question performed any employment subject to this act for any employer subject to this act: *Provided, however,* That any week (occurring within the customary school vacation periods) in which an employer employed an employee who attended a school, college, or university in the last preceding school term shall not be counted as a "week of employment" in determining the benefit rights of such employee under this act.

SEC. 4. UNEMPLOYMENT-COMPENSATION FUND

(1) *Fund.*—There is hereby created the unemployment-compensation fund, to be administered by the commission without liability on the part of the State beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund.

(2) *Withdrawals.*—The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules, and no other disbursement shall be made therefrom. Such rules shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by State officers of State moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund.

NOTE.—The first sentence of the above subsection is necessary to conform to the requirement of the Federal bill that the fund be used exclusively for the payment of benefits. Administrative expenses will have to be paid from Federal allotments for this purpose, or from other sources. Attention is called to the fact that the number of benefit payments to be made from the State fund will be extremely large in most States, though the amount of the individual payments will be small. It is therefore advisable to utilize a method of withdrawals from the fund which will involve a minimum of administrative expense, consistent with adequate protection of the fund. In some States the customary procedure for the payment from public funds would be unnecessarily expensive.

(3) *Treasurer.*—The commission shall designate a treasurer of the fund who shall pay all vouchers duly drawn upon the fund in such manner as the commission may prescribe. He shall have custody of all moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this action. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general and in an amount specified by the commission and approved by the governor. All premiums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall be paid from the unemployment administration fund. The treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this act.

(4) *Deposit.*—All contributions paid under this act shall upon collection be deposited in or invested in the obligations of the unemployment-trust fund of the United States Government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the unemployment-trust fund necessary amounts from time to time.

NOTE.—The above subsection (4) is necessary to meet the requirements of the Federal bill.

The wording of the entire section creating the State unemployment compensation fund is also important, because of constitutional provisions concerning the custody and management of "State funds" in several States. Four States (California, New Mexico, Wyoming, and Michigan) require the deposit of "State funds" or "public funds" in State or national banks. Since it is anticipated that the United States Treasury will designate banks within the State to act as its agent, even the constitutional provisions of these States do not conflict with the requirements of the Federal economic security bill for the deposit of State unemployment compensation funds with the unemployment trust fund of the United States.

SECTION 5. CONTRIBUTIONS

(1) *Payment.*—On and after the 1st day of January 1936 contributions shall accrue and become payable by each employer then subject to this act. Thereafter contributions shall accrue and become payable by any new employer on

and after the date on which he becomes newly subject to this Act. The contributions required hereunder shall be paid by each employer in such manner and at such times as the commission may prescribe.

(2) *Standard rate of contributions.*—The contributions regularly payable by each employer shall be an amount equal to 3 percent of his pay roll, except as otherwise provided in this act.

NOTE.—The Federal pay-roll tax on employers (under the economic security bill) will be 3 percent for the year 1938, and therafter. For the years 1936 and 1937, however the tax rate (which will depend on a Federal index of production) may be 3 percent, 2 percent, or 1 percent. (Of course all provisions of the Federal bill are subject to possible change by Congress.) Any State which desires to make its 1936 and 1937 contribution rates correspond exactly to the tax-rate clauses of the Federal security measure (as introduced) can use the following language:

(*Optional provision*)

(3) *1936 and 1937 contribution rates.*—The contributions payable by each employer for the calendar years 1936 and 1937 shall be determined as follows: (*a*) If the Federal Reserve Board's adjusted index of total industrial production averages, for the year ending September 30, 1935, not more than 84 percent of its average for the years 1923–25, inclusive, the commission, shall certify that fact to the secretary of state, and each employer shall contribute for the calendar year 1936 an amount equal to 1 percent of his pay roll; (*b*) if such index averages for such year, more than 84 percent but less than 95 percent of such earlier average, such fact shall be so certified, and each employer shall contribute for the calendar year 1936 an amount equal to 2 percent of his pay roll; (*c*) if such index averages for the year ending September 30, 1936, not more than 84 percent of such earlier average, such fact shall be so certified, and each employer shall contribute for the calendar year 1937 an amount equal to 1 percent of his pay roll, except that in no event shall the measure of contributions for the calendar year 1937 be less than the measure of contributions for the calendar year 1936; (*d*) if such index averages, for the year ending September 30, 1936, more than 84 percent but less than 95 percent of such earlier average, such fact shall be so certified and each employer shall contribute for the calendar year 1937 an amount equal to 2 percent of his pay roll, except that in no event shall the measure of contributions for the calendar year 1937, be less than the measure of contributions for the calendar year 1936.

NOTE.—Under the proposed Federal economic security measure a State may, after 5 years, reduce contribution rates for employers who have shown a good unemployment compensation experience. Two alternate provisions are given below for States that may wish to take advantage of this provision in the Federal measure. Both provisions are entirely optional with the State.

(*Optional provision*)

(4) *Study of contribution rates.*—For a period of 3 years after the contributions accrue and become payable under this act, the commission shall study the operations of this act relative to the financial aspects and the sufficiency of contributions hereunder, and shall submit a report of its findings and recommendations thereon to the legislature not later than February 15, 1939.

(*Optional provision*)

(4) *Future rates, based on benefit experience.*—Based on the actual contribution and benefit experience of employers under this act, the commission shall (in the year 1941 and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contributions which shall apply to him throughout the calendar year pursuant to said experience and classification. The minimum contributions thus payable to the fund shall in no case amount to less than —[3] percent on the employer's pay roll, and the average contribution rate of all employers shall be approximately 3 percent (on pay roll) for any calendar year. An employer's contribution rate shall in no case be reduced until there has been at least 3 calendar years throughout which his employees received or could have re-

[3] This figure must be at least 1 percent under the pending economic security measure, but is, of course, subject to final action by Congress.

ceived benefits when and if unemployed and eligible. The commission shall investigate and classify industries, employers, and/or occupations with respect to the degree of unemployment hazard in each, taking due account of any relevant and measurable factors, and shall have power to apply any form of classification or rating system which in its judgment is best calculated to rate individually the unemployment risk most equitably for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to discussion, adoption, and publication in the manner prescribed in this act for all general commission rules.

(Optional provision)

(5) *Contributions by employees.*—Each employee shall contribute to the fund 1 percent of his wages. Each employer shall be responsible for withholding such contribution from the wages of his employees, shall show such deduction on his pay-roll records, and shall transmit all such contributions to the fund pursuant to general commission rules.

NOTE.—The State is not required to include the above subsection (5). It is being set forth here for due consideration by each State.

Worker contributions cannot be offset or credited against the Federal tax on pay rolls, which is payable by employers alone. Hence the inclusion by a State of subsection (5) would not be a substitute for, but rather an addition to, the contributions above required from employers.

Additional contributions to the fund, from any source, would of course make possible additional benefits from the fund. (See the "actuarial memorandum" as to what benefits could be paid with additional contributions.)

SECTION 6. BENEFITS

(1) *Payment of benefits.*—After contributions have been due under this act for 2 years, benefits shall become payable from the fund to any employee who thereafter is or becomes unemployed and eligible for benets, based on his weeks of employment as defined in this act, and shall be paid through the employment offices at such times and in such manner as the commission may prescribe.

NOTE.—The above provisions should not be altered, since the proposed Federal bill requires as a condition for the allowance of credit against the Federal pay-roll tax that payment of all compensation must be made through the public employment offices in the State and must commence 2 years after contributions are first made under the State law.

(2) *Weekly benefits for total unemployment.*—An employee totally unemployed and eligible in any week shall be paid benefits (computed to the nearest half dollar) at the rate of 50 percent of his full-time weekly wage, with maximum benefits of $15 per week, and minimum benefits of $_____[4] per week.

NOTE.—The maximum weekly benefit of $15 per week indicated here is open to change by the State. It is not required by the Federal bill. It is presumed that each State will desire to fix a maximum which it deems appropriate in the particular State. Official commissions on unemployment insurance in New York, Ohio, California, and Virginia have recommended a maximum of $15 per week, while the New Hampshire commission recommended $14. The maximum in the Wisconsin law is $10, but the contribution rate is 2 percent.

(3) *Weekly benefits for partial unemployment.*—An employee partially unemployed and eligible in any week shall be paid sufficient benefits so that his week's wages (and/or any other pay for personal services, including net earnings from self-employment) and his benefits combined will be $1 more than

[4] States may also wish to fix a minimum weekly benefit for total unemployment. Senate bill no. 1 of New York provides a minimum of $5. Few of the proposed unemployment compensation bills provide for any minimum.

Practically all of the special commissions which have studied unemployment compensation in this country have recommended that the benefit rates be set at 50 percent of the full-time weekly earnings. With contributions of 3 percent, or even 4 percent, this is about the maximum weekly rate of benefit which can be provided, unless the duration of benefits is shortened. It is generally thought advisable to fix the benefit rates at this figure, and to adjust the duration of benefits and the waiting period to meet the employment experience of the State.

the weekly benefit to which he would be entitled if totally unemployed in that week.

NOTE.—The above subsection (3) is open to change by the State. However, unless larger contributions than a rate of 3 percent are required, it is suggested that partial benefits should be limited as above provided. This provision gives only a small advantage in total compensation to the partially employed person over the totally unemployed person; but it must be remembered that the person who is drawing partial benefits is not thereby exhausting his benefit rights as rapidly as the person who is drawing total benefits. While it would be desirable to provide more liberal benefits to partially unemployed persons, it must be recognized that the primary purpose of the fund is to provide protection to employees who are totally unemployed. Also, it is desirable to avoid large numbers of small claims for small amounts of partial unemployment because of the excessive administrative costs which would be involved.

(4) *One-to-four ratio of benefits to employment.*—The aggregate amount of benefits an employee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his most recent weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employee's most recent week of employment.

NOTE.—This ratio will serve to guard the fund against excessive payment of benefits to those with only a limited amount of previous employment to their credit. The ratio may be lowered to 1 to 3 if it is desired to liberalize this provision, or raised to 1 to 5 if it is desired to make benefit requirements more stringent; but this would modify the actuarial basis of this bill to some extent.

(5) *Maximum weeks of benefit in any year.*—Benefits shall be paid each employee for the weeks during which he is totally or partially unemployed and eligible for benefits based on his past weeks of employment; but not more than ——— weeks of total unemployment benefits (or an equivalent total amount, as determined by commission rules, of benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any 52 consecutive weeks.

NOTE.—A maximum duration of 16 weeks has been most discussed, based on estimates of what could have been provided if an unemployment compensation system embodying the standards contained in this bill had been in operation from 1922–30 in the United States as a whole during that period. If a State has had more unemployment than the average for the United States it would be advisable for such State to provide for a shorter maximum duration of benefits than 16 weeks. Each State is advised to consult the "actuarial memorandum" accompanying this bill to ascertain the maximum number of weeks of benefits it can safely provide.

(6) *Lump-sum benefit option.*—In lieu of paying to an eligible employee in weekly (or other) installments the maximum amount of benefits to which his past weeks of employment might entitle him under this act (in case he remained continuously unemployed and eligible), the commission may discharge the fund's entire benefit liability to such employee, based on his past weeks of employment, by paying him a lump sum equaling not less than 50 percent or more than 8 percent of said maximum amount of benefits. But lump-sum payments shall be thus made only in unusual cases (such as when the employee has no prospect of securing further employment in the locality, but may secure employment elsewhere). The commission shall by general rules determine on what percentage basis and under what unusual conditions such lump-sum payments shall be made, and each such case shall be subject to specific approval by the commission.

NOTE.—This provision is designed to encourage workers who have no further prospect of employment in the community (e. g., because of aban-

donment of a factory or mine) to seek employment elsewhere, rather than to remain in the community until their benefit rights are exhausted.

(7) *Additional benefits (1 to 20 ratio).*—An eligible employee who has received the maximum benefits permitted under subsection (5) shall receive additional benefits in the ratio of 1 week of total unemployment benefit (or its equivalent) to each unit of 20 aggregate weeks of employment occurring within the 260 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this act. Such additional benefits shall be charged against the employee's most recent weeks of employment available for this purpose.

NOTE.—The above provision is recommended because foreign experience indicates that a large proportion of employees will draw no benefits for a number of years. These employees will have an especially valid claim to the additional benefits provided here, when because of a depression or technological change they lose their jobs and are unable to find other work.

SECTION 7. BENEFIT ELIGIBILITY CONDITIONS

(1) *Employment requirement.*—An employee shall be deemed eligible for benefits for any given week of his unemployment only if he has either (*a*) accumulated 40 weeks of employment subject hereto within the 104 weeks immediately preceding the date of his application for benefits, or (*b*) accumulated 26 weeks of employment subject hereto within the 52 weeks immediately preceding the date of his application for benefits.

NOTE.—The above subsection (1) is designed to prevent the payment of benefits to persons who work only intermittently, spasmodically, or for brief seasonal periods in insured employment, in order to prevent their depleting the fund at the expense of the regularly employed worker. The State may, at its option, modify or even eliminate this provision, but this would to some extent modify the actuarial basis of this bill.

The following is a possible alternative provision to the above subsection (1). This substitute would tend to have a rather similar effect, in restricting benefits to workers making frequent changes in employment.

(1) *Required probationary period.*—An employee shall be deemed eligible for benefits, based on his employment by a given employer, only after he has been employed by such employer within any 2 weeks (subsequent to the first year of contributions under this act or to any later date on which the employer in question first becomes subject to this act).

(2) *Availability and registration for work.*—An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall register for work and shall file claim for benefits at the employment office, within such time limits and with such frequency and in such manner (in person or in writing) as the commission may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to comply with such registration and filing requirements. A copy of the commission's rules covering such requirements shall be furnished by it to each employer, who shall inform his employees of the terms thereof when they become unemployed.

(3) *Waiting period.*—Benefits shall be payable to an employee only for his weeks of unemployment occurring subsequent to a "waiting period" whose duration shall in each case be determined as follows. An aggregate of _____ waiting-period units shall be required of the employee within the 52 weeks preceding the start of any given week of unemployment.

There shall not be counted toward an employee's required waiting period or periods any week of total or partial unemployment in which he is ineligible for benefits under subsections (2), (4), (5), (6), or (7) of this section.

NOTE.—The Committee on Economic Security takes no position as to what the length of the waiting period should be. The State may specify a waiting period of 2, 3, or 4 weeks, or any other period it considers suitable. It should be emphasized, however, that a long waiting period will result in a considerable saving to the fund because of the large amount of unemployment of 2 or 3 weeks' duration, and that such saving will make possible a longer maximum duration of benefits to those unemployed longer than the waiting period. The "actuarial memorandum" accompanying this bill should be consulted, and the appropriate adjustment made in the maximum duration of benefits allowed.

(4) *During trade disputes.*—An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed.

(5) *Voluntary leaving.*—An employee who has left his employment voluntarily without good cause connected with such employment shall be ineligible for benefits for the week in which such leaving occurred and for the 3 next following weeks; provided, moreover, that such weeks shall be charged (as if benefits for total unemployment had been paid therefor) against the employee's most recent weeks of employment (by the employer in question) against which benefits have not previously been charged hereunder.

NOTE.—The above subsection (5) is considered to be equitable. The period of disqualification may, of course, be lengthened, or the person quitting voluntarily without reasonable cause may be entirely disqualified, if the State so desires.

(6) *Discharge for misconduct.*—An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for benefits for the week in which such discharge occurred and for not less than the 3 nor more than the 6 next following weeks, as determined by the commission in each individual case; provided, moreover, that the ineligible weeks thus determined shall be charged (as if benefits for total unemployment had been paid therefor) against the employee's most recent weeks of employment (by the discharging employer) against which benefits have not previously been charged hereunder, and shall also be counted against his maximum weeks of benefit per year.

NOTE.—The above provision leaves desirable flexibility, so that the penalty can be varied to suit the circumstances of each individual case. The following is a more rigid (alternative) provision:

(6) *Discharge for misconduct.*—An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for any further benefits based on his past weeks of employment by the discharging employer, and also ineligible for benefits (based on other employment) for the week in which such discharge occurred and for the 3 next following weeks; provided, moreover, that such weeks shall be counted (as if benefits for total unemployment had been paid therefor) against the employee's maximum weeks of benefit per year.

(7) *Refusal of suitable employment.*—If an otherwise eligible employee fails, without good cause, either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the 3 next following weeks; provided, moreover, that such weeks shall be charged (as if benefits for total unemployment had been paid therefor) against the employee's most recent weeks of employment against which benefits have not previously been charged hereunder, and shall also be counted against his maximum weeks of benefit per year.

"Suitable employment" shall mean any employment for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety, or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee 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, and other conditions of the work offered are less favorable to the employee than those prevailing for similar work in the locality; (*c*) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization.

NOTE.—The above definition of "suitable employment" is required in the Federal bill, and the wording of the entire last sentence should not be altered.

(*Optional provision*)

(8) *Employees barred from benefits by wage disqualification.*—An employee shall not be eligible for any benefits whatever based on his past weeks of

employment by a given employer, if he loses his employment with such employer after being regularly employed by him (for at least 20 out of the last 24 calendar months) on a minimum salary basis (payable and paid, for each of such 20 months, whether or not the employer had wage-earning work available for the employee) amounting to at least $ — per month.

NOTE.—No State is required to include in its law the above subsection (8). Any denial of benefits to an employee, because his wages have been relatively high, is very complicated to administer, and apt to be inequitable in many cases.

The $15 weekly benefit maximum will in itself result in higher-paid workers receiving in benefits a relatively lower percentage of their full-time weekly wages.

If some wage-disqualification is to be used, it should not be based on mere hourly or weekly wage rates but rather on annual (salary) earning.

Hence, the above subsection is set forth (as the best provision of this type), without being recommended.

SECTION 8. SETTLEMENT OF BENEFIT CLAIMS

NOTE ON HANDLING CLAIMS.—The following section has the great advantage of leaving the appeal arrangements flexible, so that they can be set up (and changed) by the administrative authority after further study and experience, without the necessity of legislative amendments.

(1) *Filing.*—Benefit claims shall be filed at the employment office, pursuant to general commission rules.

(2) *Initial determination.*—A deputy designated by the commission shall promptly determine whether or not the claim is valid, and the amount of benefits apparently payable thereunder, and shall duly notify the employee and his most recent employer of such decision. Benefits shall be paid or denied accordingly, unless either party requests a hearing within 5 calendar days after such notification was delivered to him or was mailed to his last known address.

(3) *Appeals.*—Unless such request for a hearing is withdrawn, the claim thus disputed shall be promptly decided, after affording both parties reasonable opportunity to be heard, by such appeal tribunal as the commission may designate or establish for this purpose. The parties shall be duly notified of such tribunal's decision, which shall be deemed a final decision by the commission except in cases where the commission acts on its own motion or, pursuant to general rules, permits the parties to initiate further appeal or review.

(4) *Appeal tribunals.*—To hear and decide disputed claims, the commission may establish one or more appeal tribunals consisting in each case of 1 full-time salaried examiner (or commissioner) who shall serve as chairman, and of 2 other members, namely an employer or representative of employers and an employee or representative of employees, who shall each be paid a fee of not more than $10 per day of active service on such tribunal (plus necessary expenses) and shall serve until replaced by the commission, except that no person shall hear any case in which he is a directly interested party. The chairman of such appeal tribunal may act for it at any session in the absence of one or both other members, provided they have had due notice of such session.

(5) *Procedure.*—The manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general commission rules (whether or not they conform to common law or statutory rules of evidence and 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 taken down by a stenographer, but need not be transcribed unless the disputed claim is further appealed.

(6) *Commission review.*—The commission shall have the power to remove or transfer the proceedings on any claim pending before a deputy, appeal tribunal, or commissioner; and may on its own motion (within 10 days after the date of any decision by a deputy, appeal tribunal, commissioner, or by the commission as a body) affirm, reverse, change, or set aside any such decision, on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony.

(7) *Appeal to courts.*—Except as thus provided, any decision (unless appealed pursuant to general commission rules) shall, 10 days after the date of such decision, become the final decision of the commission, and all findings of fact made therein shall (in the absence of fraud) be conclusive; and such decision shall then be subject to judicial review solely on questions of law. Such judicial review shall be barred unless the plaintiff party has used and exhausted the remedies provided hereunder and has commenced judicial action (with notice to the commission) within 10 days after a decision hereunder has become the final decision of the commission in the disputed case.

(8) *Oaths and witnesses.*—In the discharge of their duties under this section any deputy, any member of an appeal tribunal, and any examiner, commissioner, or duly authorized representative of the commission shall have power to administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpenas (served in the manner in which court subpenas are served) to compel attendance of witnesses and the production of books, papers, documents, and 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 commission rules, from the unemployment administration fund.

SECTION 9. COURT REVIEW

(Not drafted because of difference in State courts, etc.)

Each State should draft a section consistent with its judicial structure and procedure. This section should specify: (1) Type of legal action, (2) the court or courts to be used, (3) transmission by the commission of the record in the case, (4) assessment of court costs, etc.

Some States have, under their accident compensation laws, found it desirable to have a single court handle all such cases, thereby developing a tribunal with specialized knowledge and experience in this field. Such procedure might well be followed in the new field of unemployment compensation.

Note on Administrative Organization. (Possible types).—The work involved in the administration of a State unemployment compensation law will be very considerable.

The administrative expenses (including the operation of public employment offices), judging by experience abroad, will be at least 10 percent of the annual contributions. For each million of population, if the State's employment and wage rates are about the average of the entire country, unemployment compensation contributions (at 3 percent) would average about $3,500,000 annually under existing conditions, and the administrative expenses (at 10 percent) would be about $350,000 annually (per million of population) after benefits start. (Federal grants will cover most of these administration costs, provided the State administration complies with Federal standards.)

Hence, many States will desire to create a new full-time commission, suitable for dealing with the many new accounting, legal, and administrative problems. This bill embodies the organization of such a commission (see sec. 10, below), briefly as follows:

1. Administration by a new salaried commission of three members, which will determine the policies, adopt necessary rules and regulations, act as the board of review for appealed cases, and have general supervision of the routine administration through a director or a secretary.

However, some States, in the light of their present administrative organization or because of a smaller volume of work, may wish to consider the following alternative plans of organization:

2. Administration under the present labor department, but with a new division headed by an executive director in direct charge of administering the unemployment compensation act and the employment offices. If this is done, a part-time or full-time commission to help in formulating general policies and to review appealed benefit cases is desirable.

3. A new part-time (per diem) board, with a salaried executive director. Such a part-time board would review appealed benefit cases, have jurisdiction over general policies, pass upon rules and regulations, and be responsible for the administration, selecting the director who would be subject to the board. (Such a part-time board should be used in smaller States.)

4. Administration by a single new commissioner, with a part-time (per diem) board appointed by him. Such a part-time board might well review appealed benefit cases, and would advise the commissioner on general policies. (Such part-time board should be used only in smaller States.)

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SECTION 10. UNEMPLOYMENT COMPENSATION COMMISSION

(1) *Organization.*—There is hereby created a commission of three members, to be known as the unemployment-compensation commission of_____.
(State)
The members of the commission shall be appointed by the Governor within 90 days after the passage of this act. The commissioners thus appointed shall serve, as designated by the Governor at the time of appointment, 1 for a term of 2 years, 1 for a term of 4 years, and 1 for a term of 6 years. At the expiration of such initial terms appointments shall be made for a term of 6 years in each case. Any appointment to a vacancy shall be for the unexpired term in question. No commissioner shall, during his term of office, engage in any other business, vocation, or employment, or serve as an officer or committee member of any political party organization. The Governor may at any time, after public hearing, remove any commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(2) *Salaries.*—Each commissioner shall be paid a fixed monthly salary, at the rate of_____thousand dollars per year of service, from the unemployment administration fund.

NOTE.—To secure persons with ability, training, and experience reasonably equal to their new and difficult task, the State should expect to pay each commissioner approximately $2,000 per million of State population, but not less than $4,000 in any event.

(3) *Quorum.*—Any two commissioners shall constitute a quorum to transact business. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission, so long as a majority remain. The commission shall determine its own organization and methods of procedure.

(1) *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 and enforce all reasonable rules and orders necessary or suitable to that end, and to employ any person, make any expenditures, require any reports, and take any other action (within its means and consistent with the provisions of this act) necessary or suitable to that end. Annually, by the 1st day of February, the commission shall submit to the Governor a summary report covering the administration and operation of this act during the preceding calendar year and making such recommendations as the commission deems proper. Whenever the commission believes that a change in contribution and/or benefit rates will become necessary to protect the solvency of the fund it shall at once inform the Governor and the legislature thereof and make recommendations accordingly.

(2) *General commission rules.*—General rules, interpreting or applying this act and affecting all (or classes of) employers, employees, or other persons or agencies shall be adopted by the commission only after discussion with a representative State-wide advisory council (constituted as hereinafter described) or after public hearing (before the commission) of which notice has been given through the press. Such general commission rules shall, upon adoption by a majority of the commission, be duly recorded in its minutes and be filed with the Secretary of State and shall thereupon take legal effect. Such rules may be amended in the same manner as is above provided for their adoption.

(3) *Publication.*—The commission shall cause to be printed in proper form for distribution to the public the text of this act, the commission's general rules, its annual report to the Governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor; and such printing and availability upon application shall be deemed a sufficient publication of the same.

(4) *Personnel.*—The commission is authorized, within its means, to appoint and fix the compensation of such officers, accountants, attorneys, experts, and other persons as are necessary in the execution of its functions. All positions in the administration of this act shall be filled by persons selected and appointed on a nonpartisan merit basis, under rules and regulations of the commission. The commission shall not employ or pay any person who is serving as an officer or committee member of any political party organization. The commission shall fix the duties and powers of all persons thus employed and may authorize

any such person to do any act or acts which could lawfully be done by a commissioner. The commission may, in its discretion, bond any person handling moneys or signing checks hereunder.

NOTE.—A nonpartisan merit basis must be used to secure any Federal money for administrative costs.

(5) *Advisory councils.*—The commission shall appoint a State-wide advisory council and local advisory councils, composed in each case of equal numbers of employer representatives and employee representatives (namely of persons who may fairly be regarded as thus representative because of their vocation, employment, or affiliations), and of such members representing the public generally 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, neutrality, 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.

(6) *Employment stabilization.*—It shall be one of the purposes of this act to promote the regularization of employment in enterprises, localities, industries, and the State. The commission, with the advice and aid of its advisory councils, shall take all appropriate steps within its means 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, and 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 employ experts and to carry on and publish the results of investigations and research studies.

(7) *Records and reports.*—Every employer (of any person in this State) shall keep true and accurate employment records of all persons employed by him, and of the weekly hours worked for him by each, and of the weekly wages paid him to each such person. Such records shall be open to inspection by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employer (of any person in this State) any reports covering persons employed by him, on employment, wages, hours, unemployment, and related matters, which the commission deems necessary to the effective administration of this act. Information thus obtained shall not be published or be open to public inspection in any manner revealing the employer's liability, and any commission employee guilty of violating this provision shall be subject to the penalties provided in this act.

(8) *Representation in court.*—On request of the commission the attorney general shall represent the commission 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 commission with the approval of the Governor and except as otherwise provided in this act.

(9) *State-Federal cooperation.*—The commission is hereby authorized and directed to cooperate in all necessary respects with the appropriate agencies and departments of the Federal Government in the administration of this act and of free public employment offices; and to make all reports thereon requested by any directly interested Federal agency or department; and to accept any sums allotted or apportioned to the State for such administration, and to comply with all reasonable Federal regulations governing the expenditures of such sums.

(10) *Employment offices.*—The commission shall establish and maintain such free public employment offices, including such branch offices, as may be necessary for the proper administration of this act. The commission shall maintain a division for this purpose. The existing free public employment offices of the State (if any) shall be transferred to the jurisdiction of such 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. All moneys thereafter made available by or received by the State for the State employment service shall be paid to (and expended from) the unemployment administration fund, and a special "employment service account" shall be maintained for this purpose as a part of said fund.

SEC. 12. ACCEPTANCE OF ACT OF CONGRESS RELATING TO EMPLOYMENT SERVICE

(1) *Formal acceptance.*—The State hereby accepts the provisions of the Wagner-Peyser Act, approved June 6, 1933 (48 Stat. 113, U. S. C., title 29, sec. 49 (c)), "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 Unemployment Compensation Commission, a division to be known as the "——— State Employment Service", which shall be affiliated with the United States Employment Service. The said division is hereby designated and constituted the agents of this State for the purposes of the Wagner-Peyser Act. The said division shall be administered by a full-time salaried 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 the said act of Congress in the promotion and maintenance of a system of public employment offices.

(3) *Financing.*—All moneys made available by or received by this State under said act of Congress shall be paid into a special "employment service account" in the unemployment administration fund, and said moneys are hereby appropriated and made available to the "——— State Employment Service" to be expended as provided by this act and by said act of Congress.

NOTE.—The Federal economic security measure requires that the State accept the provisions of the Wagner-Peyser Act, for the establishment of an effective system of public employment offices.

The above section can be used for this purpose, and can properly be included in this bill even where the State has already accepted the Wagner-Peyser Act.

This bill places the State employment service under the commission administering the unemployment compensation law, as is proper and virtually necessary for the effective operation of both the service and the law.

However, in case a given State does not wish to place its State employment service under the Unemployment Compensation Commission, then the above section should be omitted or modified, and subsection (10) of section 11 should also be modified. The governor or the State's labor department should in that case secure advice from the United States Employment Service, Department of Labor, Washington, D. C., on the procedure and changes in this bill which would in that case become necessary.

SECTION 13. RECIPROCAL BENEFIT ARRANGEMENTS WITH OTHER STATES

The commission is hereby authorized, subject to approval by the governor, to enter into reciprocal arrangements with the proper authorities, in the case of any other unemployment compenastion system established by any State law or by an act of Congress, as to persons who have (after acquiring rights to benefits under this act or under such other system) newly come under this act or under such other system, whereby such benefits (or substantially equivalent benefits) shall be paid (or both paid and financed) in whole or in part through (or by) the fund of the unemployment compensation system newly applicable to such person. Such reciprocal arrangements shall be adopted and published by the commission in the same manner as its general rules.

NOTE.—The above section is designed to make possible reciprocal arrangements whereby an employee will not lose his benefit rights if he moves from one State to the other, or from employment covered by a direct act of Congress. The wording should not be altered.

SECTION 14. 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 contributions 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, or require any waiver by an employee of any right hereunder. Any

employee claiming a violation of this section may have recourse to the method set up in this act for deciding benefit claims; and the commission shall have power to take any steps necessary or suitable to correct and prosecute any such violation.

(2) *Limitation of fees.*—No employee shall be charged fees of any kind by the commission or its representatives, in any proceeding under this act. Any employee claiming benefits in any proceeding or court action may be represented by counsel or other duly authorized agent; but no such counsel or agents shall together charge or receive for such services more than 10 percent of the maximum benefits at issue in such proceeding or court action.

(3) *No assignment or garnishment of benefits.*—Benefits which are due or may become due under this act shall not be assignable 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 15. COLLECTION OF CONTRIBUTIONS

(1) *Interest on tardy payments.*—If any employer fails to make promptly, by the date it becomes due hereunder, any payment required to be made by him under this act, he shall be additionally liable (to the unemployment administration fund) for interest on such payment at the rate of 1 percent per month from the date such payment became due until paid, pursuant to general commission rules.

(2) *Bankruptcy.*—In the event of an employer's dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation, contribution payments then or thereafter due under this act shall have the greatest priority (subsequent to taxes, but at least equal to wage claims) then permitted by law; but this subsection shall not impair the lien of any judgment entered upon any award.

(3) *Court action.*—Upon complaint of the commission, the attorney-general shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder; or, at his request and under his direction, the prosecuting attorney (of any county in which the employer has a place of business) shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder.

SECTION 16. PENALTIES

(1) Whoever willfully makes a false statement or representation 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 less than $20 nor more than $50, or by imprisonment in the county jail not longer than 30 days, or by both such fine and imprisonment; and each such false statement or representation shall constitute a separate and distinct offense.

(2) Any employer (of any person in this State) or his agent, who willfully makes a false statement or representation 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 willfully 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 as lawfully required hereunder, or who makes or requires any deduction from wages to pay all or any portion of the contributions required from employers, or who tries to induce any employee to waive any right under this act, shall upon conviction be punished by a fine of not less than $20 nor more than $200, or by imprisonment in the county jail not longer than 60 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, and each such attempt to induce shall constitute a separate and distinct offense. If the employer in question is a corporation, the president, the secretary, and the treasurer, or officers exercising corresponding functions, shall each be subject to the aforesaid penalties.

(3) Any violation, of any provision of this act, for which a penalty is neither prescribed above nor provided by any other applicable statute, shall be punished by a fine of not less than $20 nor more than $50, or by imprisonment in the county jail not longer than 30 days, or by both such fine and imprisonment.

(4) On complaint of the commission the fines specified or provided in this section may be collected by the State in an action for debt. All fines thus collected shall be paid to the unemployment administration fund.

SECTION 17. UNEMPLOYMENT ADMINISTRATION FUND

(1) *Special fund.*—There is hereby created the "unemployment compensation administration fund", to consist of all moneys received by the State or by the commission for the administration of this act. This special fund shall be handled by the State treasurer as other State moneys are handled; but it shall be expended solely for the purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith.

(2) *Federal aids.*—All Federal moneys allotted or apportioned to the State by the Federal Social Insurance Board (or other agency) for the administration of this act shall be paid into the unemployment administration fund.

(3) *Employment service account.*—A special "employment service account" shall be maintained as a part of said fund.

SECTION 18. APPROPRIATIONS

(1) All moneys in the unemployment administration fund at any time are hereby appropriated to the unemployment compensation commission, including its employment service division.

(2) There is hereby appropriated to the employment service account of the unemployment administration fund, from any money in the State treasury not otherwise appropriated, on July 1, 1935, and annually thereafter on the 1st day of July, the sum of $_____.[5]

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.

NOTE.—This provision is required by the Federal bill as a condition for the allowance of credits against the Federal pay-roll tax.

SECTION 20. SEPARABILITY OF PROVISIONS

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

SECTION 21. EFFECTIVE DATE

This act shall take effect upon passage.

NOTE.—This section should be modified where necessary to conform with the State's regular requirements for official publication (etc.) prior to the taking effect of its State laws.

NOTE.—Any State which desires to do so may of course modify the foregoing bill (which now provides for a completely pooled fund), to permit certain employers (or groups) to maintain within the fund:

(1) Separate "employer accounts" for benefits; and/or

[5] This sum should be about 3 cents per capita of the State's population. (Thus a State of 1,000,000 inhabitants should make an appropriation of at least $30,000.) This should insure the State's receiving its full share of the Federal money now available from the United States Employment Service under the Wagner-Peyser Act. Any State may secure more exact information on the Federal "matching" requirements from the United States Employment Service, Washington, D. C.

Such an appropriation will be relatively small, as compared to the total cost of the State's employment service, in view of its enlarged functions under this act. (The bulk of the cost will be financed from Federal money, raised largely from employers subject to the Federal pay-roll tax and the State unemployment compensation law. Not only such employers will benefit by an effective State-wide employment service, but also the entire community.) Hence it is essential that the State (from general tax funds) appropriate at least the suggested small fraction of the total cost of its employment service.

(2) Separate "guaranteed employment accounts."

The Federal economic security measure includes certain standards which would apply to any such account permitted under a State law. (The State law could, however, provide additional standards.) An optional provision for employer reserve accounts follows herewith. An optional provision, for insertion if desired, in the foregoing "pooled" bill, to permit a guaranteed employment account will be found at pages 629–632.

Optional provision for employer reserve accounts

NOTES.—Any State which desires to do so may include the following optional provisions:

This provision would permit certain employers, at the discretion of the administrative agency, to establish special reserve accounts, within the State unemployment insurance trust fund.

The Federal economic security measure includes certain standards which would apply to any such account permitted under a State law. (The State law could, however, provide additional standards.)

If the following section is inserted in the model State bill, it should be numbered "section 19" and the present sections 19, 20, and 21 should be renumbered accordingly.

As noted below, it will also be necessary to add brief provisions to sections 4 and 5 of the model bill, to cover such employer reserve accounts, and the required minimum contributions by such employers to the pooled fund.

SECTION —. EMPLOYER RESERVE ACCOUNTS

(1) *Permission to establish.*—Subject to the requirements of this act, the Commission may permit any employer to establish within the fund a special employer reserve account covering all the employer's employees (except those, if any, covered under this act by a guaranteed employment plan). As a condition of permitting and maintaining within the fund such a reserve account, the commission shall require that the employer furnish such security or such other assurance that his employees will receive full benefits without drawing on the fund's pooled account as the commission deems reasonable.[6] Whenever two or more employers file an application to maintain a joint (group) reserve account in the fund, as if they constituted a single employer, the commission may permit and maintain such a joint account (as if it were a single employer's reserve account), subject to the conditions herein set forth and to any supplementary general rules the commission may prescribe for the conduct and dissolution of joint accounts.

NOTE.—This section is required by the proposed Federal act.

(2) *Crediting of payments.*—There shall be credited to an employer's reserve account all amounts paid to the fund by the employer, excepting his required contributions to the fund's "pooled accounts." In determining the year's record or status of an employer's reserve account (as of December 31), benefits shall be charged against it on the date when paid, and the employer's contributions (and any additional voluntary payments) payable for the year shall be credited if paid no later than February 1 of the succeeding year. Any employer may at any time make voluntary payments (additional to the contributions required under this act) to his reserve account in the fund, pursuant to general commision rules.

(3) *Benefit requirements.*—Benefits shall be payable from an employer's reserve account to each of his employees under the same conditions, and at no lower rates and for no shorter periods, than apply under this act to benefits payable to other employees from the fund's pooled account. The Commission may adopt any general rules it finds necessary to that end. An employer's reserve account shall, unless exhausted, pay in full to his eligible employees all their benefits duly chargeable under this act against their weeks of employment by such employer. If his reserve account is exhausted, such benefits shall be paid either by the employer directly or by the commission from

[6] Amendments are under consideration to allow the States either to require or not to require the guarantee of benefits in addition to the maintenance of a specified percentage of pay roll in reserve.

the proceeds of any separate security duly required from the employer under this section. If such benefits cannot thus be paid in full, the balance thereof shall be paid from the fund's pooled account.

(4) *Contribution requirements.*—The total contribution rate required of each employer shall (after he has contributed for at least 3 years) be based directly on the contribution and benefit experience of his reserve account in the fund, and shall be determined by the commission for each calendar year, at its beginning, pursuant to all the following conditions:

(*a*) If the benefits payable from an employer's reserve account within any calendar year are greater than his contributions to such account for such year, his contribution rate for the next calendar year shall be increased by 1 percent of his pay roll, unless his reserve account then equals at least —* percent of his pay roll for the last completed calendar year, or shall be increased to the standard rate of contributions, whichever is higher.

(*b*) No employer's contribution rate shall be less than the standard rate of contribution unless he has benefit experience throughout the most recently completed calendar year, without the benefits payable from his reserve account within such year being scaled down or paid by the fund's pooled account, and unless his reserve account at the start of the calendar year equals at least —* times the largest amount of benefits paid from such account within any one of the —** most recently completed calendar years.

NOTE.—*Optional provision:*

* "*Five*" is suggested at this point, although this figure is not specified by the Federal measure as introduced.

** "*Three*" is suggested at this second point, although this figure is not specified by the Federal measure as introduced.

(*c*) If an employer's reserve account at the start of the given calendar year equals at least —* percent of his pay roll for the preceding calendar year, his total contribution rate shall be reduced to —** percent of his pay roll throughout the given calendar year.

NOTE.—*This section is required by the proposed Federal act*, which specifies as minimum requirements:

* 15 percent.

** 1 percent.

These figures are subject to fiscal action by Congress. Amendments to lower them are under consideration. If adopted, a provision along the following line would be appropriate:

(*Alternative provision*)

(Not now permitted under the Federal bill[1])

(*c*) If an employer's reserve account at the start of the given calendar year equals at least 10 percent of his pay roll for the preceding calendar year, his total contribution rate shall be reduced to 1½ percent on his pay roll throughout the given calendar year; and if his account thus equals at least 15 percent of such preceding pay roll, his total contribution rate shall be reduced to one-half of 1 percent on his pay roll throughout the given calendar year.

(5) *Termination of account.*—If any employer maintaining a reserve account hereunder fails to comply with the applicable requirements of this act, or terminates such reserve account with the commission's consent, or has for any reason ceased to be subject to this act, the commission shall transfer and credit to the fund's pooled account any balance then remaining in such employer's reserve account (except as the commission may apportion to any successor employer's reserve account all or part of the assets and benefit liabilities in question); and in such case all further contributions from such employer shall be paid to said pooled account, and all further benefits to his employees shall (with the above exception) be paid pooled account.

(6) *Allocation of contributions by employees.*—The foregoing requirements and criteria, on contribution and benefit payments by an employer having a reserve account, apply to contributions made by such employer on his own behalf, and to the benefits to be financed by such contributions, as distinguished from additional contributions made by employees and additional benefits paid to employees out of their own contributions. In case any contributions or other payments are made for benefit purposes by the employees of such employer, the commission is authorized and directed to assure by any suitable

[1] Optional provision: The Federal measure as introduced does not require this provision or specify any figure but 10 percent is here suggested.

general rules that the employer shall at all times pay benefits out of his own contributions at least equal to those provided by this act, and any contributions by employees shall be used solely to provide additional benefits to those provided by this act.

NOTE.—The above provision should be included, whether or not employee contributions are required by the bill. It should be noted that employee contributions create complications if employer reserve accounts are allowed, due to the fact that the accounts must be kept in such fashion that the net amount remaining to the credit of an individual employee (taking into consideration both the payments he has made and the benefits he has received) is always determinable.

NOTE.—Where a State includes the above new section on "Employer Reserve Accounts", the following new subsections must also be inserted in that bill:

Insert at the close of section 4, relating to the Unemployment Compensation Fund:

(5) *Employer reserve accounts, within the fund.*—The fund shall be mingled and undivided, except as separate "reserve accounts" (including guaranteed-employment accounts, if any) are kept therein under provisions of this act permitting certain employers to maintain such accounts within the fund.

The entire balance of the fund (exclusive of such reserve accounts) shall constitute the "pooled account" of the fund, to which shall be credited or charged all payments to and from the fund except as this act specifies otherwise.

Insert at the close of section 5, relating to contributions:

(.) *Contribution rates, for employers having reserve accounts.*—Each employer for whom a reserve account (and/or guaranteed-employment account, if any) is maintained pursuant to this act shall for each calendar year make such total contributions to the fund as are then required of him under the applicable provisions of this act. Of such total contributions, an amount equaling —[8] per centum of the employer's pay roll shall regularly be credited to the fund's "pooled account." The balance of the employer's payments to the fund shall be duly allocated and credited (as may be proper in each case) to his reserve account (or guaranteed-employment account, if any).

PRELIMINARY DRAFT OF A SUGGESTED ALTERNATIVE STATE UNEMPLOYMENT COMPENSATION ACT NO. 2

(With employer "reserve" accounts and partial pooling)

The Federal security measure permits employers to credit (against the Federal pay-roll tax) their contributions under any State unemployment compensation law which meets certain minimum Federal standards.

Each State which passes such a law promptly will be able to set up a State unemployment compensation fund, thus using for State purposes that money which would otherwise be paid into the Federal Treasury by the State's employers.

To assist each State in enacting a suitable law, assuring its employers of the Federal tax credit, the President's Committee on Economic Security has had two model State bills prepared, after months of study and discussion.

These bills are carefully drafted to meet all the requirements of the Federal measure, including: (a) Standards for granting tax credits to employers; and (b) standards for granting Federal money to pay the administrative costs of such State laws.

The attached model bill is of the "reserves" type. Under this type of bill, part of the total contributions paid into the State fund will be pooled; but the major part of each employer's contributions will be segregated (within the fund) into separate employer accounts, and benefits will be paid from an employer's account only to his own eligible employees. After several years of contributions and benefit payments each employer's contribution rate will depend on his actual employment and benefit experience.

[8] This figure is fixed at 1 percent in the pending economic security measure, but is of course subject to final action by Congress.

Wide latitude is thus left the several States in many respects: (a) As to the general type of unemployment compensation law to be adopted, with two types of model bill suggested, and also (b) as to many other important questions (amount and duration of benefits, etc.).

It is suggested, however, that each State executive or legislator who plans to make any change in either of the model bills (prepared by the Committee on Economic Security) might do well to write the committee for advice on the vital question: "Would the proposed change prevent the State law from qualifying for (a) Federal tax credits to employers, and (b) Federal aid for State administration?"

By thus writing the Committee on Economic Security, each State can be advised whether the proposed changes: (a) Will meet Federal requirements, and (b) are consistent, or conflict with other provisions of the model bill itself.

The committee's address is 1734 New York Avenue, Washington, D. C.

TOPICAL OUTLINE OF BILL

Section 1. Short title.
Section 2. Declaration of the State's public policy.
Section 3. Definitions: (1) Benefit, (2) commission, (3) contributions, (4) eligibility, (5) employee, (6) employer, (7) employer's reserve account, (8) employment, (9) employment office, (10) full-time weekly wage, (a) hourly rate of earnings, (b) full-time weekly hours, (11) fund, (12) partial unemployment, (13) pay roll, (14) pooled account, (15) total unemployment, (16) unemployment administration fund, (17) wages, (18) waiting-period unit, (19) week, (20) week of employment.
Section 4. Unemployment compensation fund: (1) Fund, (2) withdrawals, (3) treasurer, (4) deposit, (5) pooled account, (6) employer accounts.
Section 5. Contributions: (1) Payment, (2) standard rate of contributions, (3) 1936[1] and 1937 contribution rates; (4) contributions to pooled account, (5) future total rates, based on benefit experience, (6) contributions by employees.[1]
Section 6. Benefits: (1) Payment of benefits, (2) weekly benefits for total unemployment, (3) weekly benefits for partial unemployment, (4) one-to-four ratio of benefits to employment, (5) maximum weeks of benefit in any year, (6) lump sum benefit option, (7) additional benefits (one-to-twenty ratio).
Section 7. Benefit eligibility conditions: (1) Required probationary period, (2) availability and registration for work, (3) waiting period[2], (4) during trade disputes, (5) voluntary leaving, (6) discharge for misconduct[2], (7) refusal of suitable employment, (8) employees barred from benefits by wage disqualification.[1]
Section 8. Settlement of benefit claims: (1) Filing, (2) initial determination, (3) appeals, (4) appeal tribunals, (5) procedure, (6) commission review, (7) appeal to courts, (8) oaths and witnesses.
Section 9. Court Review: (Not drafted, because of differences in State courts, etc.)
Section 10. *Unemployment compensation commission:* (1) Organization, (2) salaries, (3) quorum.
Section 11. Administration: (1) Duties and powers of commission, (2) general commission rules, (3) publication, (4) personnel, (5) advisory councils, (6) employment stabilization, (7) records and reports, (8) representation in court, (9) State-Federal cooperation, (10) employment offices.
Section 12. Acceptance of act of Congress, relating to employment service: (1) Formal acceptance, (2) State employment service, (3) financing.
Section 13. Reciprocal benefit arrangements with other States.
Section 14. Protection of rights and benefits: (1) Waiver of rights void, (2) limitation of fees, (3) no assignment or garnishment of benefits.
Section 15. Collection of contributions: (1) Interest on tardy payments, (2) bankruptcy, (3) court action.
Section 16. Penalties.
Section 17. Unemployment administration fund: (1) Special fund, (2) Federal aids, (3) employment-service account.
Section 18. Appropriations.
Section 19. Saving clause.
Section 20. Separability of provisions.
Section 21. Effective date.

[1] Indicates a completely optional provision.
[2] Two alternative provisions suggested.

A BILL RELATING TO UNEMPLOYMENT COMPENSATION, PROVIDING PENALTIES AND MAKING APPROPRIATIONS

SECTION 1. SHORT TITLE

This act shall be known and may be cited as the "unemployment compensation law."

SECTION 2. DECLARATION OF THE STATE'S PUBLIC POLICY

NOTE.—The sponsor of a State bill will probably wish to draft the statement of public policy. The following statement is appropriate and may be used if desired, but this precise wording is not essential to conform to the proposed Federal legislation:

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. Social security requires protection against this greatest hazard of our economic life. This can best be provided by requiring the systematic accumulation by employers of reserve funds, from which cash benefits can be paid to their workers when unemployed. A sound unemployment compensation law should help to encourage employers to provide more steady work, to maintain the purchasing power of workers becoming unemployed, and thus to prevent and limit 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 workers of this State require the enactment of this measure for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

SECTION 3. DEFINITIONS

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

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

(2) "Commission" means the Unemployment Compensation Commission established by this act or its authorized representative.

NOTE.—If another administrative agency than that suggested herein is used, the name of such agency should be abbreviated and defined, and when the word "commission" appears, the abbreviated name of such agency should be substituted.

(3) "Contributions" means the money payments to the State unemployment compensation fund pursuant to this act.

(4) Eligibility: An employee shall be deemed "eligible" for benefits for any given week of his partial or total unemployment (occurring subsequent to any required waiting period) only when he is not disqualified by any provision of this act from receiving benefits for such week of unemployment.

(5) "Employee" means any person employed by an employer subject to this act and in employment subject to this act.

(6) "Employer" means any person, 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, including this State and any municipal corporation or other political subdivision thereof,[3] who or whose agent or predecessor in interest has employed at least four persons in employment subject to this act within each of 13 or more calendar weeks in the year 1935 or any subsequent calendar year: *Provided*, That such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make

[3] The inclusion of the State and local governments as employers is not required in the proposed Federal legislation. Congress does not have the power to tax the pay rolls of State and local governments, and obviously could not require State and local governments to contribute to a State unemployment compensation act. It is suggested, however, that State and local employees be covered, except those in the employments exempted in paragraphs (a) to (d) of the "employment" definition below.

a newly subject employer subject for all purposes as of January 1 of the calendar year in which such employment occurs. In determining whether an employer (of any person in the State) employs enough persons to be an "employer" subject hereto, and in determining for what contributions he is liable hereunder, he shall, whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in the absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general commission rules. All persons thus employed by an employer (of any person) within the State, 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: *Provided, moreover,* That where any person, 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, either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the State, all such enterprises shall be treated as a single "employer" for the purposes of this act. Any employer subject to this act shall cease to be subject hereto only upon a written application by him and after a finding by the Commission that he has not within any calendar week within the last completed calendar year employed four or more persons in employment subject hereto. Any employer (of any person within the State) not otherwise subject to this act shall become fully subject hereto, upon filing by such employer with the Commission of his election to become fully subject hereto for not less than 2 calendar years, subject to written approval of such election by the Commission.

(7) "Employer's reserve account" means a separate benefit reserve account maintained within the fund for the employer (or group) pursuant to this act. In determining the year's record or status of an employer's reserve account (as of December 31), benefits shall be charged against it on the date when paid, and the employer's contributions payable for the year shall be credited if paid no later than February 1 of the succeeding year.

(8) "Employment" means any employment in which all or the greater part of person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all States, including the District of Columbia). In the case of all other persons employed partly in this State and partly in other States, the term "employment" shall include the employment of such persons to the extent prescribed by general rules adopted by the commission. Except as provided in any reciprocal benefit arrangement made pursuant to this act, "employment" shall not include any employment included in any unemployment compensation system established by an act of Congress.

Nor shall the term "employment" apply to:[4]

(a) Employment on a governmental relief project approved by the commission.

(b) Employment as an elected or appointed public officer.

(c) Employment by a governmental unit on an annual salary basis.

(d) Employment as a teacher in a public school, college or university.

(9) "Employment office" means that free public employment office (operated by the State) or branch thereof nearest to the employee's place of residence or employment, unless otherwise prescribed by the commission.

(10) An employee's "full-time weekly wage" means the weekly earnings such employee would average from his employment (by the employer in question) if employed at the "hourly rate of earnings" and for the "full-time weekly hours" applicable to such employee. (Where an employee had or has concurrent employments, they shall be combined in determining his full-time weekly wage for benefit purposes, pursuant to general commission rules.)

[4] The last sentence and exemptions (a) to (d) should be omitted if State and local governments are excluded from the "employer" definition (6) above.

(a) The applicable "hourly rate of earnings" shall be determined by averaging the employee's actual earnings for at least 100 hours of employment by the employer, so far as practicable, pursuant to general commission rules.

(b) An employee's "full-time weekly hours" shall mean the standard maximum weekly hours which can lawfully be worked by the employee (in the employment in question) under the applicable Federal code of fair competition or under any applicable State code or law specifying lower maximum weekly hours. Where there is no code or law applicable, the employee's full-time weekly hours shall be determined as follows: There shall be classified together all those employees usually employed by the employer both at reasonably similar work and for substantially the same weekly hours. There shall be determined the number of weekly hours prevailingly worked by the given class of employees, for each separate week of the preceding calendar year. There shall then be averaged such prevailing weekly hours of all weeks in which such hours were 30 or more. The resulting average shall constitute the full-time weekly hours applicable to each employee of the given class for benefit purposes throughout the current calendar year. Where the commission finds that the above method cannot reasonably and fairly be applied, it may by general rule or special order prescribe an equitable alternative method for determining a full-time standard of not less than 30 weekly hours for benefit purposes. In the case of any employee who is found by the commission, at the time he becomes eligible for benefits, to be unable by reason of physical disability or by reason of continuing personal obligations (other than employment) to work half the full-time weekly hours which prevail in such establishment for full-time employees, the commission shall determine his full-time weekly hours for benefit purposes by averaging his weekly hours for all weeks (in at least the past 3 months) in which he worked.

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

(12) "Partial unemployment": An employee shall be deemed "partially unemployed" in any calendar week of partial work if he fails to earn in wages (and/or any other pay for personal services, including net earnings from self-employment) for such week at least $1 more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible.

(13) "Pay roll" means the total amount of all wages payable by the employer to his employees, commencing with wages payable for employment occurring after the employer becomes newly subject to this act.

(14) "Pooled account" means that portion of the fund which is mingled and undivided, as provided in this act.

(15) "Total unemployment": An employee shall be deemed "totally unemployed" in any calendar week in which he performs no wage-earning services whatsoever, and for which he earns no wages (and no other pay for personal services, including net earnings from self-employment), and in which he cannot reasonably return to any self-employment in which he has customarily been engaged.

(16) "Unemployment administration fund" means the unemployment compensation administration fund established by this act.

(17) "Wages" means every form of remuneration for employment received by a person from his 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 similar advantages.

(18) "Waiting-period unit" means a period (for which no benefits are payable but during which the employee is in all other respects eligible) consisting of either 1 week of total unemployment or 2 weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this act.

(19) "Week" means calendar week.

(20) "Week of employment" means each calendar week (occurring at least 1 year after contributions first become generally due under this act from employers then subject hereto, and occurring after the probationary period per different employer required hereunder) within which the person in question performed any employment subject to this act for any employer subject to this act: *Provided, however,* That any week (occurring within the customary school vacation periods) in which an employer employed an employee who attended a school, college, or university in the last preceding school term, shall not be counted as a "week of employment" in determining the benefit rights

of such employee under this act. In the case of an employee working for several employers in the same week, the apportionment for benefit purposes of such "week of employment" to one or more of such employers shall be determined pursuant to general commission rules.

SECTION 4. UNEMPLOYMENT COMPENSATION FUND

(1) *Fund.*—There is hereby created the unemployment compensation fund, to be administered by the commission without liability on the part of the State beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund.

(2) *Withdrawals.*—The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules, and no other disbursement shall be made therefrom. Such rules shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by State officers of State moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund.

NOTE.—The first sentence of the above subsection is necessary to conform to the requirement of the Federal bill that the fund be used exclusively for the payment of benefits. Administrative expenses will have to be paid from Federal allotments for this purpose or from other sources. Attention is called to the fact that the number of benefit payments to be made from the State fund will be extremely large in most States, though the amount of the individual payments will be small. It is therefore advisable to utilize a method of withdrawals from the fund which will involve a minimum of administrative expense, consistent with adequate protection of the fund. In some States the customary procedure for the payment from public funds would be unnecessarily expensive.

(3) *Treasurer.*—The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn upon the fund, in such manner as the commission may prescribe. He shall have custody of all moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this action. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the Governor. All premiums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall be paid from the unemployment administration fund. The treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this act.

(4) *Deposit.*—All contributions paid under this act shall upon collection be deposited in or invested in the obligations of the "unemployment trust fund" of the United States Government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the unemployment trust fund necessary amounts from time to time.

NOTE.—The above subsection (4) is necessary to meet the requirements of the Federal bill.

The wording of the entire section creating the State unemployment compensation fund is also important, because of constitutional provisions concerning the custody and management of "State funds" in several States. Four States (California, New Mexico, Wyoming, and Michigan) require the deposit of "State funds" or "public funds" in State or national banks. Since it is anticipated that the United States Treasury will designate banks within the State to act as its agent, even the constitutional provisions of these States do not conflict with the requirements of the Federal economic security bill for the deposit of State unemployment compensation funds with the unemployment trust fund of the United States.

(5) *Pooled account.*—The commission shall maintain within the fund a pooled account, in accordance with the following requirements: There shall be credited to such pooled account (*a*) the contributions of each employer, to the

extent of —[5] percent of his pay roll; and (*b*) all realizing earnings, gains, or losses on investments of the funds; and (*c*) any balance remaining in the reserve account of an employer after he has for any reason ceased to be subject to this act, except as the commission may in such case apportion (to any successor employer's reserve account) all or part of the assets and benefit liabilities of the reserve account of such former employer.[6] The fund's pooled account, as thus constituted, shall be mingled and undivided. It shall pay benefits to all eligible employees, but only when (and to the extent that) the reserve accounts of their employers cannot, because exhausted, pay the benefits due such employees.

(6) *Employer accounts.*—The commission shall maintain within the fund a separate benefit reserve account for each employer; and shall credit to such account all amounts contributed to the fund by the employer, excepting his required contributions to the fund's pooled account. Each employer's reserve account shall, unless exhausted, pay to his eligible employees all their benefits duly chargeable under this act against their weeks of employment by such employer. In determining when and for how long an employer's reserve account is exhausted, the commission shall consider only the employer's paid and payable contributions, to the exclusion of any accrued contributions not yet due for payment. Any employer may at any time make voluntary payments, additional to the contributions required under this act, to his reserve account in the fund, pursuant to general commission rules. Whenever two or more employers file an application to merge their several reserve accounts in a joint (group) account in the fund, as if they constituted a single employer, the commission shall maintain such joint account (as if it were a single employer's reserve account), subject to such general rules for the conduct and dissolution of joint accounts as it may prescribe.

SECTION 5. CONTRIBUTIONS

(1) *Payment.*—On and after the 1st day of January 1936, contributions shall accrue and become payable by each employer then subject to this act. Thereafter contributions shall accrue and become payable by any new employer on and after the date on which he becomes newly subject to this act. The contributions required hereunder shall be paid by each employer in such manner and at such times as the commission may prescribe.

(2) *Standard rate of contributions.*—The total contributions regularly payable by each employer shall be an amount equal to 3 percent of his pay roll, except as otherwise provided in this act.

NOTE.—The Federal pay-roll tax on employers (under the economic security bill) will be 3 percent for the year 1938, and thereafter.

For the years 1936 and 1937, however, the tax rate (which will depend on a Federal index of production) may be 3 percent, 2 percent, or 1 percent. (Of course all provisions of the Federal bill are subject to possible change by Congress.)

Any State which desires to make its 1936 and 1937 contribution rates correspond exactly to the tax-rate clauses, of the Federal security measure (as introduced) can use the following language:

(*Optional provision*)

(3) *1936 and 1937 contribution rates.*—The total contributions payable by each employer for the calendar years 1936 and 1937 shall be determined as follows: (*a*) If the Federal Reserve Board's adjusted index of total industrial production averages, for the year ending September 30, 1935, not more than 84 percent of its average for the years 1923–25, inclusive, the commission shall certify that fact to the secretary of state, and each employer shall contribute for the calendar year 1936 an amount equal to 1 percent of his pay roll; (*b*) if such index averages, for such year, more than 84 percent but less than 95 percent of such earlier average, such fact shall be so certified, and each employer shall contribute for the calendar year 1936 an amount equal to 2 percent of his pay roll; (*c*) if such index averages, for the year ending September

[5] This figure is 1 percent, in the pending economic security measure, but is, of course, subject to final action by Congress.

[6] Contributions by employees might cause some administrative complications if paid into separate employer accounts. If employee contributions are nevertheless required by a State law of this "reserves" type, they could be paid into the fund's "pooled account", by inserting the following words (at the point above indicated): "; and (*d*) all contributions required from employees under this act."

30, 1936, not more than 84 percent of such earlier average, such fact shall be so certified, and each employer shall contribute for the calendar year 1937 an amount equal to 1 percent of his pay roll, except that in no event shall the measure of contributions for the calendar year 1937 be less than the measure of contributions for the calendar year 1936; (*d*) if such index averages, for the year ending September 30, 1936, more than 84 percent but less than 95 percent of such earlier average, such fact shall be so certified, and each employer shall contribute for the calendar year 1937 an amount equal to 2 percent of his pay roll, except that in no event shall the measure of contributions for the calendar year 1937, be less than the measure of contributions for the calendar year 1936.

NOTE.—The following provision, for contributions to be paid by all employers to a "pooled account", will help to assure uniform benefit protection to all employees, since benefits will be paid from this "equalization" fund to any employee after the reserve account of his employer has been exhausted.

(4) *Contributions to pooled account.*—Of his total contributions required hereunder, each employer shall at all times contribute —[7] percent on his pay roll to the fund's pooled account.

NOTE.—The following provisions, which are vital to any measure of the "reserves" type, are designed: (*a*) To assure that each employer's account will be or become adequate for benefit purposes; and (*b*) to assure to each employer in advance a higher or lower contribution rate, based directly on his own unemployment and benefit experience; and thereby (*c*) to encourage each employer to provide more steady employment.

(5) *Future total rates, based on benefit experience.*—The total contribution rate required of each employer shall (after he has contributed for at least 3 years) be based directly on the contribution and benefit experience of his reserve account in the fund, and shall be determined by the commission for each calendar year, at its beginning, pursuant to all the following conditions:

(*a*) If the benefits payable from an employer's reserve account within any calendar year are greater than his contributions to such account for such year, his contribution rate for the next calendar year shall increase 1 percent on his pay roll, unless his reserve account then equals at least —[8] percent of his pay roll for the last completed calendar year, or shall be increased to the standard rate of contributions, whichever is higher.

(*b*) No employer's contribution rate shall be less than the standard rate of contribution unless he has had benefit experience throughout the most recently completed calendar year without the benefits payable from his reserve account within such year being scaled down or paid by the fund's pooled account, and unless his reserve account at the start of the calendar year equals at least —[9] times the largest amount of benefits paid from such account within any of the —[10] most recently completed calendar years.

(*c*) If an employer's reserve account at the start of the given calendar year equals at least —* percent of his pay roll for the preceding calendar year, his total contribution rate shall be reduced to —** percent on his pay roll throughout the given year.

NOTE.—This section is required by the proposed Federal act, which specifies as minimum requirements:

* 15 percent.

** 1 percent.

These figures are subject to final action by Congress, amendments to lower them are under consideration. If adopted, a provision along the following line would be appropriate:

(*Alternative provision*)

(Not now permitted under the Federal bill)

(c) If an employer's reserve account at the start of the given calendar year equals at least 7½ percent of his pay roll for the preceding calendar year, his total contribution rate shall be reduced to 1½ percent on his pay roll through-

[7] This figure is 1 percent, under the pending economic security measure, but is, of course, subject to final action by Congress.

[8] *Optional provision.*—The Federal measure as introduced does not require this provision or specify any figure, but 7½ percent is here suggested.

[9] *Optional provision.*—The Federal measure as introduced does not specify these figures. "Five" is suggested at this point.

[10] "Three" is suggested at this second point.

out the given calendar year; and if his account thus equals at least 12 percent of such preceding pay roll, his total contribution rate shall be reduced to one-half of 1 percent on his pay roll throughout the given calendar year.

NOTE.—Contributions by employees might cause some administrative complications if paid into separate employer accounts. If a State nevertheless desires to include employee contributions in a bill of this "reserves" type, the following subsection (6) could be used:

(*Optional provision*)

(6) *Contributions by employees.*—Each employee shall contribute to the fund's pooled account 1 percent of his wages. Each employer shall be responsible for withholding such contribution from the wages of his employees, shall show such deduction on his pay-roll records, and shall transmit all such contributions to the fund pursuant to general commission rules.

NOTE.—No State is required to include the foregoing subsection (6). It is being set forth here for due consideration by each State.

Worker contributions cannot be offset or credited against the Federal tax on pay rolls, which is payable by employers alone. Hence the inclusion by a State of subsection (6) would not be a substitute for, but rather an addition to, the contributions above required from employers.

Additional contributions to the fund, from any source, would of course make possible additional benefits from the fund. (See the "actuarial memorandum" as to what benefits could be paid with additional contributions.)

SECTION 6. BENEFITS

(1) *Payments of benefits.*—After contributions have been due under this act for 2 years benefits shall became payable from the fund to any employee who thereafter is or becomes unemployed and eligible for benefits, based on his weeks of employment as defined in this act, and shall be paid through the employment office at such times and in such manner as the commission may prescribe.

NOTE.—The above provisions should not be altered, since the proposed Federal bill requires as a condition for the allowance of credit against the Federal pay-roll tax that payment of all compensation must be made through the public employment offices in the State and must commence 2 years after contributions are first made under the State law.

(2) *Weekly benefits for total unemployment.*—An employee totally unemployed and eligible in any week shall be paid benefits (computed to the nearest half-dollar) at the rate of 50 per centum of his full-time weekly wage, with maximum benefits of $15 per week and minimum benefits of $—[11] per week.

NOTE.—The maximum weekly benefit of $15 per week indicated here is open to change by the State. It is not required by the Federal bill. It is presumed that each State will desire to fix a maximum which it deems appropriate in the particular State. Official commissions on unemployment insurance in New York, Ohio, California, and Virginia have recommended a maximum of $15 per week, while the New Hampshire commission recommended $14. The maximum in the Wisconsin law is $10, but the contribution rate is 2 percent.

(3) *Weekly benefits for partial unemployment.*—An employee partially unemployed and eligible in any week shall be paid sufficient benefits so that his week's wages (and/or any other pay for personal services, including net earnings from self-employment) and his benefits combined will be $1 more than the weekly benefit to which he would be entitled if totally unemployed in that week.

NOTE.—The above subsection (3) is open to change by the State. However, unless larger contributions than a rate of 3 percent are required, it is suggested that partial benefits should be limited as above provided. This provision gives only a small advantage in total compensation to the

[11] States may also wish to fix a minimum weekly benefit for total unemployment. Senate bill no 1 of New York provides a minimum of $5. Few of the proposed unemployment compensation bills provide for any minimum. Practically all of the special commissions which have studied unemployment compensation in this country have recommended that the benefit rates be set at 50 percent of the full-time weekly earnings. With contributions of 3 percent, or even 4 percent, this is about the maximum weekly rate of benefit which can be provided, unless the duration of benefits is shortened. It is generally thought advisable to fix the benefit rates at this figure, and to adjust the duration of benefits and the waiting period to meet the employment experience of the State.

partially employed person over the totally unemployed person; but it must be remembered that the person who is drawing partial benefits is not thereby exhausting his benefit rights as rapidly as the person who is drawing total benefits. While it would be desirable to provide more liberal benefits to partially unemployed persons, it must be recognized that the primary purpose of the fund is to provide protection to employees who are totally unemployed. Also, it is desirable to avoid large numbers of small claims for small amounts of partial unemployment because of the excessive administrative costs which would be involved.

(4) *One-to-four ratio of benefits to employment*—The aggregate amount of benefits an employee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his most recent weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employee's most recent week of employment.

NOTE.—This ratio will serve to guard the fund against excessive payment of benefits to those with only a limited amount of previous employment to their credit. The ratio may be lowered to 1 to 3 if it is desired to liberalize this provision, or raised to 1 to 5 if it is desired to make benefit requirements more stringent; but this would modify the actuarial basis of this bill to some extent.

(5) *Maximum weeks of benefit in any year.*—Benefits shall be paid each employee for the weeks during which he is totally or partially unemployed and eligible for benefits, based on his past weeks of employment; but not more than —[12] weeks of total unemployment benefits (or an equivalent total amount, as determined by commission rules, or benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any 52 consecutive weeks.

(6) *Lump-sum benefit option.*—In lieu of paying to an eligible employee in weekly (or other) installments the maximum amount of benefits to which his past weeks of employment might entitle him under this act (in case he remained continuously unemployed and eligible), the commission may discharge the fund's entire benefit liability to such employee, based on his past weeks of employment, by paying him a lump sum equalling not less than 50 percent nor more than 80 percent of said maximum amount of benefits. But lump-sum payments shall be thus made only in unusual cases (such as when the employee has no prospect of securing further employment in the locality, but may secure employment elsewhere). The commission shall by general rules determine on what percentage basis and under what unusual conditions such lump-sum payments shall be made, and each such case shall be subject to specific approval by the commission.

NOTE.—This provision is designed to encourage workers who have no further prospect of employment in the community (e. g., because of abandonment of a factory or mine) to seek employment elsewhere, rather than to remain in the community until their benefit rights are exhausted.

(7) *Additional benefits (1-to-20 ratio).*—An eligible employee who has received the maximum benefits permitted under subsection (5) shall receive additional benefits in the ratio of 1 week of total unemployment benefit (or its equivalent) to each unit of 20 aggregate weeks of employment occurring within the 260 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this act. Such additional benefits shall be charged against the employee's most recent weeks of employment available for this purpose.

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[12] A maximum duration of 16 weeks has been most discussed, based on estimates of what could have been provided if an unemployment compensation system embodying the standards contained in this bill had been in operation from 1922–30 in the United States as a whole during that period. If a State has had more unemployment than the average for the United States it would be advisable for such State to provide for a shorter maximum duration of benefits than 16 weeks. Each State is advised to consult the "actuarial memorandum" accompanying this bill, to ascertain the maximum number of weeks of benefits it can safely provide.

NOTE.—The above provision is recommended because foreign experience indicates that a large proportion of employees will draw no benefits for a number of years. These employees will have an especially valid claim to the additional benefits provided here, when because of a depression or technological change they lose their jobs and are unable to find other work.

SECTION 7. BENEFIT ELIGIBILITY CONDITIONS

(1) *Required probationary period.*—An employee shall be deemed eligible for benefits, based on his employment by a given employer, only after he has been employed by such employer either on a monthly salary basis for 1 month or within any 4 weeks (subsequent to the first year of contributions under this act or to any later date on which the employer in question first becomes subject to this act). Where the commission finds, as to any definitely exceptional class of employees such as indentured apprentices, that the fitness of the employer to learn the given type of work cannot reasonably be determined within such 4 weeks or 1 month, the commission may by general rule approve for such class a longer maximum probationary period (included within 12 or less consecutive weeks), subject to such restrictions as the commission deems reasonable under the circumstances.

NOTE.—The above subsection (1) is designed to restrict benefit payments, in the case of workers making frequent changes in employment. It also affords each employer a limited but adequate chance to try out a new employee, without benefit liability in case the employee proves unsuited to the work. The probationary service period (per employer) should not be lengthened, because that would stimulate irregular, casual hiring and firing and would run counter to the purposes of the act.

(2) *Availability and registration for work.*—An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall register for work and shall file claim for benefits at the employment office, within such time limits and with such frequency and in such manner (in person or in writing) as the commission may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to comply with such registration and filing requirements. A copy of the commission's rules covering such requirements shall be furnished by it to each employer, who shall inform his employees of the terms thereof when they become unemployed.

(3) *Waiting period.*—Benefits shall be payable to an employee only for his weeks of unemployment occurring subsequent to a "waiting period" whose duration shall in each case be determined as follows:

(Alternative A): —[13] waiting-period units shall be required of the employee per each different employer by whom he has been employed within the 52 weeks preceding the start of such waiting period.

There shall not be counted toward an employee's required waiting period any week of total or partial unemployment in which he is ineligible for benefits under subsection (2), (4), (5), (6), or (7) of this section.

(Alternative B): An aggregate of —[14] waiting-period units shall be required of the employee within the 52 weeks preceding the start of any given week of unemployment.

There shall not be counted toward an employee's required waiting period any week of total or partial unemployment in which he is ineligible for benefits under subsection (2), (4), (5), (6), or (7) of this section.

(4) *During trade disputes.*—An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a

[13] In view of the above provision, for a separate waiting period per employer, this figure should not be set very high. If "two" were specified above, an employee who worked for 2 different employers would serve a 4 weeks' waiting period.

[14] The Committee on Economic Security takes no position as to what the length of the waiting period should be. The State may specify a waiting period of 2, 3, or 4 weeks, or any other period it considers suitable. It should be emphasized, however, that a long waiting period will result in a considerable saving to the fund because of the large amount of unemployment of 2 or 3 weeks' duration, and that such saving will make possible a longer maximum duration of benefits to those unemployed longer than the waiting period. The "Actuarial Memorandum" accompanying this bill should be consulted, and the appropriate adjustment made in the maximum duration of benefits allowed.

labor dispute still in active progress in the establishment in which he is or was last employed.

(5) *Voluntary leaving.*—An employee who has left his employment voluntarily without good cause connected with such employment shall be ineligible for benefits for the week in which such leaving occurred and for the 3 next following weeks: *Provided, moreover,* That such weeks shall be charged (as if benefits for total unemployment had been paid therefor) against the employee's most recent weeks of employment (by the employer in question) against which benefits have not previously been charged hereunder.

NOTE.—The above subsection (5) is considered to be equitable. The period of disqualification may, of course, be lengthened, or the person quitting voluntarily without reasonable cause may be entirely disqualified, if the State so desires.

(6) *Discharge for misconduct.*—An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for benefit for the week in which such discharge occurred and for not less than the three nor more than the six next following weeks, as determined by the commission in each individual case: *Provided, moreover,* That the ineligible weeks thus determined shall be charged (as if benefits for total unemployment had been paid therefor) against the employee's most recent weeks of employment (by the discharging employer) against which benefits have not previously been charged hereunder, and shall also be counted against his maximum weeks of benefit per year.

NOTE.—The above provision leaves desirable flexibility, so that the penalty can be varied to suit the circumstances of each individual case.

The following is a more rigid (alternative) provision:

(6) *Discharge for misconduct.*—An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for any further benefits based on his past weeks of employment by the discharging employer, and also ineligible for benefits (based on other employment) for the week in which such discharge occurred and for the three next following weeks: *Provided, moreover,* That such weeks shall be counted (as if benefits for total unemployment had been paid therefor) against the employee's maximum weeks of benefit per year.

(7) *Refusal of suitable employment.*—If an otherwise eligible employee fails, without good cause, either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him he shall thereby become ineligible for benefits for the week in which such failure occurred and for the 3 next following weeks: *Provided, moreover,* That such weeks shall be charged (as if benefits for total unemployment had been paid therefor) against the employees' most recent weeks of employment against which benefits have not previously been charged hereunder, and shall also be counted against his maximum weeks of benefit per year.

"Suitable employment" shall mean any employment for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety, or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee 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, and other conditions of the work offered are less favorable to the employee than those prevailing for similar work in the locality; (*c*) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization.

NOTE.—The above definition of "suitable employment" is required in the Federal bill, and the wording of the entire last sentence should not be altered.

(*Optional provision*)

(8) *Employees barred from benefits by wage disqualification.*—An employee shall not be eligible for any benefits whatever based on his past weeks of employment by a given employer, if he loses his employment with such employer after being regularly employed by him (for at least 20 out of the last 24 calendar months) on a minimum salary basis (payable and paid, for each of such 20 months, whether or not the employer had wage-earning work available for the employee) amounting to at least $—— per month.

NOTE.—No State is required to include in its law the above subsection (8). Any denial of benefits to an employee, because his wages have been relatively high, is very complicated to administer and apt to be inequitable in many cases.

The $15 weekly benefit maximum will in itself result in higher-paid workers receiving in benefits a relatively lower percentage of their full-time weekly wages.

If some wage disqualification is to be used, it should not be based on mere hourly or weekly wage rates but rather on annual (salary) earnings.

Hence, the above subsection is set forth (as the best provision of this type) without being recommended.

SECTION 8. SETTLEMENT OF BENEFIT CLAIMS

NOTE ON HANDLING CLAIMS.—The following section has the great advantage of leaving the appeal arrangements flexible, so that they can be set up (and changed) by the administrative authority after further study and experience, without the necessity of legislative amendments.

(1) *Filing.*—Benefit claims shall be filed at the employment office, pursuant to general commission rules.

(2) *Initial determination.*—A deputy designated by the commission shall promptly determine whether or not the claim is valid, and the amount of benefits apparently payable thereunder, and shall duly notify the employee and his most recent employer of such decision. Benefits shall be paid or denied accordingly, unless either party requests a hearing within 5 calendar days after such notification was delivered to him or was mailed to his last known address.

(3) *Appeals.*—Unless such request for a hearing is withdrawn, the claim thus disputed shall be promptly decided, after affording both parties reasonable opportunity to be heard, by such appeal tribunal as the commission may designate or establish for this purpose. The parties shall be duly notified of such tribunal's decision, which shall be deemed a final decision by the commission except in cases where the commission acts on its own motion or, pursuant to general rules, permits the parties to initiate further appeal or review.

(4) *Appeal tribunals.*—To hear and decide disputed claims, the commission may establish one or more appeal tribunals consisting in each case of one full-time salaried examiner (or commissioner) who shall serve as chairman, and of two other members, namely an employer or representative of employers and an employee or representative of employees, who shall each be paid a fee of not more than $10 per day of active service on such tribunal (plus necessary expenses) and shall serve until replaced by the commission, except that no person shall hear any case in which he is a directly interested party. The chairman of such appeal tribunal may act for it at any session in the absence of one or both other members, provided they have had due notice of such session.

(5) *Procedure.*—The manner in which claims shall be presented, the reports thereon required from the employee, and from employers, and the conduct of hearings and appeals shall be governed by general commission rules (whether or not they conform to common law or statutory rules of evidence and 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 taken down by a stenographer, but need not be transcribed unless the disputed claim is further appealed.

(6) *Commission review.*—The commission shall have the power to remove or transfer the proceedings on any claim pending before a deputy, appeal tribunal, or commissioner; and may on its own motion (within 10 days after the date of any decision by a deputy, appeal tribunal, commissioner, or by the commission as a body) affirm, reverse, change, or set aside any such decision, on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony.

(7) *Appeal to courts.*—Except as thus provided, any decision (unless appealed pursuant to general commission rules) shall, 10 days after the date of such decision, become the final decision of the commission, and all findings of fact made therein shall (in the absence of fraud) be conclusive; and such decision shall then be subject to judicial review solely on questions of law. Such judicial review shall be barred unless the plaintiff party has used and exhausted the remedies provided hereunder and has commenced judicial action (with notice to the commission) within 10 days after a decision hereunder has become the final decision of the commission in the disputed case.

(8) *Oaths and witnesses.*—In the discharge of their duties under this section any deputy, any member of an appeal tribunal, and any examiner, commissioner, or duly authorized representative of the commission shall have power to administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpenas (served in the manner in which court subpenas are served) to compel attendance of witnesses and the production of books, papers, documents, and 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 commission rules, from the unemployment administration fund.

SECTION 9. COURT REVIEW

(Not drafted because of differences in State courts, etc.)

Each State should draft a section consistent with its judicial structure and procedure. This section should specify: (1) Type of legal action, (2) the court or courts to be used, (3) transmission by the commission of the record in the case, (4) assessment of court costs, and so forth.

Some States have, under their accident compensation laws, found it desirable to have a single court handle all such cases, thereby developing a tribunal with specialized knowledge and experience in this field. Such procedure might well be followed in the new field of unemployment compensation.

Note on administrative organization (possible types).—The work involved in the administration of a State unemployment compensation law will be very considerable.

The administrative expenses (including the operation of public employment offices), judging by experience abroad, will be at least 10 percent of the annual contributions. For each million of population, if the State's employment and wage rates are about the average of the entire country, unemployment compensation contributions (at 3 percent) would average about $3,500,000 annually under existing conditions, and the administrative expenses (at 10 percent) would be about $350,000 annually (per million of population) after benefits start. (Federal grants will cover most of these administration costs, provided the State administration complies with Federal standards.)

Hence, many States will desire to create a new full-time commission, suitable for dealing with the many new accounting, legal, and administrative problems. This bill embodies the organization of such a commission (see sect. 10 below), briefly as follows:

1. Administration by a new salaried commission of three members, which will determine the policies, adopt necessary rules and regulations, act as the board of review for appealed cases, and have general supervision of the routine administration through a director or a secretary.

However, some States, in the light of their present administrative organization or because of a smaller volume of work, may wish to consider the following alternative plans of organization:

2. Administration under the present labor department, but with a new division headed by an executive director in direct charge of administering the unemployment compensation act and the employment offices. If this is done, a part-time or full-time commission to help in formulating general policies and to review appealed benefit cases is desirable.

3. A new part-time (per diem) board, with a salaried executive director. Such a part-time board would review appealed benefit cases, have jurisdiction over general policies, pass upon rules and regulations, and be responsible for the administration, selecting the director who would be subject to the board. (Such a part-time board should be used in smaller States.)

4. Administration by a single new commissioner, with a part-time (per diem) board appointed by him. Such a part-time board might well review appealed benefit cases, and would advise the commissioner on general policies. (Such part-time board should be used only in smaller States.)

SECTION 10. UNEMPLOYMENT COMPENSATION COMMISSION

(1) *Organization.*—There is hereby created a commission of three members, to be known as the Unemployment Compensation Commission of _____.
(State)

The members of the commission shall be appointed by the Governor within 90 days after the passage of this act. The commissioners thus appointed shall serve, as designated by the Governor at the time of appointment, 1 for a term

of 2 years, 1 for a term of 4 years, and 1 for a term of 6 years. At the expiration of such initial terms appointments shall be made for a term of 6 years in each case. Any appointment to a vacancy shall be for the unexpired term in question. No commissioner shall, during his term of office, engage in any other business, vocation, or employment, or serve as an officer or committee member of any political party organization. The Governor may at any time, after public hearing, remove any commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(2) *Salaries.*—Each commissioner shall be paid a fixed monthly salary, at the rate of — thousand dollars per year of service, from the unemployment administration fund.

NOTE.—To secure persons with ability, training, and experience reasonably equal to their new and difficult task, the State should expect to pay each commissioner approximately $2,000 per million of State population, but not less than $4,000 in any event.

(3) *Quorum.*—Any two commissioners shall constitute a quorum to transact business. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission, so long as a majority remain. The commission shall determine its own organization and methods of procedure.

SECTION 11. ADMINISTRATION

(1) *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 and enforce all reasonable rules and orders necessary or suitable to that end, and to employ any persons, make any expenditures, require any reports, and take any other action (within its means and consistent with the provisions of this act) necessary or suitable to that end. Annually, by the 1st day of February, the commission shall submit to the Governor a summary report covering the administration and operation of this act during the preceding calendar year, and making such recommendations as the commission deems proper. Whenever the commission believes that a change in contribution and/or benefit rates will become necessary to protect the solvency of the fund, it shall at once inform the Governor and the legislature thereof, and make recommendations accordingly.

(2) *General commission rules.*—General rules, interpreting or applying this act and affecting all (or classes of) employers, employees, or other persons or agencies, shall be adopted by the commission only after discussion with a representative State-wide advisory council (constituted as hereinafter described) or after public hearing (before the commission) of which notice has been given through the press. Such general commission rules shall, upon adoption by a majority of the commission, be duly recorded in its minutes and be filed with the secretary of state, and shall thereupon take legal effect. Such rules may be amended, in the same manner as is above provided for their adoption.

(3) *Publication.*—The commission shall cause to be printed in proper form for distribution to the public the text of this act, the commission's general rules, its annual report to the Governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor; and such printing and availability upon application shall be deemed a sufficient publication of the same.

(4) *Personnel.*—The commission is authorized, within its means, to appoint and fix the compensation of such officers, accountants, attorneys, experts, and other persons as are necessary in the execution of its functions. All positions in the administration of this act shall be filled by persons selected and appointed on a nonpartisan merit basis, under rules and regulations of the commission. The commission shall not employ or pay any person who is serving as an officer or committee member of any political party organization. The commission shall fix the duties and powers of all persons thus employed, and may authorize any such person to do any act or acts which could lawfully be done by a commissioner. The commission may in its discretion bond any person handling moneys or signing checks hereunder.

NOTE.—A nonpartisan merit basis must be used, to secure any Federal money for administrative costs.

(5) *Advisory councils.*—The commission shall appoint a State-wide advisory council and local advisory councils, composed in each case of equal numbers of employer representatives and employee representatives (namely of persons who

may fairly be regarded as thus representative because of their vocation, employment, or affiliations), and of such members representing the public generally 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, neutrality, 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.

(6) *Employment stabilization.*—It shall be one of the purposes of this act to promote the regularization of employment in enterprises, localities, industries, and the State. The commission, with the advice and aid of its advisory councils, shall take all appropriate steps within its means 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 employ experts and to carry on and publish the results of investigations and research studies.

(7) *Records and reports.*—Every employer (of any person in this State) shall keep true and accurate employment records of all persons employed by him, and of the weekly hours worked for him by each, and of the weekly wages paid by him to each such person. Such records shall be open to inspection by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employer (of any person in this State) any reports covering persons employed by him, on employment, wages, hours, unemployment and related matters, which the commission deems necessary to the effective administration of this act. Information thus obtained shall not be published or be open to public inspection in any manner revealing the employer's identity, and any commission employee guilty of violating this provision shall be subject to the penalties provided in this act.

(8) *Representation in court.*—On request of the commission the attorney general shall represent the commission 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 commission with the approval of the Governor and except as otherwise provided in this Act.

(9) *State-Federal cooperation.*—The commission is hereby authorized and directed to cooperate in all necessary respects with the appropriate agencies and departments of the Federal Government, in the administration of this act and of free public employment offices; and to make all reports thereon requested by and directly interested Federal agency or department; and to accept any sums allotted or apportioned to the State for such administration, and to comply with all reasonable Federal regulations governing the expenditure of such sums.

(10) *Employment Offices.*—The commission shall establish and maintain such free public employment offices, including such branch offices, as may be necessary for the proper administration of this act. The commission shall maintain a division for this purpose. The existing free public employment offices of the State (if any) shall be transferred to the jurisdiction of such 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. All moneys thereafter made available by or received by the State for the State employment service shall be paid to (and expended from) the unemployment administration fund, and a special "employment service account" shall be maintained for this purpose as a part of said fund.

SECTION 12. ACCEPTANCE OF ACT OF CONGRESS, RELATING TO EMPLOYMENT SERVICE

(1) *Formal acceptance.*—The State hereby accepts the provisions of the Wagner-Peyser Act approved June 6, 1933 (48 Stat. 113, U. S. C., title 29, sec. 49 (c), "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 Unemployment Compensation Commission, a division to be known as the "————

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 the Wagner-Peyser Act. The said division shall be administered by a full-time salaried 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 the said act of Congress in the promotion and maintenance of a system of public employment offices.

(3) *Financing.*—All moneys made available by or received by this State under said act of Congress shall be paid into a special "employment service account" in the unemployment administration fund, and said moneys are hereby appropriated and made available to the "———— State Employment Service" to be expended as provided by this act and by said act of Congress.

NOTE.—The Federal economic security measure requires that the State accept the provisions of the Wagner-Peyser Act for the establishment of an effective system of public employment offices.

The above section can be used for this purpose and can properly be included in this bill even where the State has already accepted the Wagner-Peyser Act.

This bill places the State employment service under the commission administering the unemployment compensation law, as is proper and virtually necessary for the effective operation of both the service and the law.

However, in case a given State does not wish to place its State employment service under the Unemployment Compensation Commission, then the above section should be omitted or modified, and subsection (10) of section 11 should also be modified. The Governor or the State's labor department should in that case secure advice from the United States Employment Service, Department of Labor, Washington, D. C., on the procedure and changes in this bill which would in that case become necessary.

SECTION 13. RECIPROCAL BENEFIT ARRANGEMENTS WITH OTHER STATES

The commission is hereby authorized, subject to approval by the Governor, to enter into reciprocal arrangements with the proper authorities, in the case of any other unemployment compensation system established by any State law or by an act of Congress, as to persons who have (after acquiring rights to benefits under this act or under such other system) newly come under this act or under such other system, whereby such benefits (or substantially equivalent benefits) shall be paid (or both paid and financed) in whole or in part through (or by) the fund of the unemployment compensation system newly applicable to such person. Such reciprocal arrangements shall be adopted and published by the commission in the same manner as its general rules.

NOTE.—The above section is designed to make possible reciprocal arrangements whereby an employee will not lose his benefit rights if he moves from one State to the other, or from employment covered by a direct act of Congress. The wording should not be altered.

SECTION 14. 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 contributions 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, or require any waiver by an employee of any right hereunder. Any employee claiming a violation of this section may have recourse to the method set up in this act for deciding benefit claims; and the commission shall have power to take any steps necessary or suitable to correct and prosecute any such violation.

(2) *Limitation of fees.*—No employee shall be charged fees of any kind by the commission or its representatives in any proceeding under this act. Any employee claiming benefits in any proceeding or court action may be represented by counsel or other duly authorized agent; but no such counsel or agents shall together charge or receive for such services more than 10 percent of the maximum benefits at issue in such proceeding or court action.

(3) *No assignment or garnishment of benefits.*—Benefits which are due or may become due under this act shall not be assignable 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.

SEC. 15. COLLECTION OF CONTRIBUTIONS

(1) *Interest on tardy payments.*—If any employer fails to make promptly, by the date it becomes due hereunder, any payment required to be made by him under this act, he shall be additionally liable (to the unemployment administration fund) for interest on such payment at the rate of 1 percent per month from the date such payment became due until paid, pursuant to general commission rules.

(2) *Bankruptcy.*—In the event of an employer's dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation, contribution payments then and thereafter due under this act shall have the greatest priority (subsequent to taxes, but at least equal to wage claims) then permitted by law; but this subsection shall not impair the lien of any judgment entered upon any award.

(3) *Court action.*—Upon complaint of the commission, the attorney general shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder; or, at his request and under his direction, the prosecuting attorney (of any county in which the employer has a place of business) shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder.

SECTION 16. PENALTIES

(1) Whoever willfully makes a false statement or representation 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 less than $20 nor more than $50, or by imprisonment in the county jail not longer than 30 days, or by both such fine and imprisonment; and each such false statement or representation shall constitute a separate and distinct offense.

(2) Any employer (of any person in this State) or his agent who willfully makes a false statement or representation 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 willfully 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 as lawfully required hereunder, or who makes or requires any deduction from wages to pay all or any portion of the contributions required from employers, or who tries to induce any employee to waive any right under this act, shall, upon conviction, be punished by a fine of not less than $20 nor more than $200, or by imprisonment in the county jail not longer than 60 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, and each such attempt to induce shall constitute a separate and distinct offense. If the employer in question is a corporation, the president, the secretary, and the treasurer, or officers exercising corresponding functions, shall each be subject to the aforesaid penalties.

(3) Any violation of any provision of this act for which a penalty is neither prescribed above nor provided by any other applicable statute, shall be punished by a fine of not less than $20 nor more than $50, or by imprisonment in the county jail not longer than 30 days, or by both such fine and imprisonment.

(4) On complaint of the commission the fines specified or provided in this section may be collected by the State in an action for debt. All fines thus collected shall be paid to the unemployment administration fund.

SECTION 17. UNEMPLOYMENT ADMINISTRATION FUND

(1) *Special fund.*—There is hereby created the "Unemployment Compensation Administration Fund", to consist of all moneys received by the State or by the commission for the administration of this act. This special fund shall be handled by the State treasurer as other State moneys are handled; but it shall be expended solely for the purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith.

(2) *Federal aids.*—All Federal moneys allotted or apportioned to the State by the Federal Social Insurance Board (or other agency) for the administration of this act shall be paid into the unemployment administration fund.

(3) *Employment service account.*—A special "employment service account" shall be maintained as a part of said fund.

SECTION 18. APPROPRIATIONS

(1) All moneys in the unemployment administration fund at any time are hereby appropriated to the unemployment compensation commission, including its employment service division.

(2) There is hereby appropriated, to the employment service account of the unemployment administration fund, from any money in the State treasury not otherwise appropriated, on July 1, 1935, and annually thereafter on the 1st day of July, the sum of $———.[15]

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.

NOTE.—This provision is required by the Federal bill as a condition for the allowance of credits against the Federal pay-roll tax.

SECTION 20. SEPARABILITY OF PROVISIONS

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

SECTION 21. EFFECTIVE DATE

This act shall take effect upon passage.

NOTE.—This section should be modified where necessary to conform with the State's regular requirements for official publication, etc., prior to the taking effect of its State laws.

NOTE.—Any State which desires to do so may of course modify the foregoing bill to permit certain employers (or groups) to maintain separate "*guaranteed employment accounts.*" The Federal economic security measure includes certain standards which would apply to any such account permitted under a State law. (The State law could, however, provide additional standards.)

Guaranteed employment (optional provision)

(For possible inclusion in either type of model State unemployment compensation bill)

NOTE.—Any State which desires to do so may include the following optional provision, as a new section to be inserted in either of the model State bills prepared by the President's Committee on Economic Security.

This provision would permit certain employers, in the discretion of the administrative agency, to establish special guaranteed employment accounts within the State unemployment compensation trust fund.

If the following new section is inserted in either model State bill (presumably immediately following the present sec. 18), then the present sections 19, 20, and 21 should of course be renumbered accordingly.

[15] This sum should be about 3 cents per capita of the State's population. (Thus, a State of 1,000,000 inhabitants should make an appropriation of at least $30,000.) This should insure the State's receiving its full share of the Federal money now available from the United States Employment Service under the Wagner-Peyser Act. Any State may secure more exact information on the Federal "matching" requirements from the United States Employment Service, Washington, D. C. Such an appropriation will be relatively small, as compared to the total cost of the State's employment service, in view of its enlarged functions under this act. (The bulk of the cost will be financed from Federal money, raised largely from employers subject to the Federal pay-roll tax and the State unemployment compensation law. Not only such employers will benefit by an effective State-wide employment service, but also the entire community.) Hence, it is essential that the State (from general tax funds) appropriate at least the suggested small fraction of the total cost of its employment service.

In case the new guaranteed employment section is inserted in the model bill of the pooled-fund type, without the similarly optional section on "Employer Reserve Accounts" being likewise inserted, then it will be necessary (as noted below) to add brief provisions to sections 4 and 5 of the "pooled fund" model bill, to provide for guaranteed-employment accounts, and for the required minimum contributions by such employers to the pooled fund.

SECTION —. GUARANTEED EMPLOYMENT PLANS

(1) *Permission to establish.*—Subject to the requirements of this act, the commission 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 fund for the purposes of this section a guaranteed-employment account, which shall be separate from and additional to any benefit-reserve account he may have in the fund (covering all his other employees, not covered under said guaranteed-employment plan). As a condition of permitting a guaranteed employment plan and of maintaining within the fund a guaranteed-employment account, the commission shall require the employer in question to furnish such separate security (or such other assurance that his employees will receive the full wages guaranteed them by the employer under such plan) as the commission deems reasonable.

(2) *Annual wage guaranty.*—The commission shall approve and permit a guaranteed employment plan only when the given employer guarantees in advance, to all his employees (except as hereinafter provided) in one or more distinct establishments, full wages for each of 40 separate calendar weeks within the calendar year. An employer's guaranteed employment plan shall be subject to approval by the commission and to all applicable general commission rules, and shall commence for the calendar year 1938 or at such later date and under such conditions (governing partial transfer of the employer's past contributions and all other relevant questions) as the commission may approve. In the case of an employer commencing his guaranty to some or all of his employees after the start of a calendar year, four-fifths of the remaining weeks within such year shall be subject to the standard guaranty of full wages per guaranteed week.

NOTE.—The foregoing language is in conformity with the proposed Federal economic security measure. An amendment is under consideration which would require a guarantee of 30 hours wages for 40 weeks or their equivalent. If adopted, a provision along the following line would be appropriate:

(*Alternative provision*)

(Not now permitted under the Federal bill)

(2) *Annual wage guaranty.*—The commission shall approve and permit a guaranteed employment plan only when the given employer guarantees in advance, to all his employees (except as hereinafter provided) in one or more distinct establishments, 30 hours wages for each of 40 separate calendar weeks within the calendar year. (Where an employer guarantees to his employees in advance more than 40 weeks within a calendar year, for each such extra guaranteed week 1 hour shall be deducted (as to all guaranteed weeks) from the 30 guaranteed weekly hours otherwise applicable, except that in no case shall an employer's guaranty under this section amount to less than 20 guaranteed hours per guaranteed week.

An employer's guaranteed employment plan shall be subject to approval by the commission and to all applicable general commission rules, and shall commence for the calendar year 1938 or at such later date and under such conditions (governing partial transfer of the employer's past contributions and all other relevant questions) as the commission may approve. In the case of an employer commencing his guaranty to some or all of his employees after the start of a calendar year, four-fifths of the remaining weeks within such year shall be subject to the standard guaranty of 30 hours' wages per guaranteed week.

NOTE.—The balance of this provision is applicable whether or not such amendment is adopted.

An employer's guaranty shall commence for each employee whenever he has once completed a probationary period with such employer of 12 weeks of

employment (or any lesser number of weeks of employment included within 12 consecutive calendar weeks) occurring subsequent to January 1, 1937, or to any later date on which the employer in question first becomes subject to this act. The employer's guaranty to an employee shall specify the wage rate or basis guaranteed the employee for all work to be done by him for the employer during the guaranty period and guaranteed him as a deficiency wage for each hour short of his number of guaranteed hours in any guaranteed week. The employer shall not be required to make good his guaranty to an employee for any week (within the guaranty period):

(*a*) Which would not be counted as a "week of employment" for benefit purposes under this act;

(*b*) In which the employee is physically unable to work;

(*c*) In which the employee fails without good cause to accept suitable employment when offered him;

(*d*) In which a labor dispute is still in active progress in the establishment in question;

(*e*) After the employee has left his employment voluntarily without good cause connected with such employment;

(*f*) After the employee has been discharged for proved misconduct connected with his employment.

(3) *Benefit requirements.*—Any employee, employed in a guaranteed establishment, but laid off (without commencement of guaranty) at or prior to the close of his above required probationary period, shall be paid from the employer's guaranteed-employment account the benefits (based on his weeks of employment by such employer) to which he would be entitled under the standard benefit provisions of this act. In the case of any employee laid off by the employer after fulfillment of his guaranty but prior to the commencement of the next ensuing calendar year, such employee shall, while unemployed and eligible within such ensuing calendar year, receive from the employer's guaranteed-employment account the benefits (based on his weeks of employment by such employer) to which he would be entitled under the standard benefit provisions of this act.

(4) *Payments.*—There shall be credited to an employer's guaranteed-employment account all amounts paid by him to the fund for such account (exclusive of his required contributions to the fund's pooled account, and exclusive of all payments based on the wages of employees not employed in his guaranteed establishment or establishments). Any such employer may at any time make voluntary payments (additional to the contributions to the contributions required under this act) to his guaranteed-employment account in the fund, pursuant to general commission rules. Any deficiency wages payable hereunder in fulfillment of the employer's guaranty to an employee shall be paid by the employer directly unless the commission finds that the employer is financially unable to fulfill his guaranty, in which case they shall be paid from his guaranteed-employment account. There shall be payable from the employer's guaranteed-employment account the benefits payable under this section to any of his employees (employed in a guaranteed establishment) whose guaranty is not commenced or renewed, and who is otherwise eligible for benefits under this act. If such guaranteed-employment account is exhausted, the balance of any such amounts payable hereunder to employees shall be paid from the fund's pooled account.

(5) *Contribution requirements.*—An employer's required total contribution rate (on his guaranteed establishment pay roll) shall, after he has contributed for at least 3 years, be based on his guaranteed-employment experience, and shall be determined by the commission for each calendar year, at its beginning, pursuant to all the following conditions:

(*a*) No employer's contribution rate (based on his guaranteed-establishment pay roll) shall be reduced unless his employment guaranties for the last completed calendar year were fulfilled, without any deficiency wages being paid from his guaranteed-employment account, and without any benefits payable from such account within such year being paid from the fund's pooled account.

(*b*) Whenever the employer's guaranteed-employment account at the close of a calendar year equals at least —* percent of his (guaranteed establishment) pay roll for such year, and at least twice the amount of deficiency wages and benefits payable for such year under this section, he shall contribute for the ensuing calendar year —** percent of his (guaranteed establishment) pay roll to the State pooled fund; provided that under all other conditions he shall contribute on such pay roll at the standard rate provided in this act.

NOTE.—In the pending economic-security measure, as introduced, the first figure (*) is 7½ percent and the second figure (**) is 1 percent; but these figures are of course subject to final action by Congress.

NOTE.—Contributions by employees might cause some complications if required in connection with guaranteed-employment accounts. If a State nevertheless desires to include employee contributions, the following subsection (6) could be used.

(6) *Contributions by employees.*—The foregoing requirements and criteria on contribution and other payments by an employer having a guaranteed-employment account, apply to contributions made by such employer on his own behalf, and to the payments to his employees to be financed by him. In case any contributions or other payments are made for benefit purposes by the covered employees of such employer, the commission is authorized and directed to assure by any suitable general rules that the employer shall at all times himself finance the required deficiency wages, and benefits at least equal to those payable by other employers contributing under this act to the funds' pooled account.

(7) *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 commission's consent, or has for any reason ceased to be subject to this act, the commission shall transfer and credit to the fund's pooled account any balance then remaining in such employer's reserve account (except as the commission may apportion to that employer's or to any successor employer's reserve account all or part of the assets and liabilities in question); and in such case (with the above exception) all further contributions from such employer shall be paid to said pooled account and all further payments to his employees shall be paid from said pooled account.

NOTE.—In case the above-guaranteed employment section is inserted in the model bill of the pooled-fund type, then the following new subsections must be inserted in that bill (and substituted for the similar inserts at the close of the optional section on "Employer-reserve accounts" if that section is also used).

Insert at the close of section 4, relating to the unemployment compensation fund:

(5) *Employer-reserve accounts, within the fund.*—The fund shall be mingled and undivided; except as separate "reserve accounts" (including guaranteed-employment accounts, if any) are kept therein under provisions of this act permitting certain employers to maintain such accounts within the fund.

The entire balance of the fund (exclusive of such reserve accounts) shall constitute the "pooled account" of the fund, to which shall be credited or charged all payments to and from the fund except as this act specifies otherwise.

Insert at the close of section 5, relating to contributions:

( ) *Contribution rates, for employers having reserve accounts.*—Each employer for whom a reserve account (and/or guaranteed employment account, if any) is maintained pursuant to this act shall for each calendar year make such total contributions to the fund as are then required of him under the applicable provisions of this act. If such total contributions, an amount equaling —* percent of the employer's pay roll shall regularly be credited to the fund's "pooled account." The balance of the employer's payments to the fund shall be duly allocated and credited (as may be proper in each case) to his reserve account (or guaranteed-employment account, if any).

*NOTE.—This figure is fixed at 1 percent, in the pending economic-security measure, but is of course subject to final action by Congress.

MEMORANDUM CONCERNING STATE OLD-AGE ASSISTANCE (PENSION) LEGISLATION TO CONFORM TO THE FEDERAL ECONOMIC SECURITY BILL

(Suggested State act follows on pp. 634–640.)

PURPOSE OF THE FEDERAL ECONOMIC SECURITY BILL RELATING TO OLD-AGE ASSISTANCE

The Federal economic security bill provides for Federal grants-in-aid to the States for old-age assistance of not to exceed 50 percent of the assistance, under standards and conditions set forth in the bill. This is one of several

provisions designed to provide security for the aged. Other parts of the program provide for contributory annuities to be built up by compulsory contributions of employers and employees, and voluntary annuities for self-employed persons.

Twenty-eight States have enacted old-age assistance laws, but many of these laws are optional upon the local units of government, and have been put into use in only a few counties. In many States the existing old-age assistance laws are inoperative because of lack of funds. Federal grants to the States will not only aid them in providing old-age assistance, but will stimulate the States and local governments to raise local funds for this purpose.

Federal grants are to be conditioned upon a few standards set forth in the bill. Many of the State laws contain excessive residence requirements—up to 25 years within the State. Obviously, the Federal Government could not make grants to State systems with such strict residence requirements, for its obligations are to all of the citizens of the United States, regardless of how long they have resided in the particular State. Many State laws have other very restrictive provisions, such as that the applicant shall have been a citizen of the United States for 15 years. Some States prohibit assistance to persons who own any property; other States fix a property limit as low as $1,000, or an income as low as $150 annually.

These and other restrictions in the State laws operate to deny assistance to old persons in real need, as witnessed by the large numbers on the relief rolls in States having old-age-assistance laws.

PROVISIONS WHICH MUST BE INCLUDED IN THE STATE LAW TO COMPLY WITH THE STANDARDS PRESCRIBED IN THE PENDING ECONOMIC SECURITY BILL INTRODUCED IN BOTH HOUSES OF THE CONGRESS

1. The State plan for old-age assistance must be State-wide and, if administered by subdivisions of the State, must be mandatory on such subdivisions. It must also provide for substantial financial participation by the State.

2. A single State agency must be designated or established either to administer or to supervise the administration of the plan in the State. This should logically be the State welfare department. This department or commission will be required to make prescribed regular reports to the Federal authority to qualify for Federal subsidies.

3. Provision must be made that whenever an application for assistance is denied the applicant has the right of appeal to the State agency.

4. The State plan must not disqualify an aged person who satisfies all of the following conditions:

(*a*) Is a citizen of the United States.

(*b*) Has resided in the State for 5 years or more within the last 10 years preceding the date of the application for assistance.

(*c*) Is not an inmate of a public or private institution.

(*d*) Does not have sufficient income (together with that of his or her spouse) to provide a reasonable subsistence compatible with decency and health. (Pending amendments omit this section.)

(*e*) Is 65 years of age or older. Assistance may be limited to persons 70 years of age or over until January 1, 1940, but following that date assistance may not be denied to persons otherwise qualified who are 65 years of age or over.

NOTE.—These qualifications may not be increased by the States. For example, a State law which requires an applicant to have been a citizen of the United States for 10 years is contrary to the Federal bill, which specifies as one condition for receipt of Federal aid that the State law must not deny assistance to citizens of the United States. Similarly, State laws requiring residence within the State for a longer period than 5 years are also in conflict with the Federal bill. The requirement of county residence is also contrary to the Federal standards, unless the State makes special provision to take care of eligible applicants who cannot satisfy the county residence requirements.

The State laws, however, may be more liberal than these standards. Assistance may be granted to other aged persons besides those meeting these qualifications, and the Federal Government will match on the same basis the assistance granted to persons who satisfy these qualifications, but it will not match assistance paid to anyone who is less than 65 years of

age nor to anyone who is an inmate of a public or other charitable institution. There is nothing in the Federal bill, however, which bars inmates of such institutions from making application for assistance but they cannot remain inmates after the assistance is granted. The State law should permit inmates of institutions to make application for assistance.

States may, if they see fit, grant assistance to aged persons who have resided less than 5 years in the State. They may also provide assistance to aged residents who are not citizens, for instance, to those who have resided in this country for a specified period of years.

The Federal bill, as introduced, provided that State plans for old-age assistance, in order to qualify for Federal aid, must not deny assistance to aged persons whose income "is inadequate to provide a reasonable subsistence compatible with decency and health". This section would probably have made it necessary for States to repeal existing provisions in their old-age pension laws which prohibit the granting of assistance to a person having a specified amount of property or income. This section is omitted in amendments now under consideration. It is suggested, nevertheless, that States may wish to liberalize their present old-age laws by repealing the arbitrary property and income limits, and thus make need the controlling consideration. If the property and income limitations are repealed, the State will doubtless wish to include provisions for recovery from the estate of recipients of old-age pensions. This is the practice in a number of States at present. This change in the existing old-age-assistance laws will probably not be required by Federal legislation, but may be made if the State wishes to liberalize its law.

5. The Federal bill provides that the State law must require that at least so much of the sum paid as assistance as represents the share of the United States Government in such assistance, shall be a lien on the estate of the aged recipient and that the net amount realized by the enforcement of such lien shall be deemed to be a part of the State's allotment from the United States Government for the year in which such lien is enforced. It is provided, however, that no such lien shall be enforced against any real estate of the recipient while it is occupied by the recipient's surviving spouse, if the latter is not more than 15 years younger than the recipient, and does not marry again.

NOTE.—The State law should make provision that on the death of a person receiving assistance under the act or of the survivor of a married couple, both of whom were so assisted, the total amount paid as assistance (with or without interest) shall be allowed and deducted from the estate) by the court having jurisdiction to settle the estate.

SUGGESTED LANGUAGE OF A STATE OLD-AGE-ASSISTANCE LAW FOR STATES WHICH HAVE NOT ENACTED SUCH LAWS OR FOR THE MODIFICATION OF EXISTING STATE LAWS

(Taken largely from existing State laws which conform to the proposed Federal standards for Federal grants-in-aid)

NOTE.—The following sections have been taken practically verbatim from existing State old-age-assistance laws, and are believed to conform to the proposed Federal economic security bill as introduced. *Changes in the following language may be necessary because of amendments to the Federal bill before enactment.* If necessary a supplementary statement will be issued following enactment, if passed by Congress. A few modifications have been made in the existing language of the State laws cited where necessary for consistency or to conform to the proposed Federal standards. Most of the following sections are taken from the New York law, which most nearly conforms to the proposed Federal act. About half of the total assistance payments now granted in this country are made in New York. These sections, if considered by the States, should be modified to fit local conditions, particularly with regard to the local organization which is set up to administer the act. *Many of the sections are not required by the proposed Federal standards but would be appropriate.*

SECTION 1. *Persons eligible to receive old-age assistance.*—Old-age assistance may be given under this act to any person who—

(1) Has attained the age of 65 years.

NOTE.—Federal standards require assistance to be granted to needy old persons of 65 years or over, but permit States to retain 70-year minimum until 1940. The State may provide assistance to persons under 65 years of age, but such assistance will not be matched by the Federal Government.

(2) Has income which, when added to the contributions in money, substance, or service from legally responsible relatives or others, is inadequate to provide a reasonable subsistence compatible with decency and health.

NOTE.—This language is based upon the "needs" standard now used by several States. It is suggested as preferable to existing provisions in many States denying old-age assistance to persons having a specified amount of property or income. The cost of living varies widely in different parts of the State, and the actual need of the aged person and his circumstances should be controlling rather than an arbitrary fixed limitation. If an aged person possesses property or income of small value, it should be taken into account in the granting of assistance, and the State should recover the amount of assistance from the estate upon the death of the persons, rather than to deny him assistance. (See appropriate sections below.)

(3) Is a citizen of the United States.

NOTE.—The State may, if it wishes, grant assistance to noncitizens who have resided in the State for a specified period (Delaware), and such assistance will be matched by the Federal Government. State laws requiring an applicant to have been a citizen of the United States for a period of years are contrary to the Federal bill.

(4) Has been a resident of the State of _____ for at least 5 years within the 10 years immediately preceding his application for old-age assistance.

NOTE.—The proposed Federal bill provides a standard of not more than 5 years' residence requirement within the previous 10 years in the State. The State may require less, but not more. State laws requiring more than 5 years' residence in the State will have to be amended to read "5 years" (or less).

(5) Has resided in and been an inhabitant of the (county or district) in which application is made for at least 1 year immediately preceding the date of the application, or has a legal settlement in the (county or district) in which the application is made. Any person otherwise qualified who has resided in the State for 5 years or more within the 10 years immediately preceding the application, and who has no legal settlement, shall file his application in the (county or district) in which he is residing, and his assistance, if granted, shall be paid entirely from State funds until he can qualify as having a legal settlement in the said (county or district). For the purpose of this act, every person who has resided 1 year or more in any (county or district) in this State shall thereby acquire a legal settlement in such (county or district), which he shall retain until he has acquired a legal settlement elsewhere, or until he has been absent voluntarily and continuously for 1 year therefrom.

NOTE.—The existing strict local residence requirement in old-age-assistance laws are in conflict with the proposed Federal standards. This section is designed to protect the locality, and at the same time to conform to the Federal standards.

(6) Is not at the time of receiving assistance an inmate of any public or private institution, except in the case of temporary medical or surgical care in a hospital.

(7) Has not made a voluntary assignment or transfer of property for the purpose of qualifying for such assistance, except as provided in sections 21 and 22 of this act.

(8) Is not, because of his physical or mental condition, in need of continued institutional care. (With the exception of subsections (2) and (5), this section is taken from New York Consolidated Laws, Cahill's, 1930, ch. 49½, art. XIV-A, sec. 123.)

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SEC. 2. *Amount of the assistance.*—It shall be the duty of the (local old-age-assistance agency) to provide a reasonable subsistence compatible with decency and health for those eligible for old-age assistance under the provisions of this act. The amount of the old-age assistance to any such person shall, subject to rules, regulations, and standards of the State welfare department, be determined by the (local old-age-assistance agency) with due regard to the conditions existing in each case. (New York Laws, *ibid*, partly from sec. 124.)

SEC. 3. *Application.*—A person requesting old-age assistance under this act shall make his application therefor to the (local old-age-assistance agency) of the (county or district) in which the applicant resides or has a legal settlement. An inmate of a public or private institution may make an application while in such institution, but the assistance, if granted, shall not be paid until after he ceases to be such an inmate. The application shall be made in writing or reduced to writing, upon standard forms, prescribed by the State welfare department. (New York Laws, ibid, sec. 124–a.)

SEC. 4. *State administration.*—The State welfare department shall supervise the administration of old-age assistance under this act by the (local old-age-assistance agencies). The State welfare department shall prescribe the form of and print and supply to the (local old-age assistance agencies) blanks of applications, reports, affidavits and such other forms as it may deem advisable. The State welfare department is hereby authorized to and shall make rules and regulations necessary for the carrying out of the provisions of this act to the end that old-age assistance may be administered uniformly throughout the State, having regard for the varying costs of living in different parts of the State and that the spirit and purpose of this act may be complied with. All rules and regulations made by the State welfare department under this act shall be binding upon the (local old-age-assistance agencies) and the (counties or districts). (New York Laws, ibid., sec. 124–1.)

SEC. 5. *Local administration.*—

NOTE.—This section will have to be prepared to fit the requirements of the individual State. It is recommended that old-age assistance be administered by a unified local welfare department, charged with all local welfare and relief activities. This is the existing practice in several States which have the most satisfactory welfare administration. The use of special local boards for granting old-age assistance has the disadvantage of creating another local agency charged with welfare functions, whereas the trend is toward unification and integration of all welfare functions. The use of separate agencies increases the administrative costs and prevents unified planning and responsibility. An investigation by a qualified paid investigator of each application before allowance, and periodically thereafter, is highly advisable, and will probably be necessary to secure Federal aid.

The local welfare unit should be used for administration of old-age assistance, but the use of units smaller than the county is inadvisable. Many States have under consideration new public welfare codes which would revise their old poor laws and set up a unified welfare administration. Most of the proposed laws permit the use of welfare districts consisting of two or more counties, designed particularly for counties with small populations. This should be permitted in the old-age assistance act.

SEC. 6. *Local appropriation.*—The legislative body of the (county or district) shall annually appropriate and make available to the order of the (local old-age-assistance agency) such a sum as may be needed for old-age assistance, and include such sum in the taxes to be levied in the territory responsible for such old-age assistance. Should the sum so appropriated, however, be expended or exhausted, during the year and for the purpose for which it was appropriated, additional sums shall be appropriated by such legislative body as occasion demands to carry out the provisions of this act. (New York Laws, *ibid.*, part of sec. 124–c.)

NOTE.—It is recommended that the State (with Federal aid) pay the entire cost of administration. This will make it possible for the State to exercise more effective control over standards of personnel and local administration. The State may, if it wishes, however, require the local unit to bear a part of the administrative expenses.

SEC. 7. *Reimbursement by the State.*—The (local old-age-assistance agency) shall keep such records and accounts in relation to old-age assistance as the State welfare department shall prescribe. The State shall reimburse each (county and district) to the extent of _____ of the amount expended for assistance for each aged person which has been granted under the provisions of this act and in accordance with the rules of the State welfare department.

NOTE.—Since the Federal aid to the States for old-age assistance will probably be about one-half of the amount required, and one of the proposed Federal standards is "substantial participation" by the States, it is suggested that the State law might provide for the reimbursement of the local units by, say, three-fourths of the total amount. This would require the State to bear only about one-fourth of the total cost. Some States will wish to pay a larger share, or even the entire amount matching Federal aid. This in entirely appropriate. The method of payment contained in this section is not required in the Federal bill. Any appropriate method would conform to the Federal standards. If the State pays the entire amount, this section and the two following would not be applicable.

SEC. 8. *Claims for reimbursement.*—Claims for State reimbursement under this act shall be presented by the respective (local old-age-assistance agencies) to the State welfare department at such times and in such manner as the department may prescribe. For the purposes of the annual departmental estimates (for the executive budget), the probable amount needed for expenditure by the State under this act shall be regarded as financial needs of the State welfare department. (New York Laws, ibid., sec. 124–e.)

SEC. 9. *Approval of claims.*—The approval of such claims shall be made by the State welfare department to the extent of ——— of the payments made in accordance with the provisions of this act and the rules of the State welfare department. The State welfare department shall certify to the (comptroller) the amounts so approved by it, specifying the amount to which each (county or district) is entitled. The amounts so certified shall be paid from the State treasury upon the audit and warrant of the (comptroller) to the fiscal officers of the (counties or districts) entitled thereto from moneys available therefor by appropriation. (New York Laws, ibid., sec. 124–f.)

SEC. 10. *Investigation of applicant.*—Whenever a (local old-age-assistance agency) receives an application for an old-age-assistance grant, an investigation and record shall be promptly made of the circumstances of the applicant. The object of such investigation shall be to ascertain the facts supporting the application made under this act and such other information as may be required by the rules of the State welfare department. The (local old-age-assistance agency) and the State welfare department shall have the power to issue subpenas for witnesses and compel their attendance and the production of papers and writings, and officers and employees designated by the (local old-age-assistance agency) or the State welfare department may administer oaths and examine witnesses under oath. (New York Laws, ibid., partly from sec. 124–g.)

SEC. 11. *Granting of assistance.*—Upon the completion of such investigation the (local old-age-assistance agency) shall decide whether the applicant is eligible for and should receive an old-age-assistance grant under this act, the amount of the assistance, and the date on which the assistance shall begin. It shall make an award which shall be binding upon the (county or district) and be complied with by such (county or district) until modified or vacated. It shall notify the applicant of his decision in writing. If an application is denied or the grant is deemed inadequate by the applicant, he may appeal to the State welfare department. The State welfare department shall upon receipt of such an appeal review the case. The State welfare department may also, upon its own motion, review any decision made by the (local old-age-assistance agency). The State welfare department may make such additional investigation as it may deem necessary, and shall make such decision as to the granting of assistance and the amount and nature of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this act. All decisions of the State welfare department shall be binding upon the (county or district) involved and shall be complied with by the (local old-age-assistance agency.) (New York Laws, ibid., sec. 124–h.)

SEC. 12. *Recipient shall not receive other public assistance.*—No person receiving an old-age-assistance grant under this act shall at the same time receive any other relief from the State, or from any political subdivision thereof, except for medical and surgical assistance. (Michigan Public Acts of 1933, Act No. 237, sec. 25, and other State laws.)

SEC. 13. *Assistance may be paid to guardian.*—If the person receiving old-age assistance is, on the testimony of reputable witnesses, found incapable of taking care of himself or his money, the State welfare department may direct the payment of the installments of the old-age assistance to any responsible person for his benefit. (Michigan Public Act, ibid., sec. 26, and other State laws.)

SEC. 14. *Funeral expenses of pensioned person.*—On the death of the recipient of old-age assistance, reasonable funeral expenses not exceeding $100 may, subject to rules and regulations of the State welfare department, be paid by the (local old-age-assistance agency) if the estate of the deceased is insufficient to pay the same and the persons legally responsible for the support of the deceased are unable to pay the same. (Maine Laws, ibid., sec. 14, and other State laws.)

NOTE.—It is not certain that Federal aid can be used for this purpose.

SEC. 15. *Subsequent increase of income.*—If, at any time during the continuance of old-age assistance the recipient thereof or the husband or wife of the recipient, becomes possessed of any property or income in excess of the amount enjoyed at the time of the granting of the asisstance, it shall be the duty of the recipient immediately to notify the (local old-age-assistance agency) of the receipt and possession of such property or income, and the (local old-age-assistance agency) may, on inquiry, either cancel the assistance or vary the amount thereof in accordance with circumstances, and any excess assistance theretofore paid shall be returned to the State and the (county or district) in proportion to the amount of the assistance paid by each respectively, and be recoverable as a debt due the State and the (county or district). (California Acts, ibid., sec. 10, and other State laws.)

SEC. 16. *Revocation of aid.*—If at any time the State welfare department has reason to believe, by reason of a complaint or otherwise, that an old-age-assistance allowance has been improperly granted, it shall cause an investigation to be made. If it appears as a result of any such investigation that the assistance was improperly granted, the State welfare department shall immediately notify the local old-age-assistance agency that it will not approve any payment made thereafter. (New York Laws, ibid., part of sec. 124–i.)

SEC. 17. *Periodic review of assistance grants.*—All assistance grants under this act shall be reconsidered from time to time, or as frequently as may be required by the rules of the State welfare department. After such further investigation as the local old-age-assistance agency may deem necessary or the State welfare department may require, the amount and manner of giving the assistance may be changed or the assistance may be withdrawn if such agency finds that the recipient's circumstances have changed sufficiently to warrant such action. It shall be within the power of the local old-age-assistance agency at any time to cancel and revoke assistance for cause, and it may for cause suspend payments for assistance for such periods as it may deem proper, subject to review by the State welfare department, as provided in section 11. (New York Laws, ibid., sec. 124–j.)

SEC. 18. *Change of residence of person receiving old-age assistance.*—Any person qualified for and receiving assistance hereunder in any county or district in this State, who removes to another county or district in the State, shall be entitled to receive assistance under the provisions of this act after a 1-year residence in the county or district to which such person has removed, provided an agreement in writing has been entered into by and between the two counties or districts concerned approving such transfer or removal, and thereupon the county or district of first residence of such person shall continue his assistance for 1 year and until the aforesaid residence has been established by him in the second county or district. (Statutes of California, 1931, ch. 608, sec. 18½.)

SEC. 19. *Reports.*—Each local old-age-assistance agency shall make such reports and in such detail as the State welfare department may from time to

time require, and shall transmit to the State welfare department upon its request copies of the application and any or all other records pertaining to any case. The State welfare department is hereby authorized and directed to make such reports and in such detail as may be required of it to the Federal Government. Within 90 days after the close of each calendar year, the State welfare department shall make a report to the Governor for the preceding year, which shall include a full account of the administration of this act, the expenditure of all funds under this act, adequate and complete statistics concerning old-age assistance within the State, and such other information as the State welfare department may deem advisable.

SEC. 20. *Assignability of assistance.*—All assistance given under this act shall be inalienable by any assignment or transfer and shall be exempt from levy or execution under the laws of this State. (New York Laws, ibid., sec. 124–m, and other State laws.)

SEC. 21. *Claims against the estate of assisted person.*—The total amount paid in assistance to the recipient of old-age assistance under this act shall be a lien upon the estate of such recipient. On the death of a person receiving assistance under this act, or of the survivor of a married couple, both of whom were assisted, the total amount paid as assistance shall be allowed and deducted from the estate by the court having jurisdiction to settle the estate, and paid to the State and the county (or district) in proportion to the amount of the assistance paid by each. The local old-age-assistance agency shall, under rules of the State welfare department, require as a condition to granting assistance in any case, that the applicant submit a properly acknowledged agreement to reimburse the State and the county (or district) for all assistance granted. In such agreement said applicant shall assign as collateral security for said assistance, such part of his personal property as the local old-age-assistance agency shall demand. At any time the local old-age-assistance agency may execute and file with the appropriate local office in charge of public records a certificate, in form to be prescribed by the State welfare department, showing the amount of assistance paid to said person, and when so filed each said certificate shall be a legal claim against both the said person and his estate and shall have the same force and effect as a judgment at law. The appropriate local officer in charge of public records shall keep a suitable record of such certificates without charging any fee therefor, and enter therein an acknowledgement of satisfaction upon receipt of notice thereof from the local old-age-assistance agency. All funds recovered under these provisions shall be allocated to the county or district and to the State in the same proportion as the assistance paid by each. No levy or lien shall be enforced against any real estate of the recipient while it is occupied by the recipient's surviving spouse if the latter is not more than 15 years younger than the recipient and does not marry again.

SEC. 22. *Assignment of property by recipient.*—If the (local old-age-assistance agency) shall deem it necessary, it may with the consent of the State welfare department, require as a condition to the grant or continuance of assistance in any case, that all or any part of the property of a person applying for aid be transferred to said (local old-age-assistance agency). Such property shall be managed under rules and regulations of the State welfare department by said (local old-age-assistance agency), which shall pay the net income thereof to such person; said (local old-age assistance agency) shall have power to sell, lease, or transfer such property or defend or prosecute all suits concerning it and pay all just claims against it and to do all things necessary for the protection, preservation, and management thereof. If the assistance to such person is discontinued during his lifetime, the property thus transferred to the (local old-age-assistance agency) shall be returned to him subject to a lien on such property for any sums paid to him as assistance under this act, or the remainder of such property after deducting therefrom the sums paid to him as assistance under this act shall be returned to him. In the event of his death, the remainder of such property, after deducting therefrom the sums paid him as assistance under this act, shall be considered as the property of the beneficiary for proper administrative proceedings. The (local old-age-assistance agency) shall execute and deliver all necessary instruments to give effect to this section. The (proper local public attorney) at the request of the (local old-age-assistance agency) shall take the necessary proceedings and

represent the (local old-age-assistance agency) in respect to any matters arising under sections 21, 22, and 23 of this act.

NOTE.—Since it is recommended that the State laws should not contain property limits, these provisions for recovery in cases where there is property are very important. Substantial amounts are recovered in States following this procedure. The provisions for recovery will cause many applicants with substantial property to withdraw their applications, and since the assistance is recoverable, will avoid criticism of the assistance to persons with small amounts of property. The Federal bill requires that so much of the assistance as represents the Federal aid shall be made a lien upon the estate of the recipient. The State may, if it wishes to do so, charge interest upon the amounts advanced as assistance, but this is not recommended.

SEC. 23. *Recovery of assistance payments.*—If at any time during the continuance of old-age-assistance allowance the (local old-age-assistance agency) has reason to believe that a spouse, son, or daughter liable for the support of the recipient of assistance is reasonably able to assist him, it shall, after notifying such person of the amount of the assistance granted, be empowered to bring suit against such spouse, son, or daughter to recover the amount of the assistance provided under this act subsequent to such notice, or such part thereof as such spouse, son, or daughter was reasonably able to have paid.

NOTE.—Interest may also be charged if desired.

SEC. 24. *Expenses of act.*—All necessary expenses incurred by a (county or district) in carrying out the provisions of this act shall be paid by such (county or district) in the same manner as other expenses of such (county or district) are paid, subject to reimbursement by the State from appropriations made by the legislature for this purpose. (New York Laws, ibid., sec. 124–n.)

SEC. 25. *Fraudulent acts.*—Any person who by means of a willfully false statement or representation, or by impersonation, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain—

(1) Assistance to which he is not entitled;
(2) Greater assistance than that to which he is justly entitled;
(3) Payment of any forfeited installment grant;
(4) Or aids or abets in buying or in any way disposing of the property of the recipient of assistance without the consent of the (local old-age-assistance agency) shall be guilty of a misdemeanor. (Minnesota Acts of 1929, sec. 15, and other State laws.)

SEC. 26. *Limitations of act.*—All assistance granted under this act shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act. (Maine Laws, ibid., sec. 22, and other State laws.)

SEC. 27. *Saving clause.*—A person 65 years of age or more not receiving old-age assistance under this act is not by reason of his age debarred from receiving other public relief and care. (New York Laws, ibid., sec. 124–p.)

SEC. 28. *Effective date.*—

The CHAIRMAN. The first witness this morning will be Charles H. Houston, of Washington, D. C., representing the National Association for the Advancement of Colored People.

STATEMENT OF CHARLES H. HOUSTON, REPRESENTING THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. HOUSTON. Mr. Chairman, the National Association for the Advancement of Colored People regrets that it cannot support the Wagner economic security bill (S. 1130). It approached the bill with every inclination, if for no other reason than the fact that Senator Wagner introduced it, to support it, but the more it studied the bill