

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 624

6
7 H.P. 442

House of Representatives, February 20, 1985

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

10 EDWIN H. PERT, Clerk

Presented by Representative Whitcomb of Waldo.

11 Cosponsored by Representative Lander of Greenville, Senator Twitchell
of Oxford and Speaker Martin of Eagle Lake.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT Concerning Payment of Unemployment
18 Benefits to Persons Employed in the
19 United States for only a Brief Period
20 of Time.
21

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

24 26 MRSA §1043, sub-§11, ¶F, as amended by PL
25 1981, c. 633, is further amended to read:

26 F. The term "employment" shall not include:

27 (1) Service performed in the employ of this
28 State, or of any political subdivision
29 thereof, or of any instrumentality of this
30 State or its political subdivisions, except
31 as provided by this subsection;

32 (2) Service performed in the employ of the
33 United States Government or an instrumental-
34 ity of the United States immune under the

1 Constitution of the United States from the
2 contributions imposed by this chapter, ex-
3 cept that on and after January 1, 1940 to
4 the extent that the Congress of the United
5 States has permitted states to require any
6 instrumentalities of the United States to
7 make payments into an unemployment compensa-
8 tion fund under a state unemployment compen-
9 sation or employment security law, all of
10 the provisions of this chapter shall be ap-
11 plicable to such instrumentalities and to
12 services performed for such instrumentalities,
13 in the same manner, to the same extent
14 and on the same terms as to all other em-
15 ployers, employing units, individuals and
16 services. If this State shall not be certi-
17 fied for any year by the Secretary of Labor
18 under section 3304 of the Federal Internal
19 Revenue Code, the payments required of such
20 instrumentalities with respect to such year
21 shall be refunded by the commissioner from
22 the fund in the same manner and within the
23 same period as is provided in section 1225,
24 subsection 5, with respect to contributions
25 erroneously collected;

26 (3) Service with respect to which unemploy-
27 ment compensation is payable under an unem-
28 ployment compensation system or employment
29 security system established by an Act of
30 Congress. The commissioner is authorized and
31 directed to enter into agreements with the
32 proper agencies under such Act of Congress,
33 which agreements shall become effective 10
34 days after publication thereof in the manner
35 provided in section 1082, subsection 2, for
36 regulations, to provide reciprocal treatment
37 to individuals who have, after acquiring po-
38 tential rights to benefits under this chap-
39 ter, acquired rights to unemployment compen-
40 sation under such Act of Congress, or who
41 have, after acquiring potential rights to
42 unemployment compensation under such Act of
43 Congress, acquired rights to benefits under
44 this chapter;

- 1 (4) Agricultural labor as defined in sub-
2 section 1, except as provided in paragraph
3 A-2;
- 4 (4-1) Agricultural labor in the harvesting
5 of apples, if performed by an individual who
6 is an alien, other than a citizen of a con-
7 tiguous country with which the United States
8 has an agreement with respect to unemploy-
9 ment compensation, admitted to the United
10 States to perform agricultural labor pursu-
11 ant to the United States Immigration and
12 Nationality Act, Sections 214(c) and 101(a)
13 (15) (H);
- 14 (4-2) Labor in a seasonal industry, if per-
15 formed by an individual who is an alien,
16 other than a citizen of a contiguous country
17 with which the United States has an agree-
18 ment with respect to unemployment compensa-
19 tion, admitted to the United States to per-
20 form labor in a seasonal industry pursuant
21 to the United States Immigration and Nation-
22 ality Act;
- 23 (5) Domestic service in a private home, ex-
24 cept as provided in paragraph A-3;
- 25 (6) Service performed by an individual in
26 the employ of his son, daughter or spouse,
27 and service performed by a child under the
28 age of 18 in the employ of his father or
29 mother;
- 30 (6-1) Services performed by a student at-
31 tending an elementary or secondary school
32 while participating in a cooperative program
33 of education and occupational training;
- 34 (9) Service performed with respect to which
35 unemployment compensation is payable under
36 the Railroad Unemployment Insurance Act (52
37 Stat. 1094);
- 38 (10) Services performed in the employ of
39 any other state, or any political subdivi-
40 sion thereof, or any instrumentality of any

1 one or more of the foregoing which is wholly
2 owned by one or more states or political
3 subdivisions; and any services performed in
4 the employ of any instrumentality of one or
5 more other states or their political subdivi-
6 sions to the extent that the instrumentality
7 is, with respect to such service, immune
8 under the Constitution of the United States
9 from the tax imposed by section 3301 of the
10 Federal Internal Revenue Code; except as
11 provided in paragraph A-1, subparagraph (1);

12 (11) Service performed in any calendar
13 quarter in the employ of any organization
14 exempt from income tax under section 501(a)
15 of the Federal Internal Revenue Code, other
16 than an organization described in section
17 401(a) or under section 521, of such Code,
18 if the remuneration for such service is less
19 than \$150;

20 (16) Service performed in the employ of a
21 foreign government, including service as a
22 consular or other officer or employee or a
23 nondiplomatic representative;

24 (17) Service performed in the employ of an
25 instrumentality wholly owned by a foreign
26 government:

27 (a) If the service is of a character
28 similar to that performed in foreign
29 countries by employees of the United
30 States Government or an instrumentality
31 thereof; and

32 (b) If the commissioner finds that the
33 United States Secretary of State has
34 certified to the United States Secretary
35 of the Treasury that the foreign
36 government, with respect to whose instrumentality
37 exemption is claimed, grants an equivalent exemption with respect
38 to similar service performed in
39 the foreign country by employees of the
40 United States Government and of instrumentalities thereof;

1 (18) Service performed as a student nurse
2 in the employ of a hospital or a nurses'
3 training school by an individual who is en-
4 rolled and is regularly attending classes in
5 a nurses' training school chartered or ap-
6 proved pursuant to state law; and service
7 performed as an intern in the employ of a
8 hospital by an individual who has completed
9 a 4 years' course in a medical school
10 chartered or approved pursuant to state law;

11 (19) Service performed by an individual for
12 a person as a real estate broker, real es-
13 tate salesman, an insurance agent or as an
14 insurance solicitor, if all such service
15 performed by such individual for such person
16 is performed for remuneration solely by way
17 of commission;

18 (20) Service performed by an individual un-
19 der the age of 18 in the delivery or distri-
20 bution of newspapers or shopping news, not
21 including delivery or distribution to any
22 point for subsequent delivery or distribu-
23 tion;

24 (21) Service performed in the employ of any
25 organization which is excluded from the term
26 "employment" as defined in the Federal Unem-
27 ployment Tax Act solely by reason of section
28 3306(c)(7) or (8) if:

29 (a) Service performed in the employ of
30 a church or convention or association
31 of churches, or an organization which
32 is operated primarily for religious
33 purposes and which is operated, super-
34 vised, controlled or principally sup-
35 ported by a church or convention or as-
36 sociation of churches;

37 (b) Service performed by a duly or-
38 dained, commissioned or licensed minis-
39 ter of a church in the exercise of his
40 ministry or by a member of a religious
41 order in the exercise of duties re-
42 quired by such order;

1 (c) Prior to January 1, 1978, service
2 performed in the employ of a school
3 primarily operated as an elementary,
4 secondary or preparatory school for
5 higher education, which is not an in-
6 stitution of higher education;

7 (d) Service performed in a facility
8 conducted for the purpose of carrying
9 out a program of rehabilitation for in-
10 dividuals whose earning capacity is im-
11 paired by age or physical or mental de-
12 ficiency or injury or providing remu-
13 nerative work for individuals who, be-
14 cause of their impaired physical or
15 mental capacity, cannot be readily ab-
16 sorbed in the competitive labor market
17 by an individual receiving such reha-
18 bilitation or remunerative work;

19 (e) Service performed as part of an
20 unemployment work-relief or
21 work-training program assisted or fi-
22 nanced in whole or in part by any fed-
23 eral agency or an agency of a state or
24 political subdivision thereof by an in-
25 dividual receiving such work-relief or
26 work-training;

27 (f) Service performed in the employ of
28 a hospital as defined in subsection 26
29 by a patient of such hospital;

30 (g) Services performed prior to Janu-
31 ary 1, 1978, for a hospital in a state
32 prison or other state correctional in-
33 stitution by an inmate of such prison
34 or correctional institution and after
35 December 31, 1977, by an inmate of a
36 custodial or penal institution;

37 (h) Service performed in the employ of
38 a school, college or university, if
39 such service is performed by a student
40 who is enrolled and is regularly at-
41 tending classes at such school, college
42 or university; or

1 (i) Prior to January 1, 1978, service
2 performed in the employ of a school
3 which is not an institution of higher
4 education; after December 31, 1977,
5 service performed in the employ of a
6 governmental entity referred to in par-
7 agraph A-1, subparagraph (1) if such
8 service is performed by an individual
9 in the exercise of duties:

10 (i) As an elected official;

11 (ii) As a member of a legislative
12 body, or a member of the judi-
13 ciary, of a state or political
14 subdivision thereof;

15 (iii) As a member of the State
16 National Guard or Air National
17 Guard;

18 (iv) As an employee serving on a
19 temporary basis in case of fire,
20 storm, snow, earthquake, flood or
21 similar emergency; or

22 (v) In a position which, under or
23 pursuant to the laws of this
24 State, is designated as a major
25 nontenured policymaking or advis-
26 ory position, or a policymaking or
27 advisory position the performance
28 of the duties of which ordinarily
29 does not require more than 8 hours
30 per week-;

31 (29) Services performed by a hairdresser
32 who holds a booth license and operates with-
33 in another hairdressing establishment if op-
34 erated under a booth rental agreement or
35 other rental agreement-;

36 (30) Services performed by a barber who
37 holds a booth license and operates within
38 another barbering establishment if operated
39 under a booth rental agreement or other
40 rental agreement;

1 (31) Services performed by a contract
2 interviewer engaged in marketing research or
3 public opinion interviewing, when such
4 interviewing is conducted in the field or
5 over the telephone on premises not used or
6 controlled by the person for whom such con-
7 tract services are being provided; and

8 (32) After December 31, 1981, services per-
9 formed by an individual on a boat engaged in
10 catching fish or other forms of aquatic ani-
11 mal life, unless those services would be in-
12 cluded in the definition of "employment" for
13 federal unemployment tax purposes under the
14 Federal Unemployment Act, United States
15 Code, Title 26, Section 3306(c), as it may
16 be amended; and

17 (a) Such individual does not receive
18 any cash remuneration, other than as
19 provided in division (b);

20 (b) Such individual receives a share
21 of the boat's, or the boats' in the
22 case of a fishing operation involving
23 more than one boat, catch of fish or
24 other forms of aquatic animal life or a
25 share of the proceeds from the sale of
26 such catch; and

27 (c) The amount of such individual's
28 share depends on the amount of the
29 boat's, or the boats' in the case of a
30 fishing operation involving more than
31 one boat, catch of fish or other forms
32 of aquatic animal life, but only if the
33 operating crew of such boat, or each
34 boat from which the individual receives
35 a share in the case of a fishing opera-
36 tion involving more than one boat, is
37 normally made up of fewer than 7 indi-
38 viduals; or

39 (33) Services performed by a member or
40 leader of a musical group, band or orchestra
41 or an entertainer when the services are per-
42 formed under terms of a contract entered in-

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to by the leader or an agent of the musical group, band, orchestra or entertainer with an employing unit for whom the services are being performed, provided the leader or agent is not an employer by reason of subsection 9 or of section 1222, subsection 3.

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STATEMENT OF FACT

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The purpose of this bill is to disallow payment of unemployment compensation to aliens engaged in seasonal employment in the State, except as may be covered by reciprocal arrangements under federal law.

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