

MAINE STATE LEGISLATURE

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New Draft of: H. P. 1247, L. D. 1547
FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1658

H. P. 1470

House of Representatives, June 4, 1979

Reported by Mrs. Kany from the Committee on State Government. Printed
under Joint Rules No. 2

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

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

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

Sec. 1. 2 MRSA § 6, sub-§ 5, as repealed and replaced by PL 1977, c. 697, § 1, is amended by adding at the end the following:

Chairman, Maine Employment Security Commission.

Sec. 2. 2 MRSA § 6, sub-§ 6, as repealed and replaced by PL 1977, c. 697, § 1, is amended by adding at the end the following:

Members, Maine Employment Security Commission.

Sec. 3. 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 agency.

Sec. 4. 26 MRSA § 1043, sub-§ 7 is amended to read:

7. Commission. "Commission" means the 3-member Employment Security Commission.

Sec. 5. 26 MRSA § 1044, sub-§ 2, 3rd sentence, as enacted by PL 1965, c. 294, is amended to read:

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 such court results in a reversal, in whole or in part, of the decision appealed from, the fees for such service shall be paid by the ~~commission~~ **commissioner** from ~~its~~ **his** administrative fund.

Sec. 6. 26 MRSA § 1046 is amended to read:

§ 1046. Nonliability

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, ~~the bureau~~ nor the commission shall be liable for any amount in excess of such sums.

Sec. 7. 26 MRSA § 1047 is amended to read:

§ 1047. Information privileged

All information transmitted to ~~the bureau~~, the commission or its duly authorized representatives pursuant to this chapter shall be absolutely privileged and shall not be made the subject matter or basis in any action of slander or libel in any court in this State.

Sec. 8. 26 MRSA § 1050, 2nd, 3rd, 4th and 5th sentences are amended to read:

The ~~commission~~ **commissioner** shall thereupon requisition from the Unemployment Trust Fund all moneys therein standing to ~~its~~ **his** credit and shall direct the Treasurer of State to deposit such moneys, together with any other moneys in the fund, as a special fund in any banks or public depositories in this State in which general funds of the State may be deposited, and to hold such moneys for such disposition as the Legislature shall prescribe. The ~~commission~~ **commissioner** shall thereupon refund, as the Legislature shall prescribe, without interest and in accordance with regulations prescribed by ~~it~~ **the commission**, to each person or concern by whom contributions have been paid, their pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the ~~commission~~ **commissioner** to pay for the costs of making such refunds. When the ~~commission~~ **commissioner** shall have executed the duties prescribed and performed such other acts as are incidental to the termination of ~~its~~ **his** duties under this chapter, the Governor shall by proclamation declare that this chapter shall cease to be operative.

Sec. 9. 26 MRSA § 1051, sub-§ 6, first sentence, as enacted by PL 1977, c. 460, § 3, is amended to read:

Any amounts of benefit payments owed to the ~~commission~~ **commissioner** by any individual may be collected by any of the following methods.

Sec. 10. 26 MRSA § 1051, sub-§ 6, ¶ B, sub-¶ (1), as enacted by PL 1977, c. 460, § 3, is amended to read:

(1) The ~~commission~~ **commissioner** 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 costs, but without interest.

Sec. 11. 26 MRSA § 1051, sub-§ 6, ¶ B, sub-¶ (2), first sentence, as enacted by PL 1977, c. 460, § 3, is amended to read:

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.

Sec. 12. 26 MRSA c. 13, sub-chapter II, 2nd line is repealed and the following enacted in its place:

ADMINISTRATION

Sec. 13. 26 MRSA § 1082, sub-§ 1, as last repealed and replaced by PL 1977, c. 696, § 373, is repealed and the following enacting in its place:

1. **Powers and duties of the commissioner.** Except as otherwise provided, it shall be the duty of the Commissioner of Manpower Affairs to administer this chapter through an organization to be known as the Bureau of Employment Security. The commissioner shall have the power and authority to employ such person, make such expenditures, require such reports, make such investigations and take such other actions as he deems necessary or suitable to that end.

Sec. 14. 26 MRSA § 1082, sub-§ 2, as repealed and replaced by PL 1977, c. 675, § 7; c. 694, § 469; c. 696, § 375 and as last amended by PL 1979, c. 127, § 163, is repealed and the following enacted in its place:

2. **Powers and duties of the commission.** In addition to other powers and duties provided in this chapter, the commission is authorized to adopt, amend or rescind rules and regulations, require reports, make investigations and take other actions as it deems necessary or suitable to carry out its duties. The procedures of the commission shall be governed by the Maine Administrative Procedure Act, Title 5, chapter 375. The commission may appoint such deputies, hearings examiners or appeals tribunals as it deems necessary to examine, hear and decide claims in accordance with section 1194. Each member of the commission shall have access to any information, memoranda, reports or statistical data which is in the possession of or which has been prepared by any division of the Department of Manpower Affairs and which relates to the administration of this chapter. The commission shall have an official seal which shall be judicially noticed. 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.

Sec. 15. 26 MRSA § 1082, sub-§ 3, as amended by PL 1971, c. 620; § 7, is further amended to read:

3. Publication. The Commissioner of Manpower Affairs shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations, his annual reports to the Governor and any other material the **commissioner of the** commission deems relevant and suitable, and shall furnish the same to any person upon application therefor.

Sec. 16. 26 MRSA § 1082, sub-§ 4, first 2 sentences, as repealed and replaced by PL 1977, c. 675, § 8, are amended to read:

Subject to other provisions of this chapter, the Commissioner of Manpower Affairs ~~with the advice and consent of the commission~~ 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 commissioner ~~with the advice and consent of the commission~~ may delegate to any such person so appointed such power and authority as is reasonable and proper for the effective administration of this chapter, and may in his discretion bond any person handling moneys or signing checks hereunder.

Sec. 17. 26 MRSA § 1082, sub-§ 7, 2nd and 3rd sentences, are amended to read:

Such records shall be open to inspection and be subject to being copied by the ~~commission~~ **commissioner** or ~~its~~ **his** authorized representatives at any reasonable time and as often as may be necessary. The ~~commission~~ **commissioner** may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the ~~commission~~ **commissioner** deems necessary for the effective administration of this chapter.

Sec. 18. 26 MRSA § 1141, first sentence, as amended by PL 1977, c. 675, § 14, is further amended to read:

The Unemployment Compensation Fund, as heretofore created, shall be a special fund, separate and apart from all public moneys or funds of this State, and ~~except as otherwise provided in section 1162~~ shall be administered by the commissioner exclusively for the purposes of this chapter.

Sec. 19. 26 MRSA § 1162, as amended by PL 1975, c. 462, § 4, is repealed and the following enacted in its place:

§ 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 commission. The commissioner shall from time to time requisition from the Unemployment Trust Fund the amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of the benefits and refunds for a reasonable future period. Upon receipt thereof the Treasurer of State shall deposit the moneys in the benefit account and warrants shall be issued for the payment of benefits and refunds solely from the benefit account. All warrants issued for the payment of benefits and refunds shall bear the signature of the commissioner or his duly authorized agent for that purpose. When so signed and delivered to the payee, the warrants shall become a check against a designated bank or trust company acting as a depository of the State Government. The commission shall be the final judge of the legality or propriety of any award of benefits, or the amount thereof, appearing in any such warrant prepared by the commissioner, 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 the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or, in the discretion of the commissioner, 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. 20. 26 MRSA § 1164, 6th sentence, as amended by PL 1977, c. 675, § 17, is further amended to read:

Such moneys shall be available either to satisfy the obligations incurred by the Employment Security Commission or the bureau 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.

Sec. 21. 26 MRSA § 1192, first sentence, is amended to read:

An unemployed individual shall be eligible to receive benefits with respect to any week only if ~~the commission finds that~~:

Sec. 22. 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 section 2 is himself actively seeking work in accordance with the regulations of the commission; provided that an unemployed individual who is neither able nor available for work due to good cause as determined by the ~~commissioner~~ **commission** shall be eligible to receive prorated benefits for that portion of the week during which he is able and available.

Sec. 23. 26 MRSA § 1221, sub-§ 1, ¶ A, 2nd sentence, is amended to read:

Such contributions shall become due and be paid by each employer to the ~~commission~~ **bureau** for the fund in accordance with such regulations as the commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

Sec. 24. 26 MRSA § 1221, sub-§ 4, ¶ E, first sentence, is amended to read:

The ~~commission~~ **commissioner**:

Sec. 25. 26 MRSA § 1221, sub-§ 10, ¶ E, first sentence, as amended by PL 1971, c. 620, § 11, is further amended to read:

The Commissioner of Manpower Affairs, in accordance with such regulations as ~~he~~ **the commission** 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. 26. 26 MRSA § 1221, sub-§ 11, ¶ A, as amended by PL 1977, c. 570, § 32, is further amended to read:

A. At the end of each period as determined by the commission, the ~~commission~~ **commissioner** shall assess each employer or governmental entity who has elected to make payments in lieu of contributions an amount as provided in subsection 10.

Sec. 27. 26 MRSA § 1221, sub-§ 11, ¶ D, as amended by PL 1977, c. 570, § 32, is further amended to read:

D. The amount due specified in any assessment from the ~~commission~~ **commissioner** shall be conclusive on the employer or governmental entity, unless not later than 15 days after the assessment was mailed to the last known address, the employer or governmental entity files an application for redetermination by the commission setting forth the grounds for such application.

Sec. 28. 26 MRSA § 1221, sub-§ 12, first sentence, as enacted by PL 1971, c. 538, § 43, is amended to read:

In the discretion of the commission, any employer who elects to become liable for payments in lieu of contributions shall be required within 60 days after the effective date of his election to execute and file with the ~~commission~~ **bureau** a surety bond or he may elect to deposit with the ~~commission~~ **bureau** money or securities as approved by the commission; upon failure of an employer to comply with this subsection within the time limits imposed, the commission may terminate such employer's election to make payments in lieu of contributions and such termination shall be effective for the current and next calendar year.

Sec. 29. 26 MRSA § 1221, sub-§ 13, first sentence, as repealed and replaced by PL 1977, c. 570, § 34, is amended to read:

The State or any political subdivision or any of their instrumentalities shall pay contributions in accordance with subsections 1 and 2, unless a governmental entity elects to pay to the ~~commission bureau~~ for the unemployment compensation fund, in lieu of contributions, an amount equal to the amount of regular benefits and $\frac{1}{2}$ of extended benefits paid that are attributable to service in the employ of such governmental entity, except that with respect to benefits paid for weeks of unemployment after January 1, 1979, such governmental entity must make payments in lieu of contributions as provided in subsection 10.

Sec. 30. 26 MRSA § 1222, sub-§ 2, ¶ B, as amended by PL 1971, c. 538, § 47, is further amended to read:

B. The ~~commission commissioner~~ may upon ~~its~~ **his** own motion terminate coverage of any employer, who became an employer under section 1043, subsection 9, paragraph H, when the ~~commission commissioner~~ finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed 4 or more individuals in employment subject to this chapter; and the ~~commission commissioner~~ may, upon ~~its~~ **his** own motion terminate the coverage of an employing unit which had become an employer by virtue of subsection 3, as of January 1st of any calendar year when such employing unit has, by virtue of approval of its election to become a subject employer, been such a subject employer for the 2 or more preceding calendar years.

Sec. 31. 26 MRSA § 1222, sub-§ 2, ¶ D, as enacted by PL 1971, c. 538, § 47, is amended to read:

D. The ~~commission commissioner~~ may upon ~~its~~ **his** own motion terminate coverage of any employer when the ~~commission commissioner~~ finds that there were no 20 different weeks within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this chapter and did not pay wages of \$1,500 in any calendar quarters; and the ~~commission commissioner~~ may upon ~~its~~ **his** own motion terminate the coverage of an employing unit which had become an employer by virtue of subsection 3, paragraphs A and B as of January 1st of any calendar year when such employing unit has, by virtue of approval of its election to become a subject employer, been such a subject employer for the 2 or more preceding calendar years.

Sec. 32. 26 MRSA § 1224, first sentence is amended to read:

All employers, exempt from the weekly payment of wage law of this State, shall report to the ~~commission commissioner~~ all accrued wages payable for employment during the calendar year up to and including December 31st of such calendar year under such regulations as the commission may prescribe.

Sec. 33. 26 MRSA § 1225, sub-§ 1, as enacted by PL 1975, c. 462, § 9, is amended to read:

1. Assessment procedure. If any employer files reports for the purpose of determining the amount of contribution due, but fails to pay any part of the contribution, interest or penalties due thereon as prescribed by the ~~commission commissioner~~, or fails to file such reports when due, or files an incorrect or insufficient report, the Director of Unemployment Compensation, ~~or if a member of the commission is acting in that capacity, a representative of the commission duly authorized by the commission to do so~~ may assess the contribution and any interest or penalties due on the basis of the information submitted by the employer or on the basis of an estimate as to the amount due and shall give written notice of the assessment to the employer.

Sec. 34. 26 MRSA § 1225, sub-§ 2, as enacted by PL 1975, c. 462, § 9, is amended to read:

2. Jeopardy assessment. If the Director of Unemployment Compensation, ~~or if a member of the commission is acting in that capacity, a representative of the commission duly authorized by the commission to do so~~ determines that the collection of any contribution, interest or penalty under this subchapter, as amended, will be jeopardized by delay, he may immediately assess such contributions, interest or penalties, whether or not the time prescribed by law or any regulations issued pursuant to section 1082, subsection 2, of this chapter for making reports and paying such contributions has expired, and shall give written notice of assessment to the employer. In such cases, the right to appeal to the commission, as provided in section 1226, shall be conditioned upon payment of the contributions, interest or penalties so assessed, or upon giving appropriate security to the ~~commission commissioner~~ for the payment thereof.

Sec. 35. 26 MRSA § 1225, sub-§ 3, first sentence, as enacted by PL 1975, c. 462, § 9, is amended to read:

Contributions which are unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of 1% per month from and after the due date, until payment is received by the ~~commission bureau~~.

Sec. 36. 26 MRSA § 1225, sub-§ 4, first sentence, as enacted by PL 1975, c. 462, § 9, is amended to read:

If quarterly contributions are not paid when due, the ~~commission commissioner~~ shall assess a penalty of 5% of the amount of the contributions, but such penalty shall not be less than \$5 nor more than \$100.

Sec. 37. 26 MRSA § 1225, sub-§ 5, first sentence, as enacted by PL 1975, c. 462, § 9, is amended to read:

If not later than 4 years after the date on which any contributions or interest thereon become due, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and if the commission shall determine that such contributions, or interest or any portion thereof was erroneously collected, the

commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the ~~commission~~ **commissioner** shall refund said amount, without interest, from the fund.

Sec. 38. 26 MRSA § 1226, § 1, ¶ A, first sentence, as enacted by PL 1975, c. 462, § 9, is amended to read:

An employer may appeal an assessment made under section 1225 to the commission by filing an appeal, in accordance with such regulations as the commission shall prescribe, within 15 days after notification of the assessment is mailed to the employer's last known address as it appears in the records of the ~~commission bureau~~ or, in the absence of such mailing, within 15 days after notification is delivered.

Sec. 39. 26 MRSA § 1226, sub-§ 1, ¶ B, first sentence, as enacted by PL 1975, c. 462, § 9 is amended to read:

Upon appeal from an assessment, the commission shall, after affording the appellant and the ~~commission's commissioner's~~ designated representative a reasonable opportunity for a fair hearing, make finding of facts and render its decision, which may affirm, modify or reverse the action of its designated representative.

Sec. 40. 26 MRSA § 1230, sub-§ 1, as enacted by PL 1975, c. 462, § 9, is amended to read:

1. Request for warrant. If any contribution required to be paid and any interest or penalty or both payable to the ~~commission commissioner~~ under this chapter is not paid when due and has become final as to law and fact under section 1226, the ~~commission commissioner~~ may, within 3 years thereafter, notify the employer who is liable according to the records of the ~~commission bureau~~, specifying the amount due and demanding payment within 12 days after the date the notice is mailed. The notice shall inform the employer that if he does not make the payment as demanded, the ~~commission commissioner~~ will certify to the Attorney General the amount due for collection by warrant as provided in this section. If the employer does not make payment as demanded within the 12-day period or within an extended period which the ~~commission commissioner~~ may allow, the ~~commission commissioner~~ shall certify to the Attorney General the amount due for collection. The Attorney General may file in the office of the clerk of the Superior Court of Kennebec County, or any county, a certificate addressed to the clerk specifying the contribution required to be paid, interest and penalties due, the name and address of the liable employer as it appears on the records of the ~~commission bureau~~, the facts whereby the amount has become final as to law and fact and the notice given, and requesting that a warrant be issued against the employer for the contribution required to be paid, together with interest and penalties, as set forth in the certificate, and with costs. If the ~~commission commissioner~~ has reasonable grounds to believe that the employer may abscond

within the 12-day period, the ~~commission~~ **commissioner** may certify to the Attorney General the amount due for collection without notice to the employer.

Sec. 41. 26 MRSA § 1230, sub-§ 4, ¶ A, 2nd and 4th ¶¶, as enacted by PL 1975, c. 462, § 9, are amended to read:

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:

We command you, therefore, that of 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.

Sec. 42. 26 MRSA § 1230, sub-§ 4, ¶ C, as enacted by PL 1975, c. 462, § 9, is amended to read:

C. The remedy provided by this section is in addition to or an alternative to all other remedies given to the ~~commission~~ **or the commissioner** in this chapter.

Sec. 43. Amendatory provision. Wherever in the Revised Statutes, Title 26, section 1043, subsection 11, paragraphs C and E; section 1051, subsection 4; section 1221, subsections 10 and 14; and section 1230, subsection 2, except as otherwise provided by this Act, the word "commission" appears it shall be changed to "bureau" meaning the "Bureau of Employment Security" as defined in section 2.

Sec. 44. Amendatory provision. Wherever in the Revised Statutes, Title 26, section 1043, subsection 11, paragraph F, subparagraphs (2), (3) and (17); section 1082, subsection 14, paragraphs A and B; sections 1111 and 1112; section 1221, subsection 5, paragraph A; section 1221, subsection 6, paragraph A; section 1222, subsection 2, paragraphs A and C; section 1222, subsection 3, paragraphs A and B; section 1225, subsection 6; and section 1228, except as otherwise provided by this Act, the word "commission" appears it shall be changed to "commissioner" meaning the "Commissioner of Manpower Affairs."

Sec. 45. Amendatory provision. Wherever in the Revised Statutes, Title 26, section 1193, subsection 1, paragraphs A and B; section 1193, subsections 2 and 3; section 1193, subsection 4; section 1195, subsection 3; and section 1221, subsection 3, paragraph A, except as otherwise provided by this Act, the word "commission" appears it shall be changed to "deputy."

STATEMENT OF FACT

The purpose of this new draft is to clarify policy making and administration under the Employment Security Law. Very generally, this new draft:

1. Roles — distinguishes the roles of the Commissioner of Manpower Affairs and the 3-member Employment Security Commission. Corrects apparent inconsistencies in present statute as to their responsibilities;

2. Employment Security Commission — the 3-member commission retains certain discretionary authorities, including all rule-making authority under the Employment Security Law, in addition to its role as a hearing body;

3. Commissioner of Manpower Affairs — provides that the commissioner shall administer the law and rules, through the Bureau of Employment Security which he supervises; permits the commissioner to appoint all employees of the bureau, except for deputies, hearing examiners and members of appeals tribunals all of whom shall be appointed by the commission; and

4. Bureau of Employment Security — renames the employment security administrative organization formerly identified as the Employment Security Commission to be the Bureau of Employment Security.