

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 863

6
7 H.P. 593

House of Representatives, February 28, 1985

8 On Motion of Representative Beaulieu of Portland, referred to the
9 Committee on Labor. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Joseph of Waterville.

11 Cosponsored by Senator Dutremble of York, Representative Diamond of
Bangor and Representative Brannigan of Portland.

12 STATE OF MAINE
13

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

17 AN ACT to Clarify the Status of Newspaper
18 Carriers under the Unemployment
19 Compensation Act.
20

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

23 26 MRSA §1043, sub-§11, ¶F, as amended by PL
24 1981, c. 633, is further amended to read:

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

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

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

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

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

44 (4) Agricultural labor as defined in sub-
45 section 1, except as provided in paragraph
46 A-2;

1 (4-1) Agricultural labor in the harvesting
2 of apples, if performed by an individual who
3 is an alien, other than a citizen of a con-
4 tiguous country with which the United States
5 has an agreement with respect to unemploy-
6 ment compensation, admitted to the United
7 States to perform agricultural labor pursu-
8 ant to the United States Immigration and
9 Nationality Act, Sections 214(c) and 101(a)
10 (15) (H);

11 (5) Domestic service in a private home, ex-
12 cept as provided in paragraph A-3;

13 (6) Service performed by an individual in
14 the employ of his son, daughter or spouse,
15 and service performed by a child under the
16 age of 18 in the employ of his father or
17 mother;

18 (6-1) Services performed by a student at-
19 tending an elementary or secondary school
20 while participating in a cooperative program
21 of education and occupational training;

22 (9) Service performed with respect to which
23 unemployment compensation is payable under
24 the Railroad Unemployment Insurance Act (52
25 Stat. 1094);

26 (10) Services performed in the employ of
27 any other state, or any political subdivi-
28 sion thereof, or any instrumentality of any
29 one or more of the foregoing which is wholly
30 owned by one or more states or political
31 subdivisions; and any services performed in
32 the employ of any instrumentality of one or
33 more other states or their political subdivi-
34 sions to the extent that the instrumentality
35 is, with respect to such service, immune
36 under the Constitution of the United States
37 from the tax imposed by section 3301 of the
38 Federal Internal Revenue Code; except as
39 provided in paragraph A-1, subparagraph (1);

40 (11) Service performed in any calendar
41 quarter in the employ of any organization

1 exempt from income tax under section 501(a)
2 of the Federal Internal Revenue Code, other
3 than an organization described in section
4 401(a) or under section 521, of such Code,
5 if the remuneration for such service is less
6 than \$150;

7 (16) Service performed in the employ of a
8 foreign government, including service as a
9 consular or other officer or employee or a
10 nondiplomatic representative;

11 (17) Service performed in the employ of an
12 instrumentality wholly owned by a foreign
13 government:

14 (a) If the service is of a character
15 similar to that performed in foreign
16 countries by employees of the United
17 States Government or an instrumentality
18 thereof; and

19 (b) If the commissioner finds that the
20 United States Secretary of State has
21 certified to the United States Secre-
22 tary of the Treasury that the foreign
23 government, with respect to whose in-
24 strumentality exemption is claimed,
25 grants an equivalent exemption with re-
26 spect to similar service performed in
27 the foreign country by employees of the
28 United States Government and of instru-
29 mentalities thereof;

30 (18) Service performed as a student nurse
31 in the employ of a hospital or a nurses'
32 training school by an individual who is en-
33 rolled and is regularly attending classes in
34 a nurses' training school chartered or ap-
35 proved pursuant to state law; and service
36 performed as an intern in the employ of a
37 hospital by an individual who has completed
38 a 4 years' course in a medical school
39 chartered or approved pursuant to state law;

40 (19) Service performed by an individual for
41 a person as a real estate broker, real es-

1 tate salesman, an insurance agent or as an
2 insurance solicitor, if all such service
3 performed by such individual for such person
4 is performed for remuneration solely by way
5 of commission;

6 (20) Service performed by an individual under
7 the age of 18 in the delivery or distribution
8 of newspapers or shopping news, not
9 including delivery or distribution to any
10 point for subsequent delivery or distribution;
11

12 (21) Service performed in the employ of any
13 organization which is excluded from the term
14 "employment" as defined in the Federal Unemployment
15 Tax Act solely by reason of section
16 3306(c)(7) or (8) if:

17 (a) Service performed in the employ of
18 a church or convention or association
19 of churches, or an organization which
20 is operated primarily for religious
21 purposes and which is operated, supervised,
22 controlled or principally supported by a church or convention or
23 association of churches;
24

25 (b) Service performed by a duly ordained,
26 commissioned or licensed minister of a church in the exercise of his
27 ministry or by a member of a religious
28 order in the exercise of duties required by such order;
29
30

31 (c) Prior to January 1, 1978, service
32 performed in the employ of a school
33 primarily operated as an elementary,
34 secondary or preparatory school for
35 higher education, which is not an institution of higher education;
36

37 (d) Service performed in a facility
38 conducted for the purpose of carrying
39 out a program of rehabilitation for individuals whose earning capacity is
40 impaired by age or physical or mental de-
41

1 ficiency or injury or providing remun-
2 erative work for individuals who, be-
3 cause of their impaired physical or
4 mental capacity, cannot be readily ab-
5 sorbed in the competitive labor market
6 by an individual receiving such reha-
7 bilitation or remunerative work;

8 (e) Service performed as part of an
9 unemployment work-relief or
10 work-training program assisted or fi-
11 nanced in whole or in part by any fed-
12 eral agency or an agency of a state or
13 political subdivision thereof by an in-
14 dividual receiving such work-relief or
15 work-training;

16 (f) Service performed in the employ of
17 a hospital as defined in subsection 26
18 by a patient of such hospital;

19 (g) Services performed prior to Janu-
20 ary 1, 1978, for a hospital in a state
21 prison or other state correctional in-
22 stitution by an inmate of such prison
23 or correctional institution and after
24 December 31, 1977, by an inmate of a
25 custodial or penal institution;

26 (h) Service performed in the employ of
27 a school, college or university, if
28 such service is performed by a student
29 who is enrolled and is regularly at-
30 tending classes at such school, college
31 or university; or

32 (i) Prior to January 1, 1978, service
33 performed in the employ of a school
34 which is not an institution of higher
35 education; after December 31, 1977,
36 service performed in the employ of a
37 governmental entity referred to in par-
38 agraph A-1, subparagraph (1) if such
39 service is performed by an individual
40 in the exercise of duties:

41 (i) As an elected official;

- 1 (ii) As a member of a legislative
2 body, or a member of the judi-
3 ciary, of a state or political
4 subdivision thereof;
- 5 (iii) As a member of the State
6 National Guard or Air National
7 Guard;
- 8 (iv) As an employee serving on a
9 temporary basis in case of fire,
10 storm, snow, earthquake, flood or
11 similar emergency; or
- 12 (v) In a position which, under or
13 pursuant to the laws of this
14 State, is designated as a major
15 nontenured policymaking or advis-
16 ory position, or a policymaking or
17 advisory position the performance
18 of the duties of which ordinarily
19 does not require more than 8 hours
20 per week; i
- 21 (29) Services performed by a hairdresser
22 who holds a booth license and operates with-
23 in another hairdressing establishment if op-
24 erated under a booth rental agreement or
25 other rental agreement; i
- 26 (30) Services performed by a barber who
27 holds a booth license and operates within
28 another barbering establishment if operated
29 under a booth rental agreement or other
30 rental agreement;
- 31 (31) Services performed by a contract
32 interviewer engaged in marketing research or
33 public opinion interviewing, when such
34 interviewing is conducted in the field or
35 over the telephone on premises not used or
36 controlled by the person for whom such con-
37 tract services are being provided; and
- 38 (32) After December 31, 1981, services per-
39 formed by an individual on a boat engaged in
40 catching fish or other forms of aquatic ani-

1 mal life, unless those services would be in-
2 cluded in the definition of "employment" for
3 federal unemployment tax purposes under the
4 Federal Unemployment Act, United States
5 Code, Title 26, Section 3306(c), as it may
6 be amended; and

7 (a) Such individual does not receive
8 any cash remuneration, other than as
9 provided in division (b);

10 (b) Such individual receives a share
11 of the boat's, or the boats' in the
12 case of a fishing operation involving
13 more than one boat, catch of fish or
14 other forms of aquatic animal life or a
15 share of the proceeds from the sale of
16 such catch; and

17 (c) The amount of such individual's
18 share depends on the amount of the
19 boat's, or the boats' in the case of a
20 fishing operation involving more than
21 one boat, catch of fish or other forms
22 of aquatic animal life, but only if the
23 operating crew of such boat, or each
24 boat from which the individual receives
25 a share in the case of a fishing opera-
26 tion involving more than one boat, is
27 normally made up of fewer than 7 indi-
28 viduals; i

29 (33) Services performed by a member or
30 leader of a musical group, band or orchestra
31 or an entertainer when the services are per-
32 formed under terms of a contract entered in-
33 to by the leader or an agent of the musical
34 group, band, orchestra or entertainer with
35 an employing unit for whom the services are
36 being performed, provided the leader or
37 agent is not an employer by reason of sub-
38 section 9 or of section 1222, subsection 3; i
39 and

40 (34) Services performed in the delivery or
41 distribution of periodicals to the ultimate
42 consumer by an individual who is compensated

1
2

by receiving or retaining a commission or
profit on the sale of the periodical.

3

STATEMENT OF FACT

4
5
6
7
8
9
10
11

The Unemployment Compensation Act presently exempts newspaper carriers under 18 years of age from coverage. Very similar part-time work is done by persons over 18 years of age who deliver to rural newspaper routes using automobiles. In both cases, the job is only a modest supplement to family income. There appears to be no reason to treat these 2 situations differently.

12

1350010385