

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1449

H. P. 1096

House of Representatives, March 20, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Tuttle of Sanford.

Cosponsors: Mr. Lizotte of Biddeford, Mr. Nadeau of Lewiston and Mr. Doukas of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

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 § 1043, sub-§ 1, ¶ A, sub-¶ (1), as enacted by PL 1977, c. 570, § 1, is amended to read:

(1) 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, **aquacultural or** horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and furbearing animals and wildlife;

Sec. 2. 26 MRSA § 1043, sub-§ 11, ¶ A, sub-¶ (3), as repealed and replaced by PL 1977, c. 570, § 6, is amended to read:

(3) The term "employment" shall include an individual's service, wherever performed within the United States or Canada ~~and in the case of Virgin Islands prior to January 1st of the year following the year in which the U. S. Secretary of Labor approves the unemployment compensation law of the Virgin Islands under section 3304 (a) of the Internal Revenue Code of 1954~~ in the employ of an American employer, other than service which is deemed

employment under the unemployment compensation law of any other state ~~the Virgin Islands~~ or Canada, and the place from which the service is directed or controlled is in this State.

Sec. 3. 26 MRSA § 1043, sub-§ 11, ¶ A-1, sub-¶ (4), first ¶, as amended by PL 1977, c. 570, § 8, is further amended to read:

(4) The service of an individual who is a citizen of the United States, performed outside the United States, after December 31, 1971, except in Canada, ~~and in the case of the Virgin Islands after December 31, 1971, and prior to January 1st of the year following the year in which the U. S. Secretary of Labor approves the unemployment compensation law of the Virgin Islands under section 3304 (a) of the Internal Revenue Code of 1954~~ in the employ of an American employer, other than service which is deemed employment under paragraph A, if:

Sec. 4. 26 MRSA § 1043, sub-§ 16, ¶ C, as repealed and replaced by PL 1977, c. 570, § 17, is repealed.

Sec. 5. 26 MRSA § 1043, sub-§ 17, ¶¶ A and B, as amended by PL 1975, c. 201, §§ 1 and 2, are further amended to read:

A. An individual, including corporate officers, 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, except that remuneration payable or received as holiday pay shall not be deemed wages for the purpose of this subsection and except that any amounts received from the Federal Government by members of the National Guard and organized reserve, including base pay and allowances, or any amounts received ~~by~~ **as a volunteer firemen fireman**, shall not be deemed wages for the purpose of this subsection.

B. An individual, including corporate officers, shall be deemed "partially unemployed" in any week of less than full-time work if his wages payable from any source for such week are not \$5 or more in excess of the weekly benefit amount he would be entitled to receive if totally unemployed and eligible, except that remuneration payable or received as holiday pay shall not be deemed wages for the purpose of this subsection and except that any amounts received from the Federal Government by members of the National Guard and organized reserve, including base pay and allowances, or any amounts received as a voluteer fireman, **or as an elected member of the Legislature**, shall not be deemed wages for the purpose of this subsection.

Sec. 6. 26 MRSA § 1044, sub-§ 1, last sentence is amended to read:

Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be ~~punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not more than 6 months, or by both~~ **guilty of a Class E crime.**

Sec. 7. 26 MRSA § 1044, sub-§ 2, 4th sentence, as enacted by PL 1965, c. 294, is repealed and the following enacted in its place:

Any person who violates any provision of this subsection shall be guilty of a Class E crime.

Sec. 8. 26 MRSA § 1044, sub-§ 2, last sentence is repealed.

Sec. 9. 26 MRSA § 1051, sub-§§ 1-3, are repealed and the following enacted in their place:

1. False statement or representation. A person is guilty of unemployment fraud if he makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact:

A. To obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or of the Federal Government;

B. To prevent or reduce the payment of unemployment benefits to any individual;

C. To avoid becoming or remaining an employer under this chapter; or

C. To avoid or reduce any contribution or other payment required from an employing unit under this chapter.

Each false statement or representation or failure to disclose a material fact shall constitute a separate offense. Unemployment fraud is a Class E crime.

2. Separate offense. Any person who willfully fails or refuses to make any contributions or other payments, to furnish any reports required by this chapter or to produce or permit the inspection or copying of records as required shall be guilty of a Class E crime. Each failure or refusal shall constitute a separate offense.

3. Class E crime. Any person who willfully violates any provision of this chapter or any 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 guilty of a Class E crime.

Sec. 10. 26 MRSA § 1082, sub-§ 7, last sentence is amended to read:

Any person who violates any provision of this subsection shall be ~~punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not more than 90 days, or by both~~ guilty of a Class E crime.

Sec. 11. 26 MRSA § 1082, sub-§ 9-A is enacted to read:

9-A. Refusal to appear. 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 of the commission, the appeal tribunal or the duly authorized representative of either of them shall be guilty of a Class E crime. Whenever a person refuses to obey a subpoena duly issued by the commission, the appeal tribunal or the duly authorized representative of either of them, any court of this State within the jurisdiction of which the person resides or transacts business, shall have jurisdiction to issue to that person an order requiring him to appear and produce evidence or testimony and any failure to obey that order may be punished by the court as contempt thereof.

Sec. 12. 26 MRSA § 1191, sub-§ 3, first sentence, as amended by PL 1975, c. 710, § 1-A, is further amended to read:

On and after April 1, 1966, each eligible individual who is partially unemployed in any week shall be paid with respect to such week a partial benefit in an amount equal to his weekly benefit amount less that part of his earnings paid or payable to him with respect to such week which is in excess of \$10 plus any fraction of a dollar, except that remuneration payable or received as holiday pay shall not be deemed wages for the purpose of this subsection and except that any amounts received from the Federal Government by members of the National Guard and organized reserve, including base pay and allowances or any amounts received by as a volunteer firemen fireman or by as elected members of the Legislature, shall not be deemed wages for the purpose of this subsection.

Sec. 13. 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 full-time 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 the commission; 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. 14. 26 MRSA § 1192, sub-§ 7, ¶ D is enacted to read:

D. With respect to weeks of unemployment beginning after June 30, 1979, benefits shall be denied to an individual who performed services in an educational institution while in the employ of an educational service agency for any week which commences during a period described in paragraphs A, B and C if that individual performs any services described in paragraphs A or B in the first of these periods, as specified in the applicable paragraph, and there is a contract or a reasonable assurance as applicable in the appropriate paragraph, that the individual will perform these services in the 2nd of these periods, as applicable in the appropriate paragraph. For purposes of this paragraph the term "educational service agency" means a governmental agency or

governmental entity which is established and operated exclusively for the purposes of providing these services to one or more educational institutions.

Sec. 15. 26 MRSA § 1193, sub-§ 1, ¶ A, last sentence, as repealed and replaced by PL 1977, c. 472, § 1-A, is amended to read:

Leaving work shall not be considered voluntary without good cause when it is caused by the illness or disability of the claimant or of his immediate family and the claimant took all reasonable precautions to protect his employment status by having promptly notified his employer as to the reasons for his absence and by promptly requesting reemployment when he is again able to resume employment; nor shall leaving work be considered voluntary without good cause if the leaving was necessary for the claimant to accompany, follow or join his spouse in a new place of residence and he can clearly show **within 7 days** upon arrival at the new place of residence an attachment to the new labor market and is in all respects able, available and actively seeking suitable work;

Sec. 16. 26 MRSA § 1193, sub-§ 2, ¶ A is enacted to read:

A. For the duration of any period for which he has been suspended from his work by his employer as discipline for misconduct or other good cause, if so found by the commission.

Sec. 17. 26 MRSA § 1195, sub-§ 1, ¶ A, sub-¶ (3), as amended by PL 1977, c. 570, § 23, is further amended to read:

(3) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, or under such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada ~~or the Virgin Islands~~; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he shall be considered an exhaustee if the other provisions of this definition are met; provided that the reference in this subparagraph to the Virgin Islands shall be applicable effective on the day, on which the U. S. Secretary of Labor approves under section 3304 (a) of the Internal Revenue Code of 1954, an unemployment compensation law submitted to the Secretary by the Virgin Islands for approval.

Sec. 18. 26 MRSA § 1225, sub-§ 3, as enacted by PL 1975, c. 462, § 9, is amended by adding at the end a new sentence to read:

If it is shown to the satisfaction of the commission that the delinquency arose through no fault of the employer, no assessment of interest shall be made.

STATEMENT OF FACT

The purposes of this bill are:

1. To repeal certain references to the Virgin Islands as the unemployment law of the Virgin Islands was approved by the United States Secretary of Labor and as of January 1, 1978, comes within the definition of State;
2. To provide consistency in all sections with reference to earnings as a volunteer fireman or as an elected member of the Legislature;
3. To conform all penalty provisions to the Criminal Code;
4. To provide for the enforcement of subpoenas issued by the commission;
5. To clarify the provisions relating to availability for work and misconduct;
and
6. To enact a provision relative to payment of unemployment benefits between terms and within terms to employees of an educational service agency.