

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1158

H. P. 897

House of Representatives, March 4, 1969

Referred to Committee on Labor. Sent up for concurrence and 1,000 ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Dennett of Kittery.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Revising the Employment Security Law and Providing for an
Executive Director.

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

Sec. 1. R. S., T. 26, § 1081, repealed and replaced. Section 1081 of Title 26 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof :

§ 1081. Executive director

1. Executive director. The Maine Employment Security Commission, as heretofore created by previous enactment, shall be abolished as soon as its successor as provided for in this Act is appointed and qualified. The commission shall be succeeded by an executive director who shall be appointed by the Governor and the first executive director shall be the chairman of the commission serving as such at that time, and he shall serve until February 3, 1975. Thereafter the executive director shall be appointed by the Governor for a term of 4 years and until his successor is appointed and qualified. He shall be paid a salary from the Employment Security Administration Fund, to be fixed by the Governor and Council. During his term, the executive director shall not engage in any other business, vocation or employment, or serve as an officer or committee member of any political party organization.

2. Duties. The executive director shall succeed to the duty of the commission to administer this chapter. After he has succeeded to this function, whenever in this chapter the word "commission" appears it shall thereafter mean "executive director" and the executive director shall exercise all of the powers heretofore exercised by the commission except those that are specifically revised by amendment to this chapter.

Sec. 2. R. S., T. 26, § 1082, sub-§§ 5 - 6, repealed and replaced. Subsection 5, as amended by section 7 of chapter 381 of the public laws of 1965, and subsection 6 of section 1082 of Title 26 of the Revised Statutes, are repealed and the following enacted in place thereof:

5. **Employment Security Council.** The Governor shall appoint an Employment Security Council which, when it is appointed and qualified shall succeed the State Advisory Council which shall then be abolished. The Employment Security Council shall consist of 9 men and women members composed of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations and an equal number of members representing the general public. These members shall each be appointed to a 4-year term except that when the council is first appointed, one member from each category of representatives shall be appointed for a 2-year term and one member from each category of representatives shall be appointed for a 3-year term. Such council shall meet upon the call of the executive director or its chairman but no less frequently than 4 times a year and shall aid and advise the executive director in formulating policies and resolving problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. The Employment Security Council may make recommendations to the Legislature for such changes in this chapter as in their opinion will aid in accomplishing the objectives of this chapter. Each member of the Employment Security Council shall be compensated in the amount of \$30 for each day in attendance upon a meeting of the council in addition to reimbursement for any necessary expenses.

6. **Duties of executive director.** The executive director, with the advice and aid of such Employment Security Council, may take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends carry on and publish the results of investigations and research studies.

Sec. 3. R. S., T. 26, § 1194, amended. Section 1194 of Title 26 of the Revised Statutes is amended to read as follows:

§ 1194. **Claims for benefits**

1. **Filing.** Claims for benefits shall be made in accordance with such regulations as the ~~commission~~ **executive director** may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations. Such printed statements shall be supplied by the ~~commission~~ **executive director** to each employer without cost to him.

2. Determination. A representative designated by the ~~commission executive director~~, and in this chapter referred to as a deputy, shall promptly examine the first claim filed by a claimant in each benefit year and shall determine the weekly benefit amount and maximum benefit amount potentially payable to the claimant during such benefit year in accordance with section 1192, subsection 5.

The deputy shall promptly examine all subsequent claims filed and, on the basis of the facts found by him, shall determine whether or not such claim is valid with respect to sections 1192 and 1193, other than section 1192, subsection 5, or shall refer such claim or any question involved therein to an appeal tribunal ~~or to the commission~~, which shall make a determination with respect thereto in accordance with the procedure described in subsection 3, except that in any case in which the payment or denial of benefits will be subject to section 1193, subsection 4, the deputy shall promptly transmit a report with respect to that subsection to the ~~commission executive director~~ upon the basis of which the ~~commission executive director~~ shall notify ~~its~~ his appropriate deputies as to the applicability of that subsection.

The deputy shall determine in accordance with section 1221, subsection 3, paragraph A, the proper employer's experience rating record, if any, against which benefits of an eligible individual shall be charged, if and when paid. The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons therefor. Unless the claimant or any such interested party, within 7 calendar days after such notification was mailed to his last known address, files an appeal from such determination, such determination shall be final and benefits shall be paid or denied in accordance therewith. If new evidence or pertinent facts that would alter such determination become known to the deputy prior to the date such determination becomes final, a redetermination is authorized, but such redetermination must be mailed before the original determination becomes final. If an appeal is duly filed, benefits with respect to the period of any possible disqualification involved shall be paid only after the final determination of the ~~commission board of review~~. If an appeal tribunal affirms a determination of a deputy or the ~~commission board of review~~ affirms a determination of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such determination is finally reversed, no employer's account shall be charged with benefits so paid. If an appeal tribunal disqualifies a claimant for a specified period of time, benefits shall be paid following the expiration of the period of disqualification if the claimant is otherwise qualified to receive them, regardless of any appeal which may thereafter be taken. If the claimant's appeal relates to the weekly benefit amount or maximum benefit amount potentially payable to him in the benefit year, benefits may nevertheless be paid to the extent of the deputy's determination and prior to the final determination of the ~~commission board of review~~.

3. Appeals. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or set aside 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~~ board of review, unless within 15 days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection 5. When an employer appeals from a deputy's decision in favor of a claimant and such appeal is limited solely to the issue as to which of one or more employer experience rating records or the general fund shall be charged, such appeal shall not interrupt the payment of benefits for continuous unemployment.

4. Appeals tribunals. To hear and decide disputed claims, the ~~commission~~ executive director shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of 3 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 2 members shall serve at the pleasure of the ~~commission~~ executive director and be paid a fee of not more than \$10 per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the ~~commission~~ executive director in any case in which he is an interested party. The ~~commission~~ executive director 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. The executive director may transfer to another appeals tribunal the proceedings on any claim pending before an appeals tribunal. Any proceedings so removed shall be heard in accordance with the requirements in subsection 3.

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 of 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 which is not unanimous and by the deputy whose decision has 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 in subsection 3. The commission shall promptly notify the interested parties of its findings and decisions.

5. Board of review. To review decisions of the executive director or an appeals tribunal involving benefits, the Governor shall appoint a board of review. The board of review shall consist of 3 members composed of an employer representative and an employee representative who may fairly be regarded as representative because of their vocation, employment or affiliations and an individual representing the general public. The members shall each be appointed to a 4-year term except that when the board of review is first appointed, the member representing the general public shall be appointed for a 4-year term, the employee representative shall be appointed for a 3-year term and the employer representative shall be appointed for a 2-year term.

The public member shall serve as chairman of the board and the board shall meet from time to time subject to his call. Each member of the board shall be compensated in the amount of \$50 for each day in attendance upon a meeting of the board in addition to reimbursement for any necessary expenses. The executive director shall provide office, supply and personnel facilities sufficient to enable the board to carry out its responsibilities with efficiency and dispatch. The board shall adopt such regulations and procedures as are needed for the orderly performance of its review function.

The board of review shall permit any of the parties to a decision of an appeals tribunal involving benefits including the executive director to initiate a further appeal before it. The board may affirm, modify or set aside any decision or deny an appeal on the basis of the evidence previously submitted in such case or direct the appeal tribunal to take additional evidence and certify it to the board. The board shall promptly notify the interested parties of its findings and decision. If an appeal to the board is denied the decision of the appeal tribunal shall be deemed to be the decision of the board for the purpose of judicial review and shall be subject to judicial review within the time and in the manner provided for with respect to decisions of the board, except that the time limitations shall run from the date on which notice of the order of the board denying the appeal is mailed to the parties. The board of review shall have jurisdiction over all appeals and other proceedings involving benefits pending before the commission on the date this Act becomes effective.

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 regulations prescribed by the ~~commission~~ executive director for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing 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 chapter shall be allowed fees at a rate fixed by the ~~commission~~ executive director to be paid out of the Employment Security Administration Fund, except that no attendance or mileage fee shall be due or payable when a subpoena is issued to compel an employing unit to appear and produce records and reports for the purpose of making a determination as to liability or for the purpose of completing routine reports as provided under this chapter.

8. **Appeal to courts.** Any decision of the commission shall become final ~~10 days after the date of notification or mailing thereof and any party aggrieved thereby shall have 15 days thereafter in which to perfect his or her appeal to the courts.~~ The commission shall be deemed to be a party to any judicial act involving any such action and may be represented in any such judicial action by any qualified attorney who is employed by the commission and designated by it for that purpose, or at the commission's request, by the Attorney General.

8. Appeal to courts. Any decision of the board of review or the executive director shall become final 10 days after the date of notification or mailing thereof and any party aggrieved thereby, including the executive director in the case of a decision of the board of review, shall have 15 days thereafter in which to perfect his appeal to the courts. The executive director shall be deemed to be a party to any judicial act involving any such action and may be represented in any such judicial action by any qualified attorney who is employed by the executive director and designated by him for that purpose, or at the executive director's request by the Attorney General.

9. Appeal. Within 15 days after the decision of the commission has become final, any party aggrieved thereby may appeal by commencing an action in the Superior Court of Kennebec County against the commission for the appeal of its decision, in which action any other party to the proceedings before the commission shall be made a defendant. In such action, a complaint which need not be verified, but which shall state the grounds upon which an appeal is sought, shall be served upon 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 complaint as there are defendants and the commission shall forthwith mail one such copy to each such defendant. With its answer, the commission shall certify and file with said court the original or certified copies of all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The commission may, in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this chapter, the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil actions except actions arising under the Workmen's Compensation Law of this State. An appeal may be taken from the decision of the Superior Court of Kennebec County to the Supreme Judicial Court of the State, in the same manner, but not inconsistent with this chapter, as is provided in civil actions. It shall not be necessary, in any judicial proceeding under this section, to enter objections to the rulings of the commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceedings, the commission shall enter an order in accordance with such determination. An appeal shall not act as a supersedeas or stay unless the commission shall so order.

9. Appeal. Within 15 days after any decision has become final, the executive director or any other party aggrieved thereby who has exhausted his administrative remedies may appeal by commencing an action in the Superior Court of Kennebec County for the appeal of the decision, in which action any other party to the proceedings shall be made a defendant. In such action, a complaint which need not be verified, but which shall state the grounds upon which an appeal is sought shall be served upon each of the defendants. When the executive director is the party appealing, he may mail a copy of the complaint to each defendant and service will be deemed completed. In all

other appeals, the complaint shall be served upon the executive director or upon such person as the executive director 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 complaint as there are defendants and the executive director shall forthwith mail one such copy to each such defendant. With his complaint or his answer, the executive director shall certify and file with said court the original or certified copies of all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The executive director may also, in his discretion, certify to such court questions of law involved in any decision. In any judicial proceeding under this chapter, the findings of the board of review or executive director as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil actions except actions arising under the Workmen's Compensation Law of this State. An appeal may be taken from the decision of the Superior Court of Kennebec County to the Supreme Judicial Court of the State, in the same manner, but not inconsistent with this chapter, as is provided in civil actions. It shall not be necessary, in any judicial proceeding under the provisions of this section, to enter objections to the rulings of the board of review or executive director and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the board of review or executive director shall enter an order in accordance with such determination. An appeal shall not act as a supersedeas or stay unless the board of review or executive director shall so order.

10. Determination may be reconsidered; appeal. The ~~commission~~ executive director may reconsider a determination with respect to the weekly benefit amount and maximum total amount of benefits for a claimant for any given benefit year, if ~~he~~ he finds that an error in computation or identity has occurred in connection therewith, or that wages have been erroneously reported, but no such redetermination shall be made after one year from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. If the maximum amount of benefits is increased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in subsection 2. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to an appeal by claimant with respect to subsequent benefits which may be affected by the redetermination. An appeal may be filed in the manner and subject to the limitations provided in subsection 2.

The ~~commission~~ executive director may reconsider a benefit payment for any particular week or weeks whenever it finds that an error in computation or identity has occurred in connection therewith or that earnings were erroneously reported, but no such redetermination may be made after one year from the date of payment for such week or weeks. Notice of any such redetermina-

tion shall be promptly given to the claimant. Unless the claimant files an appeal from such redetermination within 7 calendar days after such notification was mailed to his last known address such redetermination shall be final and benefits shall be paid or denied in accordance therewith.

Subject to the same limitations and for the same reasons, the ~~commission~~ **executive director** may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal, the ~~commission board of review~~ or a court, and may apply to the body or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.