

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 2103

S. P. 683

In Senate, January 24, 1978

Governor's bill. Referred to the Committee on State Government. Sent down for concurrence.

MAY M. ROSS, Secretary

Presented by Senator McNally of Hancock.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-EIGHT

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**AN ACT to Clarify the Administration of the Department of Manpower Affairs.**

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

Sec. 1. 26 MRSA § 1043, sub-§ 5-A is enacted to read:

5-A. **Bureau of Employment Security.** "Bureau of Employment Security," hereinafter in this chapter called the "bureau," means the former Employment Security Commission. Whenever the context requires, "bureau" shall also mean the 3 bureau members.

Sec. 2. 26 MRSA § 1043, sub-§ 7 is repealed.

Sec. 3. 26 MRSA § 1051, sub-§ 5, as last amended by PL 1977, c. 460, § 2, is further amended to read:

5. **Refusal to repay erroneous payments.** 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~~ bureau the amount erroneously paid to such person may be deducted from any future benefits payable to him under this chapter. Provided that there shall be no recovery of payments from any

person who, in the judgment of ~~at least 2 commissioners~~ **the bureau**, is without fault on his part and where, in the judgment of the ~~commission~~ **bureau**, such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience.

**Sec. 4. 26 MRSA § 1051, sub-§ 6**, as enacted by PL 1977, c. 460, § 3, is amended to read:

**6. Collection of erroneous payments received by nondisclosure or misrepresentation.** Any amounts of benefit payments owed to the ~~commission~~ **bureau** 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~~ **bureau**.

**B.** If any amount of benefit payments owed to the ~~commissioner~~ **bureau** 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~~ **bureau** 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~~ **bureau**, 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 cost, but without interest.

(2) When the certificate is filed, the clerk of the Superior Court shall issue a warrant in favor of the ~~commission~~ **bureau** 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 § 1081, sub-§ 1, as last amended by PL 1975, c. 771, § 285, is repealed and the following enacted in its place:

1. **Bureau.** The Maine Employment Security Commission, as heretofore created, shall be abolished as soon as its successor, as provided for in this chapter, is appointed and qualified. The commission shall be succeeded by the Bureau of Employment Security. The bureau shall consist of 3 members, one of whom shall be a representative of labor, one of whom shall be a representative of employers and one of whom shall be a representative of the general public who shall be impartial and shall be chairman of the bureau. Upon the expiration of the term of office of the labor representative or the employers' representative, his successor shall be appointed by the Governor, subject to review by the Joint Standing Committee on Labor and to confirmation by the Senate to hold office for a term of 6 years or until his successor has been duly appointed and qualified, or during the pleasure of the Governor, except that 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 the term. The public member shall be appointed, reviewed and confirmed according to the same procedures set forth in this subsection. Until the public member takes office, the Commissioner of Manpower Affairs shall serve in his stead. During his term of membership on the bureau, a member shall not engage in any other business, vocation or employment nor serve as an officer or committee member of any political party organization.

Sec. 6. 26 MRSA § 1081, sub-§ 2, as last amended by PL 1971, c. 620, § 3, is repealed and the following enacted in its place:

2. **Salaries.** The members of the bureau shall receive a fixed weekly salary and shall be paid from the Employment Security Administration Fund.

Sec. 7. 26 MRSA § 1082, sub-§ 1, as amended by PL 1971, c. 620, § 6, is further amended to read:

1. **Duties and powers of commissioner.** It shall be the duty of the ~~commission~~ **commissioner** to administer this chapter. ~~He~~ **He** shall have power and authority to adopt, amend or rescind regulations as provided in subsection 2, to employ such persons, make such expenditures, require such reports, make such investigations and take such other action as ~~he~~ **he** deems necessary or suitable to that end. Such regulations shall be effective upon publication in the manner, not inconsistent with this chapter, which the ~~commission~~ **commissioner** shall prescribe. The ~~commission~~ **commissioner** shall determine ~~its own~~ **the** organization of the bureau and methods of procedure in accordance with this chapter, and **the** bureau shall have an official seal which shall be judicially noticed. Not later than the first day of May

of each year, the Commissioner of Manpower Affairs shall submit to the Governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make such recommendations for amendments to this chapter as he deems proper. Such report shall include a balance sheet of the moneys in the Unemployment Compensation Fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the ~~commission~~ commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity and other relevant factors for the longest possible period. Whenever the ~~commission~~ commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it he shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

**Sec. 8. 26 MRSA § 1082, sub-§ 2, is amended to read:**

**2. Regulations.** The ~~commission~~ commissioner shall make, amend or rescind, after public hearing thereon, notice of which has been duly advertised in the state paper reasonable regulations as required by this chapter. Such regulations shall become effective 10 days after a certified copy has been filed with the Secretary of State and notice of filing shall be published in the state paper.

Any person aggrieved by any such regulation, or any act or order of the ~~commission~~ commissioner in enforcement thereof, may appeal to the Superior Court by filing a complaint within 30 days, and it shall fix a time and place of hearing and cause notice thereof to be given the ~~commission~~ commissioner; and after the hearing, the court may affirm or reverse the regulation, act or order of the ~~commission~~ commissioner.

Said ~~commission~~ commissioner may waive the requirements of any such regulations under special circumstances or conditions.

This subsection shall not apply to regulations of the ~~commission~~ bureau governing its personnel.

**Sec. 9. 26 MRSA § 1082, sub-§ 4, as last amended by PL 1975, c. 771, § 286, is further amended to read:**

**4. Personnel.** Subject to other provisions of this chapter, the Commissioner of Manpower Affairs is authorized to appoint and prescribe the duties and powers of, and fix the compensation of such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of his duties, subject to the Personnel Law. The ~~commission~~ commissioner may delegate to any such person so appointed such power and authority as ~~it~~ he deems reasonable and proper for the effective administration of this chapter, and may in ~~its~~ his discretion bond any

person handling moneys or signing checks hereunder. On request on the ~~commissioner~~ **commissioner**, the Attorney General shall represent the ~~commission department, the Bureau of Employment Security~~ and the State in any court action relating to this chapter or to its administration and enforcement. Special counsel may be designated by the Attorney General at the request of the ~~commissioner~~ **commissioner** whose services and expenses, subject to approval by the Governor, shall be paid from the funds provided for the administration of this chapter. The ~~commissioner~~ **commissioner** shall not employ or pay any person who is an officer or committee member of any political party organization.

**Sec. 10.** 26 MRSA § 1162, as amended by PL 1975, c. 462, § 4, is further amended to read:

**§ 1162. Withdrawals**

Moneys shall be requisitioned from the state's account in the Unemployment Trust Fund solely for the payment of benefits and for the payment of refunds pursuant to section 1043, subsection 11, paragraph F, subparagraph (2) and section 1225 in accordance with regulations prescribed by the ~~commissioner~~ **bureau**. The ~~commissioner~~ **bureau** shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amounts standing to this state's account therein, as it deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof, the Treasurer of State shall deposit such moneys in the benefit account and warrants shall be issued for the payment of benefits and refunds solely from such benefit account. All such warrants for the payment of benefits from the benefit account shall be prepared by and shall be signed by the chairman of the ~~commissioner~~ **bureau**, and countersigned by the remaining 2 members of the ~~commissioner~~ **bureau** and when so signed and countersigned and delivered to the payee shall become a check against a designated bank or trust company acting as a depository of the State Government. The ~~commissioner~~ **bureau** shall be the sole judge of the legality or propriety of any award of benefits, or the amount thereof, appearing in any such warrant prepared by the ~~chairman~~ **bureau**, subject only to the right of appeal as provided in section 1194, subsections 8 and 9. Any balance of moneys requisitioned from the Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding period, or, in the discretion of the ~~commissioner~~ **bureau** shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the Unemployment Trust Fund, as provided in section 1161.

**Sec. 11.** 26 MRSA § 1164, 5th to 13th sentences are amended to read:

The moneys in this fund shall be used by the ~~commissioner~~ **commissioner** for the

payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds received for or in the Employment Security Administration Fund on or after January 1, 1943. Such moneys shall be available either to satisfy the obligations incurred by the ~~commission~~ **commissioner** directly or by requesting the Treasurer of State to transfer the required amount from the Special Administrative Expense Fund to the Employment Security Administration Fund. The Treasurer of State shall upon receipt of a written request of the ~~commission~~ **commissioner** make any such transfer. No expenditure of this fund or transfer shall be made unless and until the ~~commission by resolution duly entered in its minutes~~ **commissioner** finds that no other funds are available or can properly be used to finance such expenditures. The ~~commission~~ **commissioner** shall order the transfer of such funds or the payment of any such obligation and such funds shall be paid by the Treasurer of State on requisitions drawn by the ~~commission~~ **commissioner** directing the State Controller to issue his warrant therefor. Any such warrant shall be drawn by the State Controller based upon bills of particulars and vouchers certified by an officer or employee designated by the ~~commission~~ **commissioner**. Such certification shall among other things include a duly certified copy of the ~~resolution~~ **determination** of the ~~commission~~ **commissioner**. The moneys in this fund are specifically made available to replace, within a reasonable time, any moneys received by this State pursuant to section 302 of the Federal Social Security Act as amended, which because of any action or contingency have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the Employment Security Law. The moneys in this fund shall be continuously available to the ~~commission~~ **commissioner** for expenditure in accordance with this section and shall not lapse at any time or be transferred to any other fund except as provided.

**Sec. 12. 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 show 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~~ **bureau** provided that an unemployed individual who is neither able nor available for work due to good cause as determined by the ~~commissioner~~ **bureau** shall be eligible to receive prorated benefits for that portion of the week during which he was able and available.

**Sec. 13. 26 MRSA § 1221, sub- § 10, ¶ E, 1st sentence**, as amended by PL 1971, c. 620, § 11, is further amended to read:

The ~~Commissioner of Manpower Affairs~~ **bureau**, in accordance with such

regulations as ~~he~~ it may prescribe, shall notify each such employer of any determination which is made of its status as an employer and of the effective date of any election which it makes and any termination of such election.

Sec. 14. 26 MRSA § 1230, sub-§ 4, ¶ A, as enacted by PL 1975, c. 462, § 9, is amended to read:

A. The warrant shall have the force and effect of an execution issued upon a judgment in a civil action for the collection of taxes and may be in substantially the following form:

“..... SS. — To the sheriff of our respective counties or  
(Name of County) their deputies

Whereas, the ~~Maine Bureau of Employment Security Commission~~ and the Attorney General have certified that, pursuant to the terms of Title 26, section 1230, subsection 1, of the Revised Statutes, the amount of certain unemployment compensation tax, assessed against..... of.....with interest and penalties, has become final as to law and fact, to wit:

Period	Contributions	Interest	Penalties
Interest will accrue at \$ .00 per day for each day after ... Total \$.....and			
\$..... costs of this proceeding, .....			

We command you, therefore, that the money, goods and chattels of said debtor, in your precinct, or the value thereof in money, you cause to be paid and satisfied unto the ~~Maine Bureau of Employment Security Commission~~, to satisfy the sums aforesaid and.....cents more for this warrant, together with your own fees.

Hereof fail not, and make due return of this warrant, with your doings thereon, unto my office within one year from the date hereof.

.....  
Clerk of Courts, County of  
.....  
Date.....”

Sec. 15. 26 MRSA § 1401, as last amended by PL 1975, c. 771, § 289, is further amended by adding after the first paragraph a new paragraph to read:

**The Commissioner of Manpower Affairs shall receive a fixed weekly salary and shall be paid from the administrative funds of the Bureau of Employment Security, the Bureau of Labor and from other program administrative funds which he is authorized by statute to administer.**



**Sec. 16.** 26 MRSA § 1401, 2nd ¶, 1st sentence, as enacted by PL 1971, c. 620, § 12, is repealed.

**Sec. 17. Amendatory provision.** Wherever in the Revised Statutes, Title 26, chapter 13, section 1044, subsection 2; sections 1046, 1047 and 1051; section 1082, subsections 7, 8, 9 and 10; section 1192, subsections 1, 3 and 6; sections 1193 and 1194; section 1221, subsection 11, paragraphs A and F; and subsections 13 and 14; sections 1222, 1224, 1225, 1226, 1227 and 1230, except as otherwise provided by this Act, the words “Maine Employment Security Commission,” or “commission” appear they shall mean the “Bureau of Employment Security” as defined in section 1.

**Sec. 18. Amendatory provision.** Wherever in the Revised Statutes, Title 26, chapter 13, section 1050; section 1082, subsections 1, 2, 4, 5, 11, 12 and 13; sections 1083, 1141, 1161, 1163 and 1191; section 1195, subsection 1; subsection 1, paragraphs H and I and subsections 7 and 8; section 1221, subsection 3, paragraph A, and subsection 15, except as otherwise provided by this Act, the words “Maine Employment Security Commission,” and “commission” appear they shall mean the “Commissioner of Manpower Affairs.”

**Sec. 19. Transitional provisions.** All existing rules and regulations of the commission currently in effect and operation on the effective date of this Act shall continue in effect until rescinded, amended or changed according to law.

The term “regulation” shall include, but shall not be limited to, any regulation, rule, order, administrative procedure, policy determination, directive, authorization, privilege, form, requirement, designation or agreement.

All appointments and deputizations heretofore made by the commission shall continue in force and effect on the effective date of this Act, unless revoked by the Bureau of Employment Security.

All funds, equipment, property and records of the commission shall remain in the custody and control of the Bureau of Employment Security as required by the Revised Statutes, Title 26, chapter 13.

#### STATEMENT OF FACT

The purpose of this bill is to replace the Maine Employment Security Commission with the Bureau of Employment Security to be appointed by the Governor. This bill also relieves the Commissioner of Manpower Affairs of the burden of acting on the 3-member commission and provides for the appointment of a public member of the bureau to act as its chairman.