

MAINE STATE LEGISLATURE

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(Governor's Bill)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1789

S. P. 504

In Senate, May 18, 1977

Referred to the Committee on Labor. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary

Presented by Senator McNally of Hancock.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Amend Certain Provisions of the Employment Security Law.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 26 MRSA § 1044, sub-§ 2, as amended by PL 1965, c. 294, is repealed and the following enacted in its place:

2. Limitation of fees; penalty. 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 a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the commission. In the event a claimant has retained counsel for the purpose of prosecuting an appeal from a decision of the commission and the final decision of the Superior Court, if such court's decision is not appealed, results in a reversal, in whole or in part, of the decision appealed from, or if the final decision of the Supreme Judicial Court results in a reversal, in whole or in part, of the commission decision appealed from, the fees for such service shall be paid by the commission from its administrative fund. The legal fees to be approved or paid under this subsection shall not exceed the equivalent of \$25 per hour, plus reasonable travel expenses, except that for an argument before the Supreme Judicial Court the fees may include an additional \$150 above the hourly rate. Any person who violates any provision of this subsection shall, for each such offense, be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment for not more than 6 months, or by both.

Sec. 2. 26 MRSA § 1051, sub-§ 4, as amended by PL 1975, c. 462, § 2, is amended to read:

4. **Nondisclosure or misrepresentation to receive benefits.** Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact, and such nondisclosure or misrepresentation was known to him or ought to have been known by him to be 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 1229 for the collection of past due contributions~~ subsection 6.

Sec. 3. 26 MRSA § 1051, sub-§ 5, first sentence, as amended by PL 1971, c. 419, is repealed and the following enacted in its place:

If, after due notice, any person refuses to repay amounts erroneously paid to him as unemployment benefits, the amounts due from such person shall be collectible in the manner provided in subsection 6 or in the discretion of the commission the amount erroneously paid to such person may be deducted from any future benefits payable to him under this chapter.

Sec. 4. 26 MRSA § 1051, sub-§ 6 is enacted to read:

6. **Collection of erroneous payments or payments received by nondisclosure or misrepresentation.** Any amounts of benefit payments owed to the commission by any individual may be collected by any of the following methods.

A. The amount due may be collected by civil action in the name of the commission.

B. If any amount of benefit payments owed to the commissioner is not paid when the decision establishing or a decision upholding the establishment of the debt has become final as to law and fact under section 1194, and if the amount of benefit payments due was set forth on a notice duly mailed to the individual following the finality of the last decision, the amount due may be collected by warrant as follows.

(1) The commission may file in the office of the clerk of the Superior Court of Kennebec County a certificate addressed to the clerk specifying the amount of benefit payments required to be paid and the weeks involved, the name and address of the liable person as it appears on the records of the commission, the facts whereby the amount has become final as to law and fact and requesting that a warrant be issued against the person for the amount required to be paid, and with costs, but without interest.

(2) When the certificate is filed, the clerk of the Superior Court shall issue a warrant in favor of the commission against the person for the

amount required to be paid and with costs. The clerk shall file the certificate in a separate docket entitled "Special Warrants for Unemployment Compensation Benefit Payments." These records are not to become a part of the extended record of the court.

(3) The warrant shall have the force and effect of an execution issued upon a judgment in a civil action, may be substantially the same as the form in section 1230, subsection 4, paragraph A, and shall specify the amount of benefit payments required to be paid and the weeks involved.

(4) Warrants shall be returnable within one year, and new warrants may be issued on any such certificate within 4 years from the return day of the last preceding warrant for sums remaining unsatisfied.

Sec. 5. 26 MRSA § 1082, sub-§ 14, ¶ E, 3rd sentence, as repealed and replaced by PL 1975, c. 90, is amended to read :

A copy of the complaint shall be served upon the commission or upon such person as it may designate no later than 40 days after the decision of the commission has become final if the appeal is commenced by filing the complaint with the Superior Court.

Sec. 6. 26 MRSA § 1192, sub-§ 3, as repealed and replaced by PL 1975, c. 770, § 122, is amended to read :

3. Is able and available for work. He is able to work and is available for work at his usual or customary trade, occupation, profession or business or in such other trade, occupation, profession or business for which his prior training or experience shows him to be fitted or qualified; and in addition to having complied with subsection 2 is himself actively seeking work in accordance with the regulations of the commission; provided that an individual shall be ineligible to receive benefits for any week which is recognized as a vacation period for his grade, class or shift at the factory, mill, workshop or other premises where he is employed, and no distinction shall be made between those who receive pay during vacation periods and those who do not; provided that an unemployed individual who is neither able nor available for work due to good cause as determined by the commissioner shall be eligible to receive prorated benefits for that portion of the week during which he was able and available.

Sec. 7. 26 MRSA § 1192, sub-§ 10 is enacted to read :

10. Service with private or public elementary and secondary schools. Benefits based on service in employment in a private or public elementary or secondary school shall not be paid to an individual during periods of recognized vacation for such school.

Sec. 8. 26 MRSA § 1193, sub-§ 4, ¶ C, as enacted by PL 1971, c. 209, is amended to read :

C. He has obtained employment subsequent to the beginning of the stoppage of work and has earned at least 8 times his weekly benefit amount or has been employed ~~5~~ 6 full weeks.

Sec. 9. 26 MRSA § 1193, sub-§ 5, ¶¶ A and B are repealed and the following enacted in their place :

A. Dismissal wages or wages in lieu of notice or terminal pay or vacation pay or bonus payments; or

B. Benefits under the unemployment compensation or employment security law of any state or similar law of the United States, or workmen's compensation;

Sec. 10. 26 MRSA § 1194, sub-§ 9, 2nd sentence is repealed and the following enacted in its place:

In such action, a complaint which need not be verified shall state the grounds upon which an appeal is sought and shall be served upon the commission or upon such person as the commission may designate no later than 40 days after the decision of the commission has become final if the appeal is commenced by filing the complaint with the Superior Court. 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 complaint as there are defendants and the commission shall forthwith mail one such copy to each defendant.

Sec. 11. 26 MRSA § 1221, sub-§ 4, ¶ E, sub-¶ (1) is amended by inserting after the 4th sentence the following:

A copy of the complaint shall be served upon the commission or upon such person as it may designate no later than 40 days after the decision of the commission has become final.

Sec. 12. 26 MRSA § 1221, sub-§ 10, 3rd sentence, as enacted by PL 1971, c. 538, § 41, is repealed and the following enacted in its place:

A nonprofit organization shall pay contributions as provided in subsections 1 and 2, unless it elects in accordance with this subsection to pay to the commission for the unemployment compensation fund, in lieu of such contributions, an amount equal to the amount of regular benefits and of $\frac{1}{2}$ of the extended benefits paid that are attributable to service in the employ of such employer.

Sec. 13. 26 MRSA § 1225, sub-§ 6 is enacted to read:

6. Limitations on assessment. Notification of assessments shall be mailed to the employer not later than 4 years after a report was due or filed, whichever is later, except that if, with intent to evade the liabilities imposed by this chapter, no return is filed or a false report is filed, a notification of assessment may be mailed to the employer not later than 6 years after the report was due or filed. Before the expiration of the time prescribed in this subsection, the commission and the employer may consent in writing to an assessment after such time, and the notification of assessment must be mailed within the limitation agreed upon.

Sec. 14. 26 MRSA § 1226, sub-§ 2, ¶ A, 3rd sentence, as enacted by PL 1975, c. 462, § 9, is amended to read:

A copy of the complaint shall be served upon the commission or upon such person as it may designate no later than 40 days after the decision of the commission has become final if the appeal is commenced by filing the complaint with the Superior Court.

STATEMENT OF FACT

The purposes of this bill are :

To clarify the attorney's fee provisions ;

To streamline the collection of benefit overpayments ;

To clarify the appeal sections to insure that the Employment Security Commission is served promptly and so that tape recordings are preserved for the appeal ;

To provide a new provision that would deny benefits to an individual unemployed due to a recognized vacation period where he is employed ;

To provide a new provision to deny benefits during periods of recognized vacation, not necessarily between 2 regular terms or semesters, to individuals whose benefits are based on service in employment in private or public elementary and secondary schools ;

To amend the requalifying requirements for individuals unemployed due to a labor dispute ;

To include bonus payments as disqualifying remuneration ;

To include workmen's compensation as disqualifying remuneration ;

To clarify the liability of direct reimbursement employers ; and

To provide a new provision to establish a statute of limitations on the assessment of contributions, interest and penalties.