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STATE OF IOWA  
1967

Iowa  
Employment  
Security  
Law

Administered by the  
IOWA EMPLOYMENT SECURITY COMMISSION

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1967

IOWA  
EMPLOYMENT SECURITY  
LAW

**Including Revisions by the  
Sixty-first General Assembly**

**Administered by the  
IOWA EMPLOYMENT SECURITY COMMISSION  
1000 EAST GRAND  
DES MOINES, IOWA 50319**

**J. W. JANSSEN, Chairman  
Employer Representative**

**HENRY E. CARTER, Vice-Chairman  
Labor Representative**

**CECIL A. REED  
Public Representative**

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**Chapter 96**  
**EMPLOYMENT SECURITY**

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## CHAPTER 96

# EMPLOYMENT SECURITY

### SHORT TITLE

**96.1. Name.** This chapter shall be known and may be cited as the "Iowa Employment Security Law."

### DECLARATION OF STATE PUBLIC POLICY

**96.2. Guide for interpretation.** As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

See: *Moorman v. Commission*, 230 Iowa 123; 296 N. W. 791.  
*Iowa Pub. Serv. Co. v. Rhode*, 230 Iowa 751; 298 N. W. 794.  
*Meredith Pub. Co. v. Iowa Emp. Sec. Comm.*, 232 Iowa 66; 6 N. W. 2d 6.  
*Wolf v. Iowa Emp. Sec. Comm.*, 244 Iowa 999; 59 N. W. 2d 216.  
*Stromberg Hatchery v. Iowa Emp. Sec. Comm.*, 33 N. W. 2d 498.  
*Moulton v. Iowa Emp. Sec. Comm.*, 34 N. W. 2d 211.  
*Burlington Truck Lines v. Iowa Emp. Sec. Comm.*, 32 N. W. 2d 792.  
*Tapager v. Birmingham*, 75 F. Supp. 375.  
*Hansen v. Iowa Emp. Sec. Comm.*, 34 N. W. 2d 203.  
*Equitable Life Ins. Co. v. Iowa Emp. Sec. Comm.*, 231 Iowa 889, 2 N. W. 2d 262,  
139 A. L. R. 885  
*Spence v. Iowa Emp. Sec. Comm.*, 86 N. W. 2d 154.

### BENEFITS

#### 96.3 How paid and amounts.

1. *Payment.* Twenty-four months after the date when contributions first accrue under this chapter, benefits shall become payable from the fund; provided, that wages earned for services defined in section 96.19, subsection 7, paragraph "g" (3), irrespective of when performed, shall not be included for purposes of determining eligibility, under section 96.4 or full-time weekly wages, under subsection 4 of this section, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under subsection 5 of this section on the basis of such wages. All benefits shall be paid through employment offices in accordance with such regulations as the commission may prescribe.

2. *Total unemployment.* Each eligible individual who is totally unemployed in any week shall be paid with respect to such week benefits in an amount which shall be equal to his weekly benefit amount.

3. *Partial unemployment.* Each eligible individual who is partially unemployed in any week shall be paid with respect to such weekly benefits in an amount equal to his weekly benefit amount less the total amount of wages earned in such week reduced by six dollars.

4. *Determination of benefits.* An individual's weekly benefit amount shall be an amount equal to one-twenty-second (1/22) of his total wages in insured work paid during that quarter of his base period in which such total wages were highest, subject to the following limitation: The commission shall determine annually a maximum weekly benefit amount by computing fifty (50) percent of the average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July. Such maximum weekly benefit amount, if not a multiple of one dollar (\$1.00) shall be rounded to the nearest multiple of one dollar (\$1.00).

Such computation shall be made by determining gross wages as paid for insured work by employers in each preceding twelve (12) months period ending on December thirty-first (31) and dividing said gross wages by a figure resulting from fifty-two (52) times the average of mid-month employment reported by employers for the same period.

5. *Duration of benefits.* The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the total of the wage credits accrued to his account during his base period, or twenty-six (26) times his weekly benefit amount, whichever is the lesser. The commission shall maintain a separate account for each individual who earns wages in insured work. The commission shall compute wage credits for each individual by crediting his account with one-third (1/3) of the wages for insured work paid him during his base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in his account which have not been previously charged hereunder, in the same chronological order as the wages on which such wage credits are based were paid.

6. *Part-time workers.*

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

b. The commission shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

7. *Canning industry workers.* An individual employed by an employer engaged in the canning or freezing of fresh perishable fruits or vegetables and employed solely within the canning season or seasons, as determined by the commission, shall not be eligible to receive benefits based on such employment unless he earns wages of two hundred dollars or more for employment performed for one or more other employers during his base period.

See: *Moulton v. Iowa Emp. Comm.*, 34 N. W. 2d 211.



## BENEFIT ELIGIBILITY CONDITIONS

**96.4 Required findings.** An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:

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

2. He has made a claim for benefits in accordance with the provisions of section 96.6 subsection 1.

3. He is able to work, is available for work, and is earnestly and actively seeking work.

4. Prior to any week, in any benefit year, for which he claims benefits he has been totally unemployed for a waiting period of one week (and for the purposes of this subsection, two weeks of partial unemployment shall be deemed to be equivalent to one week of total unemployment). Such weeks of total or partial unemployment or both need not be consecutive. The one week waiting period shall be waived and become compensable after unemployment during which benefits are payable for five (5) consecutive weeks. No week shall be counted as a week of total unemployment for the purposes of this subsection:

a. If benefits have been paid with respect thereto;

b. Unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsections 2 and 5 of this section;

c. Unless it occurs after benefits first could become payable to any individual under this chapter.

5. He has been paid wages for insured work of not less than two hundred dollars (\$200.00) in that calendar quarter in his base period in which his wages were the highest, and also he has been paid wages for insured work of not less than one hundred dollars (\$100.00) in a calendar quarter in his base period other than the calendar quarter in which his wages were the highest; and provided further if he has drawn benefits in any benefit year, he must during or subsequent to that year, be paid wages in insured work totaling one hundred dollars (\$100.00) as a condition to receive benefits in the next benefit year.

See: *Kunkel v. Eastern Iowa Light & Power*, 232 Iowa 649, 5 N. W. 2d 899.  
*Moulton v. Iowa Emp. Sec. Comm.*, 34 N. W. 2d 211.

**96.5 Causes.** An individual shall be disqualified for benefits:

1. **Voluntary quitting.** If he has left his work voluntarily without good cause attributable to his employer, if so found by the commission. But he shall not be disqualified if the commission finds that:

a. He left his employment in good faith for the sole purpose of accepting better employment, which he did accept, and that he remained continuously in said new employment for not less than six weeks;

b. He has been laid off from his regular employment and has sought temporary employment, and has notified his temporary employer that he expected

**96.5-c**

to return to his regular job when it became available, and the temporary employer employed him under these conditions, and the worker did return to his regular employment with his regular employer as soon as it was available, provided, however, if such temporary employment proves to be unsuitable, (if so found by the commission), he shall forfeit only the credits he may have earned in said unsuitable employment.

c. He left his employment for the necessary and sole purpose of taking care of a member of his immediate family who was then injured or ill, and if after said member of his family sufficiently recovered, he immediately returned to and offered his services to his employer, provided, however, that during such period he did not accept any other employment.

d. He left his employment because of illness or injury upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for such absence immediately notified his employer, or his employer consented to such absence, and after recovering from such illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular work or comparable suitable work was not available, if so found by the commission, provided he is otherwise eligible.

e. He left his employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of his family to a place having a different climate, during which time he shall be deemed unavailable for work, and notwithstanding during such absence he secures temporary employment, and returned to his regular employer and offered his services and his regular work or comparable work was not available, provided he is otherwise eligible.

f. He is the principal support of his family, or is a widow, widower, legally separated from his spouse, or a single person, and he left his employing unit for not to exceed ten (10) working days, or such additional time as may be allowed by his employer, for compelling personal reasons (if so found by the commission), and prior to such leaving had informed his employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist he returned to his employer and offered his services and his regular or comparable work was not available, provided he is otherwise eligible; except that during the time he is away from his work because of the continuance of such compelling personal reasons, he shall not be eligible for benefits.

g. However, an individual who has left his employment without good cause attributable to his employer, except as provided in paragraphs "a" through "f" hereof, shall forfeit only those credits acquired by him during that period of employment that was quit.

h. "Principal support" shall mean exclusive of the earnings of any child of the wage earner.

- See: Iowa Pub. Serv. Co. v. Rhode, 230 Iowa 751; 298 N. W. 794.  
Wolfe v. Iowa Unemp. Comp. Comm., 232 Iowa 1254; 7 N. W. 2d 799.  
Forest Park Sanitarium v. Miller, 233 Iowa 1341; 11 N. W. 2d 582.  
Moulton v. Comm., 239 Iowa 1161; 34 N. W. 2d 211.  
Wolf's v. Iowa Emp. Sec. Comm., 244 Iowa 999; 59 N. W. 2d 216.  
Spence v. Iowa Emp. Sec. Comm., 86 N. W. 2d 154.  
Rafferty v. Iowa Emp. Sec. Comm., 247 Iowa 896, 76 N. W. 2d 787.  
McCarthy v. Iowa Emp. Sec. Comm., 247 Iowa 760, 76 N. W. 2d 201.  
Gateway v. Iowa Iron & Metal Co., 102 N. W. 2d 146.  
Sue McComber v. Iowa Emp. Sec. Comm., 254 Iowa 957; 119 N. W. 2d 792.

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2. *Discharge for misconduct.* If the commission shall find that he has been discharged for misconduct in connection with his employment, he shall forfeit four (4) to nine (9) weeks' benefits.

3. *Failure to accept work.* If the commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him, or to return to his customary self-employment, if any.

a. In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence, and any other factor which it finds bears a reasonable relation to the purposes of this subsection.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

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

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

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

4. *Labor disputes.* For any week with respect to which the commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that:

a. He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

b. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

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

See: Dallas Co. v. Horne, 230 Iowa 1148; 300 N. W. 303.

Johnson v. Comm., 239 Iowa 816; 32 N. W. 2d 786.

Deere Mfg. Co. v. Iowa Emp. Sec. Comm. & Crowe 249 Iowa 1066, 90 N. W. 2d 750.

5. *Other compensation.* For any week with respect to which he is receiving, has received, or is entitled to receive payment in the form of:



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a. Wages in lieu of notice:

b. Compensation for temporary disability under the workmen's compensation law of any state or under a similar law of the United States;

c. Old-age benefits under title II of the Social Security Act (42 USC, chapter seven (7), as amended) or similar retirement payments under any Act of Congress; provided that the commission shall withhold payments under this chapter if it has reason to believe a claimant is entitled to benefits under title II of the Social Security Act of the United States or any similar payments under any other Act of Congress, until such time as the claimant files with the commission satisfactory evidence that he is not entitled to such benefits;

d. Benefits paid as retirement pay or as private pension.

Provided, that if such remuneration is less than the benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraphs "a," "b," "c," or "d," of this subsection were paid on a retroactive basis for the same period, or any part thereof, the commission shall recover any such excess amount of benefits paid by the commission for such period, and no employer's accounts shall be charged with benefits so paid, provided further, however, that retirement pay or compensation for service-connected disabilities or pensions based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, shall in no way disqualify any individual, otherwise qualified, from any of the benefits contemplated herein.

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

**7. *Vacation pay.***

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in subsection thirteen (13) of section ninety-six point nineteen (96.19), and shall be applied as provided in paragraph "c" hereof.

b. Whenever, in connection with any separation or layoff of an individual, his employer makes a payment or payments to him, or becomes obligated to make such payment to him as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within seven (7) calendar days after notification of the filing of his claim, designates by notice in writing to the commission the period to which such payment shall be allocated; provided, that if such designated period is extended by the employer, he may again similarly designate an extended period, by giving notice thereof in writing to the commission not later than the beginning of the extension of such period, with the same effect as if such period of extension were included in the original designation. The amount of any such payment or obligation to

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make payment, shall be deemed "wages" as defined in subsection thirteen (13) section ninety-six point nineteen (96.19), and shall be applied as provided in paragraph "c" of this subsection seven (7).

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal work day shall be attributed to, or deemed to be payable to him with respect to, the first and each subsequent work day in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal work days, equal or exceed his weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, his benefits shall be reduced by such amount.

## 96.6 Filing—determination—appeal

1. *Filing.* Claims for benefits shall be made in accordance with such regulations as the commission may prescribe.

2. *Initial determination.* A representative designated by the commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal or to the commission, which shall make its determination with respect thereto in accordance with the procedure described in subsection 3 of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 96.5 subsection 4, the deputy shall promptly transmit his full findings of fact with respect to that subsection to the commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. Unless the claimant or other interested party, within five calendar days after the delivery of such notification, or within seven calendar days after such notification was mailed to his last-known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the commission, shall be paid only after such determination; provided, that if an appeal tribunal affirms a decision of a deputy, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

3. *Appeals.* Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be



duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection 5 of this section.

4. *Appeal tribunals.* To hear and decide disputed claims, the commission shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee, as fixed by the commission per day of active service on such tribunal, plus necessary expenses. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

5. *Commission review.* The commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal and by the deputy whose decision have been overruled or modified by an appeal tribunal. The commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the commission shall be heard in accordance with the requirements of subsection 3, by the full membership of the commission, or, in the absence or disqualification of the labor representative or the employer representative on the commission, by the public representative acting alone. The commission shall promptly notify the interested parties of its findings and decision.

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

7. *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary traveling expenses at a rate fixed by the commission, which fees shall be charged to the unemployment compensation administration fund of the commission.

8. *Appeal to courts.* Any decision of the commission in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be

permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the commission as provided by this chapter. The commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the commission or who has been designated by the commission for that purpose, or at the commission's request, by the attorney general.

9. **Court review.** Within ten days after the decision of the commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which the claimant was last employed or resides, provided that if the claimant does not reside in the state of Iowa the action shall be brought in the district court of Polk County, Iowa, against the commission for the review of its decision, in which action any other party to the proceeding before the commission shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served on a member of the commission or upon such person as the commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the commission shall forthwith mail one such copy to each such defendant. The commission shall within sixty days after notice of appeal has been served on the commission certify and file with said district court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein, or so much thereof as may be agreed upon by the parties to such appeal. Such agreement as to the records, papers and documents to be certified shall be in writing, signed by the parties to the appeal, and shall be filed with the commission. A copy of such agreement shall be filed with the transcript of the records filed with the district court. With such transcript the commission shall file its answer. The transcript as certified and filed by the commission shall be the record on which the appeal shall be heard, and no additional evidence shall be heard. In the absence of fraud any finding of fact by the commission, after notice and hearing as herein provided, shall be binding upon the court on appeal, when supported by substantial and competent evidence. The commission may also, in its discretion, certify to such courts, questions of law involved in any decision by it. Such actions, and the question so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state.

10. **Decision on appeal.** Any order or decision of the commission may be modified, reversed, or set aside on one or more of the following grounds and on no other:

1. If the commission acted without or in excess of its powers.
2. If the order or decree was procured by fraud.
3. If the facts found by the commission do not support the order or decree.
4. If there is not sufficient competent evidence in the record to warrant the making of the order or decision.

11. **Judgment or order remanding.** When the district court, on appeal, reverses or sets aside an order or decision of the commission, it may remand the case to the commission for further proceedings in harmony with the



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holdings of the court, or it may enter the proper judgment, as the case may be. Such judgment or decree shall have the same force and effect as if action had been originally brought and tried in said court.

12. *Appeal.* An appeal may be taken from any final order, judgment, or decree of the district court to the supreme court of Iowa, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section, to enter exceptions to the rulings of the commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the commission shall so order.

- See: Equitable Life Ins. Co. v. Iowa Emp. Sec. Comm., 231 Ia. 889, 2 N. W. 2d 262.  
Woods Bros. v. Iowa Emp. Sec. Comm., 229 Ia. 1171, 296 N. W. 345.  
Moorman Mfg. v. Iowa Emp. Security Comm. 230 Ia. 123, 296 N. W. 791.  
Meredith Pub. Co. v. Iowa Emp. Sec. Comm., 232 Ia. 666, 6 N. W. 2d 6.  
Dallas Fuel v. Horne, 230 Ia. 1148, 300 N. W. 303.  
Johnson v. Iowa Emp. Sec. Comm., 32 N. W. 2d 786.  
Wolfe v. Iowa Unemp. Comp. Comm., 232 Ia. 1254, 7 N. W. 2d 799  
Moulton v. Iowa Emp. Sec. Comm., 34 N. W. 2d 211.  
Spence v. Iowa Emp. Sec. Comm., 86 N. W. 2d 154.  
McCarthy v. Iowa Emp. Sec. Comm., 247 Ia. 760, 76 N. W. 2d 201.  
Forest Park Sanitarium v. Miller, 233 Iowa 1341, 11 N. W. 2d 582.  
Deere Mfg. Co. v. Iowa Emp. Sec. Comm., etal, 249 Iowa 1066, 90 N. W. 2d 750.

## CONTRIBUTIONS

### 96.7 Payment—rates.

#### 1. *Payment.*

a. On and after July 1, 1936, contributions shall accrue on all taxable wages paid by an employer for insured work.

b. Such contributions shall become due and be paid to the commission for the fund at such times and in such manner as the commission by regulation prescribes.

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

d. Contributions required from an employer shall not be deducted in whole or in part from the wages paid to individuals in his employ.

2. *Rate of contribution by employers.* Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

a. One and eight-tenths percent with respect to employment for the six months period beginning July 1, 1936, provided that if the total of such contributions at such one and eight-tenths percent rate equals less than nine-tenths of one percent of the annual payroll of any employer for the calendar year 1936, such employer shall pay, at such time as the commission shall prescribe, an additional lump sum contribution with respect to employment for such six months period beginning July 1, 1936, equal to the difference between nine-tenths of one percent of his annual payroll for the calendar year 1936 and the total of his contributions at such one and eight-tenths percent rate for such six months period beginning July 1, 1936, and provided further that in no event shall employers' contributions at such one and eight-tenths per-

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cent rate exceed nine-tenths of one percent of his annual payroll for the calendar year 1936;

b. One and eight-tenths percent with respect to employment in the calendar year 1937;

c. Two and seven-tenths percent with respect to employment during the calendar years 1938, 1939, 1940; and

d. Two and seven-tenths percent of wages paid by him during the calendar year 1941, and during each calendar year thereafter, with respect to employment occurring after December 31, 1940, except as may be otherwise prescribed in subsection 3 of this section.

**3. *Future rates based on benefit experience.***

a. (1) The commission shall maintain a separate account for each employer and shall credit his account with all contributions which he has paid or which have been paid on his behalf.

(2) Benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of such individual occurred. Provided, that in any case in which a claimant to whom such benefits are paid is in the employ of a base period employer at the time he is receiving such benefits, and he is receiving the same employment from such employer that he received during his base period, then no charge of benefits paid to such claimant shall be made against the account of such employer.

(3) The amount of benefits so charged in any calendar quarter against the account of any employer shall not exceed the amount of such individual's wage credits based on employment with such employer during such quarter.

(4) The commission shall by general rule prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment during the same calendar quarter.

(5) Nothing in this chapter shall be construed to grant any employer or the individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals.

(6) As soon as practicable after the close of each calendar quarter, and in any event within forty (40) days after the close of such quarter, the commission shall notify each employer of the amount that has been charged to his account for benefits paid during such quarter. This statement to the employer shall show the name of each claimant to whom such benefit payments were made, the claimant's social security number, and the amount of benefits paid to such claimant. Any employer who has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to such claimants may within thirty days after the receipt of such statement appeal to the commission for a hearing to determine the eligibility of the claimant to receive such benefits. The commission may hear the case or may refer the same to an appeal tribunal for hearing. In either case both the employer and the claimant shall receive notice of the time and place of such hearing.

(7) Any employer may at any time make voluntary payments to his account in excess of the other requirements of this chapter, and all such pay-



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ments shall be considered on any computation date as contributions required under the provisions of this chapter if they are paid by the employer not later than the next December thirty-first (31st) after such computation date.

b. In any case in which the enterprise or business for which contributions have been paid has been sold or otherwise transferred to a subsequent employing unit, or in any case in which one or more employing units have been reorganized or merged into a single employing unit and the successor employer continues to operate such enterprise, such successor employer shall assume the position of the predecessor employer or employers with respect to such predecessors' payrolls, contributions, accounts and contribution rates to the same extent as if there had been no change in the ownership or control of such enterprise or business.

In determining each employer's rate of contribution for the calendar year 1945, and for each year thereafter, such employer shall be given full credit for the payrolls, contributions, accounts and contribution rates of his predecessor employer or employers to the same extent as if there had been no change in the organization or the ownership of the business. Provided, that in any case in which such sale, transfer, merger or reorganization has taken place in any year after the predecessor employer's rate of contribution (hereafter called rate) has been determined for such year the employer's rate for the remainder of such year, shall, upon his application to the commission be determined in the following manner:

(1) If the successor employer has no rate or if he has a rate and it is the same rate as that of his predecessor employer or employers, their rates being the same rate, his rate shall be that of the predecessor employer or employers.

(2) If the rate or rates of the predecessor employers are not the same rate, and that of the successor employer if he has a rate is not the same rate as that of the predecessor employer then the rate of the successor employer shall be redetermined under the combined experience of the predecessor employer or employers and the successor employers.

c. Each employer's rate of contribution shall be two and seven-tenths percent except as otherwise provided in this chapter. No reduced rate of contribution shall be granted to such employer until there shall have been twelve consecutive calendar quarters immediately preceding the computation date throughout which his account has been chargeable with benefit payments.

d. Each employer's rate for each calendar year after December 31, 1956, shall be determined on the basis of his record and the record of the predecessor owner of such enterprise, if any, up to the computation date for such year. If, on the computation date, the total of all contributions paid to an employer's account for all past periods to and including those for the quarter ending September 30 immediately preceding the computation date exceeds the total benefits charged to such account for all past periods to and including those for the quarter ending September 30 immediately preceding the computation date, such employer's contribution rate subject to the adjustment hereinafter provided, shall be fixed in accordance with the following table. Percentage of excess in said table means the percentage resulting from dividing the excess of contribution paid over benefits charged by the employer's average annual payroll.

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Contribution Rate	Percentage of Excess is
2.7%	0.0% but less than 2.3%
2.6%	2.3% but less than 2.4%
2.5%	2.4% but less than 2.5%
2.4%	2.5% but less than 2.6%
2.3%	2.6% but less than 2.7%
2.2%	2.7% but less than 2.8%
2.1%	2.8% but less than 2.9%
2.0%	2.9% but less than 3.0%
1.9%	3.0% but less than 3.1%
1.8%	3.1% but less than 3.2%
1.7%	3.2% but less than 3.3%
1.6%	3.3% but less than 3.4%
1.5%	3.4% but less than 3.5%
1.4%	3.5% but less than 3.6%
1.3%	3.6% but less than 3.7%
1.2%	3.7% but less than 3.8%
1.1%	3.8% but less than 4.0%
1.0%	4.0% but less than 4.3%
.9%	4.3% but less than 4.6%
.8%	4.6% but less than 4.9%
.7%	4.9% but less than 5.3%
.6%	5.3% but less than 5.7%
.5%	5.7% but less than 6.1%
.4%	6.1% but less than 6.5%
.3%	6.5% but less than 7.0%
.2%	7.0% but less than 7.5%
.1%	7.5% but less than 8.0%
.0%	8.0% or over

If, on the computation date, the total of all benefits paid from an employer's account for all past periods to and including those for the quarter ending September 30 immediately preceding the computation date, exceeds the total contributions paid to such account for all past periods to and including those for the quarter ending September 30 immediately preceding the computation date, such employer's contribution rate shall be:

Contribution Rate	Percentage of Excess is
4.0%	0.5% or more
3.5%	0.1% but less than 0.5%
3.0%	0.0% but less than 0.1%

Provided, that the maximum contribution rate of any employer for the calendar year 1966 shall not be more than three per cent (3%), and for the calendar year 1967 shall not be more than three and five-tenths per cent (3.5%). Provided, however, that notwithstanding any other provision of this chapter, any employer which employs individuals in the construction, erection, demolition, alteration or repair of roads and highways, or of bridges, buildings, factories, residences, earth work, grading, river work, or any other construction project, and who has not qualified for an experience rating shall pay three per cent (3%) in the calendar year 1966, three and



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five-tenths per cent (3.5%) in the calendar year 1967, and four point zero per cent (4.0%) in the calendar year 1968 and every calendar year thereafter until such time as he has qualified for an experience rating entitling said employer to a lesser rate of contribution. Provided further, that in no event shall any employer's contribution rate be more than two and seven-tenths per cent (2.7%) of the first ten thousand dollars (\$10,000.00) of wages for insured work paid during any calendar quarter.

Whenever the unemployment trust fund account of the state equals or exceeds one hundred ten million dollars the contribution rates herein stated, except the rates of contribution higher than one point nine percent, shall be reduced to and remain at fifty percent thereof until said unemployment trust fund account of the state shall have been reduced to seventy million dollars in which event the said contribution rates shall revert to the rate herein stated.

e. No employer's rate for the period of twelve months commencing January 1 of any calendar year after December 31, 1937, shall be less than two and seven-tenths percent, unless the total assets of the fund, excluding contributions not yet paid at the beginning of such calendar year, exceed the total benefits paid from the fund within the last preceding calendar year; and no employer's rate shall be less than one and eight-tenths percent unless such assets at such time were at least twice the total benefits paid from the fund within such last preceding year.

f. Based upon the formula above provided in this section the commission shall fix the rate of contribution for each employer. The commission shall notify the employer of the rate so fixed. An employer may appeal to the commission for a revision of the rate of contribution so fixed within thirty days from the date of the notice to such employer. The commission after such hearing may set aside its former determination or modify it and may grant the employer a new rate of contribution. The commission shall notify the employer of this determination by certified mail. From this determination the employer may appeal to the district court for further hearing. The manner in which such appeal shall be taken and heard shall be in accordance with the provisions of subsections 5 and 6 of this section.

**4. *Determination and assessment of contributions.***

a. As soon as practicable and in any event within two years after an employer has filed reports, as required by the commission pursuant to subsection 7 of section 96.11, the commission shall examine such reports and determine the correct amount of contributions due, and the amount so determined by the commission shall be the contributions payable. If the contributions found due shall be greater than the amount theretofore paid, the excess, together with interest as provided in this chapter, shall be paid by the employer within thirty days after the commission shall have given notice thereof to the employer by certified mail.

b. If the commission discovers from the examination of the reports or otherwise that wages payable for employment, or any part thereof, have not been listed in the reports, or that no reports were filed when due, or that reports have been filed showing contributions due but no contributions in fact have been paid, it may at any time within five years after the time such reports were due, determine the correct amount of contributions payable, to-

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gether with interest as provided in this chapter. The amount so determined shall be paid within thirty days after the commission shall have given notice thereof to the employer by certified mail.

c. The certificate of the commission to the effect that contributions have not been paid, that reports have not been filed, or that information has not been furnished, as required under the provisions of this chapter shall be prima facie evidence thereof.

5. **Revision of contributions.** An employer may appeal to the commission for revision of the contributions and interest assessed against such employer at any time within thirty days from the date of the notice of the assessment of such contributions and interest. The commission shall grant a hearing thereon and if, upon such hearing, it shall determine that the amount of contributions payable with interest thereon is incorrect, it shall revise the same according to the law and the facts and adjust the computation of the contributions and interest accordingly. The commission shall notify the employer by certified mail of its findings.

**6. Appeals.**

a. An appeal may be taken by the employer to the district court of the county in which such employer resides, or in which such employer's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in any county in which the wages payable for employment were earned or paid or in Polk county, within sixty days after the date of notice to such employer notifying such employer of his rate of contribution, or of the commission's determination as provided for in subsection 3 of this section or subsection 5 of this section.

b. The appeal shall be taken by the employer filing in the office of the clerk of the district court of such county his petition setting forth the errors complained of in the commission's ruling. The employer shall cause an original notice to be served upon the chairman of the commission in the same manner as provided for in ordinary actions in court. The commission shall within thirty days from the date on which said notice was served on the commission certify and file with the clerk of said court a copy of the records and proceedings upon which the rate of contributions or the assessment of contributions was established.

The plaintiff shall file with the clerk of said court a bond for the use of the defendant, with sureties approved by the clerk, in penalty to be fixed and approved by the clerk of said court. In no case shall the bond be less than fifty dollars conditioned that the plaintiff shall perform the orders of the court.

c. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the commission. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the commission who shall then correct the assessment in accordance with said decree. An appeal may be taken by the employer or the commission to the supreme court of this state in the same manner that appeals are taken in suits in equity, irrespective of the amount involved.

7. **Jeopardy assessments.** If the commission believes that the assessment or collection of contributions payable will be jeopardized by delay, the com-



mission may immediately make an assessment of the estimated amount of contributions due, together with all interest thereon as provided by this chapter, and demand payment thereof from the employer. If such payment is not made, a distress warrant may be issued or a lien filed against such employer immediately.

The commission shall be permitted to accept a bond from the employer to satisfy collection until the amount of contributions legally due shall be determined. Such bond to be in an amount deemed necessary, but not more than double the amount of the contributions involved, and with securities satisfactory to the commission.

See: Hansen v. Iowa Emp. Sec. Comm., 34 N. W. 2d 203.  
 Burlington Truck Lines v. Iowa Emp. Sec. Comm., 239 Ia. 752; 32 N. W. 2d 792.  
 Merchants Supply Co. v. Iowa Emp. Security Comm., 235 Ia. 372; 16 N. W. 2d 572.  
 Meredith Pub. Co. v. Iowa Emp. Sec. Comm., 232 Ia. 666, 6 N. W. 2d 6.  
 Kaus v. Iowa Emp. Sec. Comm., 230 Ia. 860; 299 N. W. 415.  
 Dahl Enterprises v. Iowa Emp. Sec. Comm, 249 Ia. 318; 86 N. W. 2d 922.  
 Fleck v. Iowa Emp. Sec. Comm., 233 Iowa 67; 8 N. W. 2d 703.

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

### 96.8 Conditions and requirements.

1. *Period of coverage.* Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

2. *Voluntary termination.* Except as otherwise provided in subsection 3 of this section, an employing unit shall cease to be an employer subject to this chapter, as of the first day of January of any calendar year, if it files with the commission, prior to the fifteenth day of February of such year, a written application for termination of coverage, and the commission finds that there was no twenty different weeks within the preceding calendar year, within which such employing unit employed four or more individuals in employment subject to this chapter. For the purpose of this subsection, the two or more employing units mentioned in paragraph "b" or "c" or "d" of section 96.19 subsection 6 shall be treated as a single employing unit.

### 3. *Election by employer.*

a. An employing unit, not otherwise subject to this chapter, which files with the commission its written election to become an employer subject hereto for not less than two calendar years, shall with the written approval of such election by the commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year, it has filed with the commission a written notice to that effect.

b. Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment

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subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year such employing unit has filed with the commission a written notice to that effect.

**4. *Transfer or discontinuance of business.***

a. In any case in which the enterprise or business of a subject employer has been sold or otherwise transferred to a subsequent employing unit or reorganized or merged into a single employing unit under the provisions of section 96.7, subsection 3 paragraph "b," the account of the transferring employer shall terminate as of the date on which such transfer, reorganization or merger was completed.

b. In any case in which the enterprise or business of a subject employer has been discontinued otherwise than by sale or transfer to a subsequent employing unit and such employer has had no employment for a period of one year, the commission may, on its own motion, terminate said account.

See: *Spagnola v. State*, 237 Ia. 645; 23 N. W. 2d 433.

UNEMPLOYMENT COMPENSATION FUND

**96.9 Control, management, and use.**

1. ***Establishment and control.*** There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this chapter. This fund shall consist of:

a. All contributions collected under this chapter, together with any interest thereon collected pursuant to section 96.14,

b. All fines and penalties collected pursuant to the provisions of this chapter,

c. Interest earned upon any moneys in the fund,

d. Any property or securities acquired through the use of moneys belonging to the fund,

e. All earnings of such property or securities, and

f. All money credited to this state's account in the unemployment trust fund pursuant to section nine hundred three (903) of the Social Security Act. All moneys in the unemployment compensation fund shall be mingled and undivided.

2. ***Accounts and deposits.*** The state treasurer shall be ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the commission. The state comptroller shall issue warrants upon the fund pursuant to the order of the commission and such warrants shall be paid from the fund by the treasurer. The treasurer shall maintain within the fund three separate accounts:

a. A clearing account.

b. An unemployment trust fund account.



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c. A benefit account. All moneys payable to the fund shall, upon receipt thereof by the commission, be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 96.14 shall be paid by the treasurer from the clearing account upon warrants issued by the comptroller under the direction of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund for the payment of benefits. Except as herein otherwise provided moneys in the clearing and benefit account may be deposited by the treasurer under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the governor and in form and manner prescribed by law. Premiums for said bond shall be paid from the administration fund.

Interest paid upon the trust fund deposited with the secretary of the treasury of the United States under the provisions of this subsection 2 of this section for any calendar year shall be allocated and credited to and become a part of each employer's reserve account, said allocation to be made in the following manner: For the calendar year 1950 and each calendar year thereafter, the commission shall add and credit to each employer's reserve account, the percentage of the total interest paid upon the aggregate of the reserve accounts of all of the employers in the state in said year that each such employer's individual reserve account bears to said aggregate reserve account. Said interest shall be credited and applied in the same manner as a voluntary contribution made by each such employer.

3. *Withdrawals.* Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission, except that money credited to this state's account pursuant to section nine hundred three (903) of the Social Security Act may, subject to the conditions prescribed in subsection four (4) of this section, be used for the payment of expenses incurred for the administration of this chapter. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the account of this state therein, as the commission deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall disburse such moneys upon warrants drawn by the comptroller pursuant to the order of the commission for the payment of benefits solely from such benefit account. Expenditures of such moneys from the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the comptroller for the payment of benefits and refunds shall bear the signature of the comptroller. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in

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the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection 2 of this section.

**4. Money credited under section nine hundred three (903) of the Social Security Act.**

a. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section nine hundred three (903) of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to subsection three (3) of this section for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which (1) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (2) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section nine hundred three (903) of the Social Security Act during the same twelve-month period and the four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this state during such five twelve-month periods.

b. Amounts credited to this state's account in the unemployment trust fund under section nine hundred three (903) of the Social Security Act which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve-month period specified herein may be charged against any amount credited during such a twelve-month period earlier than the fourth preceding such period.

c. Money requisitioned as provided herein for the payment of expenses of administration shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The treasurer of state shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.



5. *Administration expenses excluded.* Any amount credited to this state's account in the unemployment trust fund under section nine hundred three (903) of the Social Security Act which has been appropriated for expenses of administration pursuant to section ninety-six point nine (96.9) subsection four (4) of this chapter, whether or not withdrawn from such account, shall not be deemed assets of the unemployment compensation fund for the purpose of computing contribution rates under section ninety-six point seven (96.7), subsection three (3) of this chapter.

6. *Management of funds in the event of discontinuance of unemployment trust fund.* The provisions of subsections 1, 2 and 3 to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the Treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission in accordance with the provisions of this chapter: Provided that such moneys shall be invested in the following readily marketable classes of securities; such securities as are authorized by the laws of the state of Iowa for the investment of trust funds. The treasurer shall dispose of securities and other properties belonging to the unemployment compensation fund only under the direction of the commission.

7. *Transfer to railroad account.* Notwithstanding any requirements of the foregoing subsections of this section, the commission shall, prior to July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from his state's account in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, to the railroad unemployment insurance account, established and maintained pursuant to section 10 of the Railroad Unemployment Insurance Act, an amount hereinafter referred to as the preliminary amount; and shall, prior to January 1, 1940, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance accounts an additional amount, hereinafter referred to as the liquidating amount. The social security board shall determine both such amounts after consultation with the commission and the railroad retirement board. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contributions collected from "employers" as the term "employer" is defined in section 1 (a) of the Railroad Unemployment Insurance Act, and credited to the unemployment compensation fund bears to all contributions theretofore collected under this chapter and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" as the term "employer" is defined in section 1 (a) of the Railroad Unemployment Insurance Act pursuant to the provisions of this chapter during the period July 1, 1939 to December 31, 1939, inclusive.

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8. *Cancellation of warrants.* The state comptroller, as of January 1, April 1, July 1, and October 1 of each year, shall stop payment on all warrants for the payment of benefits which have been outstanding and unredeemed by the state treasurer for six months or longer. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the state comptroller at the discretion of and certification by the commission.

EMPLOYMENT SECURITY COMMISSION

**96.10 The commission and divisions.**

1. *Commission created.* There is hereby created a commission to be known as the Iowa employment security commission. The commission shall consist of three members who shall devote their entire time to the duties of their office; one of whom shall be a representative of labor, one of whom shall be a representative of employers, and one of whom shall be impartial and shall represent the public generally. During his term of membership on the commission no member shall serve as an officer or committee member of any political party organization, and not more than two members of the commission shall be members of the same political party. Each of the three members of the commission shall be appointed by the governor immediately after the effective date of this chapter, subject to approval by a two-thirds vote of the members of the senate in executive session, and shall serve for a term of six years, or until his successor is appointed and qualified, except that

a. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and

b. The terms of the members first appointed after the date of enactment of this chapter shall expire, as designated by the governor at the time of appointment, one member on June 30, 1939, and one member on June 30, 1941, and one member on June 30, 1943, or in each of the foregoing instances until his successor is appointed and qualified.

The governor may at any time, after notice and hearing, remove any commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in the performance of his duties as a member of the commission. Before entering upon the discharge of his official duties, each member of the commission shall take and subscribe to an oath of office, which shall be filed in the office of the secretary of state. Any vacancy occurring for any cause in the membership of this commission shall be filled for the unexpired term by appointment by the governor subject to approval by a two-thirds vote of the members of the senate in executive session at the next regular session of the legislature. Each members of the commission shall be entitled to receive as compensation for his services the sum of five thousand dollars per year, payable monthly. In addition to the compensation hereinbefore prescribed, each member of the commission shall be entitled to receive the amount of his traveling and other necessary expenses actually



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incurred while engaged in the performance of his official duties. For the purposes of this chapter the first meeting in July shall be designated the annual meeting. Two members of the commission shall constitute a quorum for the transaction of business. At its first meeting, and at each annual meeting held thereafter, the commission shall organize by the election of a chairman and vice chairman from its own number, each of whom, except those first elected, shall serve for a term of one year and until his successor is elected. The commission shall adopt and use an official seal for the authentication of its orders and records. The commission shall establish and maintain its principal place of business in the city of Des Moines.

2. *Divisions.* The commission shall have power to establish and maintain such divisions under it as it deems necessary for the purposes of this chapter.

## ADMINISTRATION

### 96.11 Powers, rules and personnel.

1. *Duties and powers of commission.* It shall be the duty of the commission to administer this chapter; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon compliance with chapter seventeen A (17A) of the Code. Not later than the fifteenth day of December of each year, the commission shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the commission deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. *Regulations and general and special rules.* General and special rules may be adopted, amended, or rescinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission. Each employer shall post and maintain printed statements of all regulations in places readily accessible to individuals in his service, and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations relating to the filing of claims for benefits. Such printed statements shall be supplied by the commission to each employer without cost to him.

3. *Publication.* The commission shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations and general rules, its annual reports to the governor, and any other material the commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

4. *Personnel.* Subject to other provisions of this chapter, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The commission shall classify its positions and shall establish salary schedules and minimum personnel standards for the positions so classified. All positions shall be filled by persons selected and appointed on the basis of competency and fitness for the position to be filled. The commission shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for any elective public office. The commission shall establish and enforce fair and reasonable regulations for appointments, promotions and demotions based upon ratings of efficiency and fitness and for terminations for cause. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may in its discretion bond any person handling moneys or signing checks hereunder.

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

6. *Employment stabilization.* The commission with the advice and aid of such advisory councils as it may appoint, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

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



who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than ninety days, or both.

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

9. *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission, or appeal tribunal, or any member or duly authorized representative thereof, shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, or an appeal tribunal, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena, shall be punished by a fine of not more than two hundred dollars or by imprisonment, for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

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

11. *State-federal co-operation.* In the administration of this chapter, the commission shall co-operate to the fullest extent consistent with the provisions of this chapter, with the federal social security board, created by the Social Security Act, passed by congress and approved August 14, 1935, as amended; shall make such reports, in such form and containing such information as the federal social security board may from time to time require, and shall comply with such provisions as the federal social security board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the

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federal social security board governing the expenditures of such sums as may be allotted and paid to this state under title III of the Social Security Act for the purpose of assisting in administration of this chapter. Upon request therefor the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

The commission may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies thereof as the railroad retirement board deems necessary for its purposes. The commission may afford reasonable co-operation with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board or any other agency requiring such services and reports from the commission shall pay the commission such compensation therefor as the commission determines to be fair and reasonable.

12. *Destruction of records.* The commission may in its discretion destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the commission and are deemed by the commission no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the commission and such order shall be spread on the minutes of the commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund.

See: Wood Bros. v. Iowa Emp. Sec. Comm., 229 Ia. 1171; 206 N. W. 345.  
Couch v. Iowa Emp. Sec. Comm., 228 Ia. 790; 293 N. W. 482.

## EMPLOYMENT SERVICE

### 96.12 State employment service.

1. *Duties of commission.* The employment security commission shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the act of Congress entitled "An Act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes," approved June 6, 1933, as amended, and known as the Wagner-Peyser Act (48 Stat. L. 113; 29 USC§49). All duties and powers conferred upon any other department, agency, or officer of this state relating to the establishment, maintenance, and operation of free employment offices shall be vested in the commission. The provisions of the said Act of Congress, as amended, are hereby accepted by this state, in conformity with section 4 of said Act, and this state will observe and comply with the requirements thereof. The commission is hereby designated and constituted the agency of this state for the purpose of said Wagner-Peyser Act. If this chapter shall become inoperative for the reason prescribed in section 96.21, the Iowa state employment division shall not be



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affected thereby, but such division shall, upon the happening of such contingency, be deemed to be a division of the bureau of labor of the state of Iowa, with the same force and effect as if this chapter had not been passed, and that all funds and property made available to the Iowa state employment service division under this chapter shall under such contingency become, and shall be declared to be, the funds and property of the Iowa state employment service of the bureau of labor of Iowa. The commission may co-operate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of employment service facilities. The railroad retirement board shall compensate the commission for such services or facilities in the amount determined by the commission to be fair and reasonable.

2. *Financing.* For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an employment security law, with any political subdivision of this state, or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment security administration fund.

### EMPLOYMENT SECURITY ADMINISTRATION FUND

#### 96.13 Control and use.

1. *Special fund.* There is hereby created in the state treasury a special fund to be known as the "Employment Security Administration Fund". All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commission. All moneys in this fund, except money received pursuant to subsection four (4) of section ninety-six point nine (96.9) of this chapter, which are received from the federal government or any agency thereof or which are appropriated by the state for the purposes described in section 96.12 shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter. This fund shall consist of all moneys appropriated by this state, and all moneys received from the United States, or any agency thereof, including the department of labor, the railroad retirement board, the United States employment service, established under the Wagner-Peyser Act, or from any other source for such purpose. Moneys received from the railroad retirement board, or any other agency, as compensation for services or facilities supplied to said board or agency shall be paid to the commission, and the commission shall allocate said moneys to the employment security administration fund. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commission for expenditure consistent with this chapter. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the employment security administration fund in an amount and with such sureties as shall be fixed and approved by the governor. The premiums for such bond and the premiums for the bond given by the treasurer



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of the unemployment compensation fund under section 96.9, shall be paid from the moneys in the employment security administration fund. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to paragraph "c" of subsection four (4) of section ninety-six point nine (96.9) of this chapter shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in said subsection four (4) of section ninety-six point nine (96.9).

2. *Replenishment of lost funds.* If any moneys received after June 30, 1941, from the social security board under title III of the Social Security Act, or any unencumbered balances in the unemployment compensation administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the social security board, because of any action or contingency, to have been lost or been expended for purposes other than or in amounts in excess of, those found necessary by the social security board for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in subsection 1 of this section. Upon receipt of notice of such a finding by the social security board, the commission shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the Social Security Act.

## COLLECTION OF CONTRIBUTIONS

### 96.14 Priority-refunds.

1. *Interest.* Any employer who shall fail to pay any contribution and at the time required by this chapter and the rules and regulations of the commission, shall pay to the commission in addition to such contribution, interest thereon at the rate of one percent (1%) per month and one-thirtieth (1/30) of one per cent (1%) for each day or fraction thereof computed from the date upon which said contribution should have been paid.

2. *Penalties.* Any employer who shall fail to file a report of wages paid to each of his employees for any period in the manner and within the time required by this chapter and the rules and regulations of the commission or any extension of such time, shall pay to the commission a penalty in a sum equal to two percent (2%) of the contributions required to be paid by such employer for each month or part thereof, for failure to file such report, provided that the total of such penalties shall not exceed ten percent (10%) of the amount of such contributions. If the commission finds that any such report is insufficient, it shall notify the employer in writing to file a sufficient report. If such employer shall fail to file a sufficient report within thirty (30) days after the mailing of such notice to him, he shall, in addition

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to any amount otherwise payable by him under the provisions of this chapter, pay to the commission, a penalty equal to two percent (2%) of the contributions for such period unpaid by him at the time of the mailing of each notice, for each month or part thereof of such failure to file a sufficient report, provided that the total penalties shall not exceed ten percent (10%) of the amount of such contribution.

If the commission finds that any employer has willfully failed to pay any contribution or part thereof when required by this chapter and the rules and regulations of the commission, with intent to defraud the commission, then such employer shall in addition to such contribution or part thereof, pay a contribution equal to fifty percent (50%) of the amount of such contribution or part thereof, as the case may be.

However, in the event an employer is not required to make a contribution, the penalties for failure to report shall be an amount equal to one percent (1%) of his taxable payroll. After September 30, 1961 no penalty or penalties shall be less than ten dollars (\$10.00).

The commission may cancel any interest or penalties if it is shown to the satisfaction of the commission that the failure to pay a required contribution or to file a required report was not the result of negligence, fraud, or intentional disregard of the law or the rules and regulations of the commission.

**3. Lien of contributions—collection.** Whenever any employer liable to pay contributions refuses or neglects to pay the same, the amount, including any interest, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said employer.

The lien aforesaid shall attach at the time the contributions become due and payable and shall continue until the liability for such amount is satisfied.

In order to preserve the aforesaid lien against subsequent mortgages, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commission shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in his office a book to be known as "index of unemployment contribution liens", so ruled as to show in appropriate columns the following data, under the names of employers, arranged alphabetically:

- a. The name of the employer.
- b. The name "State of Iowa" as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.



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The commission shall pay a recording fee as provided in section 335.14, for the recording of such lien, or for the satisfaction thereof.

Upon the payment of contributions as to which the commission has filed notice with a county recorder, the commission shall forthwith file with said recorder a satisfaction of said contributions and the recorder shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

The commission shall, substantially as provided in sections 445.6 and 445.7, proceed to collect all contributions as soon as practicable after the same become delinquent, except that no property of the employer shall be exempt from the payment of said contributions.

If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the commission and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workmen's compensation law of this state.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the commission shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

4. *Priorities under legal dissolutions or distribution.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages preferred as provided by statute. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 (b) of that Act (11 USC., §104 (b), as amended).

5. *Refunds, compromises and settlements.* In any case in which the commission finds that an employer has paid contributions or interest thereon, which have been erroneously paid, and who has filed an application for adjustment thereof, the commission shall make such adjustment, compromise, settlement, and make such refund of erroneous payments as it finds just and equitable in the premises. Refunds so made shall be charged to the fund to which the erroneous collections have been credited, and shall be paid to the claimant without interest. Any claim for such refund shall be made within three years from the date of payment. For like cause, adjustments, compromises or refunds may be made by the commission on its own initiative. In any case in which the commission finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the commission may institute a proceeding in the district court in the county in which the enterprise against which such tax is levied



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is located, requesting authority to compromise such contribution. Notice of the filing of such application shall be given to the interested parties as the court may prescribe. The court upon such hearing shall have power to authorize the commission to compromise and settle its claim for such contribution and shall fix the amount to be received by the commission in full settlement of such claim and shall authorize the release of the commission's lien for such contribution.

**6. *Nonresident employing units.*** Any employing unit which is a non-resident of the state of Iowa and for which services are performed in insured work within the state of Iowa by having such services performed within the state of Iowa shall be deemed:

a. To agree that such employing unit shall be subject to the jurisdiction of the district court of the state of Iowa over all civil actions and proceedings against such employing unit for all purposes of this chapter, and

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served all original notices of suit and other legal processes pertaining to such actions and proceedings, and

c. To agree that any original notice of suit or any other legal process so served upon such nonresident employing unit shall be of the same legal force and validity as if personally served on it in this state.

**7. *Original notice—form.*** The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that that part of said notice pertaining to the return day shall be in substantially the following form, to wit:

“And unless you appear thereto and defend in the district court of Iowa in and for ----- county at the courthouse in -----, Iowa before noon of the sixtieth day following the filing of this notice with the secretary of state of this state, you will be adjudged in default, your default entered of record, and judgment rendered against you for the relief prayed in plaintiff's petition.”

**8. *Manner of service.*** Plaintiff in any such action shall cause the original notice of suit to be served as follows:

a. By filing a copy of said original notice of suit with said secretary of state, together with a fee of two dollars, and

b. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant at his last known residence or place of abode, a notification of the said filing with the secretary of state.

**9. *Notification to nonresident—form.*** The notification, provided for in subsection 7, shall be in substantially the following form, to wit:

“To ----- (Here insert the name of each defendant and his residence or last known place of abode as definitely as known.)

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“You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, with the secretary of state of the state of Iowa.

“Dated at \_\_\_\_\_, Iowa, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

-----  
Plaintiff.  
  
By-----  
Attorney for Plaintiff.”

10. *Optional notification.* In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

11. *Proof of service.* Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

12. *Actual service within this state.* The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

13. *Venue of actions.* Actions against nonresidents as contemplated by this law may be brought in Polk county, or in the county in which such services were performed.

14. *Continuances.* The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford him reasonable opportunity to defend said action.

15. *Duty of secretary of state.* The secretary of state shall keep a record of all notices of suit filed with him, shall not permit said filed notices to be taken from his office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which he is defendant.

See: Fleck v. Iowa Emp. Sec. Comm., 233 Iowa 67; 8 N. W. 2d 703.

PROTECTION OF RIGHTS AND BENEFITS

**96.15 Waiver—fees—assignments.**

1. *Waiver of rights void.* Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chap-

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ter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than six months, or both.

2. *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the commission, or an appeal tribunal or a court may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the commission. Any person who violates any provisions of this subsection shall, for each such offense, be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned for not more than six months or both.

3. *No assignment of benefits—exemptions.* Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts. Any waiver of any exemption provided for in this subsection shall be void.

## 96.16 Offenses.

1. *Penalties.* Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for himself or for any other person, shall be punished by a fine of not less than twenty dollars nor more than fifty dollars or by imprisonment for not longer than thirty days. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

2. *False statement.* Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each



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day of such failure or refusal, shall constitute a separate offense.

3. **Unlawful acts.** Any person who shall willfully violate any provisions of this chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

4. **Misrepresentation.** Any person who, by reason of any error, or by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in section 96.14 subsection 3 for the collection of past-due contributions.

## REPRESENTATION IN COURT

### 96.17 Counsel.

1. **Legal service.** In any civil action to enforce the provisions of this chapter, the commission and the state may be represented by any qualified attorney who is a regular salaried employee of the commission and is designated by it for this purpose or, at the commission's request, by the attorney general. In case the governor designates special counsel to defend on behalf of the state, the validity of this chapter, the expenses and compensation of such special counsel employed by the commission in connection with such proceeding may be charged to the unemployment compensation administration fund.

2. **County attorney.** All criminal actions for violations of any provision of this chapter, or of any rules or regulations issued by the commission pursuant thereto, shall be prosecuted by the prosecuting attorney of any county in which the employer has a place of business or the violator resides, or, at the request of the commission, shall be prosecuted by the attorney general.

**96.18 Nonliability of state.** Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commission shall be liable for any amount in excess of such sums.

## DEFINITIONS

**96.19 Scope.** As used in this chapter, unless the context clearly requires otherwise:

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1. "*Annual payroll*". The term "annual payroll" as used in subsection 3 "d" of section 96.7 means the total amount of taxable wages paid by an employer for insured work during the period of four consecutive calendar quarters ending on September 30 of each year, and the term "average annual payroll" as used in said subsection means the average of the "annual payrolls" of an employer for the last three periods of four consecutive calendar quarters immediately preceding the computation date.

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

3. "Commission" means the employment security commission established by this chapter.

4. "Contributions" means the money payments to the state unemployment compensation fund required by this chapter.

5. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection 6 or section 96.8 subsection 3, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of subsection 6 or section 96.8 subsection 3 shall alone be liable for the contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection 6 or section 96.8 subsection 3, may recover the same from such contractor or subcontractor, except as any 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 rules of the commission. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work, and provided, further, that such employment was for a total of not less than eight hours in any one calendar week.

6. "Employer" means:

a. Any employing unit which for some portion of a day in each of twenty



**96.19-6-b**

different weeks within either the current or the preceding calendar year, excepting the calendar year 1935 (whether or not such weeks are or were consecutive) has or had in employment four or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such day).

b. Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter.

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

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

e. Any employing unit which, having become an employer under paragraph "a", "b", "c" or "d", has not, under section 96.8, ceased to be an employer subject to this chapter.

f. For the effective period of its election pursuant to section 96.8 subsection 3 any other employing unit which has elected to become fully subject to this chapter.

g. Any employing unit which is an employer under the provisions of Subchapter (C) (Federal Unemployment Tax Act) of the internal revenue code.

Provided, however, that if an employer subject to contributions solely because of the terms of this subsection shall establish proper proof to the satisfaction of the commission that his employees have been and will be duly covered and insured under the unemployment compensation law of another jurisdiction such employer shall not be deemed an employer and such services shall not be deemed employment under this chapter.

**7. "Employment".**

a. Except as otherwise provided in this subsection 7, "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

b. The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(1) The service is localized in this state, or

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

c. Services performed within this state but not covered under paragraph



**96.19-7-d**

“b” of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

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

e. Service shall be deemed to be localized within a state if:

(1) The service is performed entirely within such state, or

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

f. Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact.

g. The term “employment” shall not include:

(1) Service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivision.

(2) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States; provided, however, that the general language just used shall not include any such instrumentality of the United States after congress has, by appropriate legal action, expressly permitted the several states to require such instrumentalities to make payments into an employment fund under a state unemployment compensation law; and all such instrumentalities so released from the constitutional immunity to make the contributions, imposed by this chapter shall, thereafter, become subject to all the provisions of said chapter, and such provisions shall then be applicable to such instrumentalities and to all services performed for such instrumentalities in the same manner, to the same extent and on the same terms as are applicable to all other employers, employing units, individuals and services. Should the social security board, acting under section 1603 of the federal internal revenue code, fail to certify the state of Iowa for any particular calendar year, then the payments required of such instrumentalities with respect to such year shall be refunded by the commission from the fund in the same manner and within the same period as is provided for in section 96.14 subsection 5, which section provides for the refunding of contributions erroneously collected.

**96.19-7-g-(3)**

(3) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 96.11 subsection 2 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter.

(4) Agricultural labor.

The term "agricultural labor", as used in this chapter includes all services performed:

On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm, its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the federal Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes.

In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

The phrase "agricultural labor" as used herein, shall be construed to apply only to this subsection and shall not be construed to apply or define "agricultural labor" as used in the workmen's compensation act.



**96.19-7-g-(5)**

(5) Domestic service in a private home.

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

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

(8) Services performed during school vacations or outside of school hours by students who devote their time and efforts chiefly to their studies, rather than to incidental employment.

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

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

**10. "Total and partial unemployment".**

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

b. An individual shall be deemed partially unemployed in any week in which, while employed at his then regular job, he works less than the regular full-time week and in which he earns less than his weekly benefit amount plus three dollars.

c. An individual shall be deemed partially unemployed in any week in which he, having been separated from his regular job, earns at odd jobs less than his weekly benefit amount plus three dollars.

11. "State" includes, in addition to the states of the United States, the District of Columbia and Puerto Rico.

12. "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter, from which administration expenses under this chapter shall be paid.

13. "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the commission. Wages payable to an individual for insured work performed prior to January 1, 1941, shall, for the purposes of sections 96.3, 96.4, and this section, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable.

14. "Week" means such period or periods of seven consecutive calendar days ending at midnight, or as the commission may by regulations prescribe.



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15. *“Weekly benefit amount”*. An individual’s “weekly benefit amount” means the amount of benefits he would be entitled to receive for one week of total unemployment. An individual’s weekly benefit amount, as determined for the first week of his benefit year, shall constitute his weekly benefit amount throughout such benefit year.

16. *“Benefit year”*. The term “benefit year” means a period of one year beginning with the day with respect to which an individual filed a valid claim for benefits. Any claim for benefits made in accordance with section 96.6, subsection 1, shall be deemed to be a valid claim for the purposes of this subsection if the individual has been paid wages for insured work required under the provisions of this chapter.

17. *“Base period”* means the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual’s benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which he filed a valid claim.

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

19. *“Customary self-employment”*. An employee shall be deemed to be engaged in “his customary self-employment,” as said words are used in section 96.5, during the periods in which he customarily devotes the major portion of his working time and efforts: (a) To his individual enterprises and interests; or (b) to her duties as housewife; or (c) to attending classes and preparing his studies for any school or college.

20. *“Insured work”* means employment for employers.

21. *“Taxable wages”*. The term “taxable wages” shall include all wages paid to an individual by an employer in any calendar year for insured work equal to the sum of three thousand dollars. Wages paid to such individual in any calendar year by an employer in excess of three thousand dollars are not taxable. Contributions on such taxable wages are to be credited to the calendar quarter in which such wages are paid.

22. *“Computation date”*. The computation date for contribution rates shall be October 1 of that calendar year preceding the calendar year with respect to which such rates are to be effective.

See: Mt. Vernon Bank & Trust Co. v. Iowa Emp. Sec. Comm., 233 Ia. 1165, 11 N. W. 2d 402.  
Stromberg Hatchery v. Iowa Emp. Sec. Comm., 33 N. W. 2d 498.  
Kunkel v. Eastern Ia. Light & Power, 232 Iowa 649; 5 N. W. 2d 899.  
Equitable Life Ins. Co. v. Iowa Emp. Sec. Comm., 231 Ia. 889, 2 N. W. 2d 262.  
Woods Bros. v. Iowa Emp. Sec. Comm., 229 Ia. 1171, 296 N. W. 345.  
Kaus v. Huston, 120 F. 2d 183.  
Spagnola v. Iowa Emp. Sec. Comm., 237 Ia. 645, 23 N. W. 2d 433.  
Glidden Rural Electric v. Iowa Emp. Sec. Comm., 236 Ia. 910, 20 N. W. 2d 435.  
Meredith Pub. Co. v. Iowa Emp. Sec. Comm., 232 Ia. 666, 6 N. W. 2d 6.  
Kaus v. Iowa Emp. Sec. Comm., 230 Ia. 860, 299 N. W. 415.  
Moorman Mfg. Co. v. Iowa Emp. Sec. Comm., 230 Ia. 123, 296 N. W. 791.  
Dahl Enterprises v. Iowa Emp. Sec. Comm., 249 Ia. 318; 86 N. W. 2d 922.

## 96.20 Reciprocal benefit arrangements.

1. The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby

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

2. The commission may enter into arrangements with the appropriate agencies of other states or of the federal government (a) whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for the purposes of section 96.3 and section 96.4 subsection 5; provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the commission finds will be fair and reasonable as to all affected interests, and (b) whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the commission finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of section 96.3 subsection 5 and section 96.9, but no reimbursement so payable shall be charged against any employer's account for the purposes of section 96.7. The commission is hereby authorized to make to other state or federal agencies and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

3. The commission is hereby authorized to enter into agreements with the appropriate agencies of other states or the federal government administering unemployment compensation laws to provide that contributions on wages for services performed by an individual in more than one state for the same employer may be paid to the appropriate agency of one state.

**96.21 Termination.** If at any time title IX of the Social Security Act, as amended, shall be amended or repealed by congress or held unconstitutional by the supreme court of the United States, with the result that no portion of the contributions required under this chapter may be credited against the tax imposed by said title IX, in any such event the operation of the provisions of this chapter requiring the payment of contributions and benefits shall immediately cease, the commission shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit, and such moneys, together with any other moneys in the unemployment compensation fund shall be refunded, without interest and under regulations prescribed by the commission, to each employer by whom contributions have been paid, proportionately to his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the commission to pay for the costs of making such refunds. When the commission shall have executed the duties prescribed in this section and performed such other acts as are incidental to the termination of its duties under this chapter, the provisions of this chapter, in their entirety, shall cease to be operative.

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