

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND THIRTEENTH LEGISLATURE
4

5 Legislative Document

NO. 142
6

7 H.P. 117 House of Representatives, January 28, 1987
8 On Motion of Representative McHenry of Madawaska,
referred to the Committee on Labor. Sent up for concurrence
9 and ordered printed.

EDWIN H. PERT, Clerk

10 Presented by Representative DELLERT of Gardiner.

Cosponsored by Representatives BEGLEY of Waldoboro,
RUHLIN of Brewer, and Senator SEWALL of Lincoln.

11
12 STATE OF MAINE.
13

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

17 AN ACT to Amend the Employment Security Law
18 Regarding Full-time Students in the
19 Employ of Organized Camps to Conform
20 with the Federal Unemployment Tax Act.
21

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

24 Sec. 1. 26 MRSA §1043, sub-§11, ¶F, as amended
25 by PL 1985, c. 302, 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;

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

29 (3) Service with respect to which unemploy-
30 ment compensation is payable under an unem-
31 ployment compensation system or employment
32 security system established by an Act of
33 Congress. The commissioner is authorized and
34 directed to enter into agreements with the
35 proper agencies under such Act of Congress,
36 which agreements shall become effective 10
37 days after publication thereof in the manner
38 provided in section 1082, subsection 2, for
39 regulations, to provide reciprocal treatment
40 to individuals who have, after acquiring po-
41 tential rights to benefits under this chap-
42 ter, acquired rights to unemployment compen-
43 sation under such Act of Congress, or who
44 have, after acquiring potential rights to
45 unemployment compensation under such Act of
46 Congress, acquired rights to benefits under
47 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 (5) Domestic service in a private home, ex-
15 cept as provided in paragraph A-3;
- 16 (6) Service performed by an individual in
17 the employ of his son, daughter or spouse,
18 and service performed by a child under the
19 age of 18 in the employ of his father or
20 mother;
- 21 (6-1) Services performed by a student at-
22 tending an elementary or secondary school
23 while participating in a cooperative program
24 of education and occupational training;
- 25 (9) Service performed with respect to which
26 unemployment compensation is payable under
27 the Railroad Unemployment Insurance Act (52
28 Stat. 1094);
- 29 (10) Services performed in the employ of
30 any other state, or any political subdivi-
31 sion thereof, or any instrumentality of any
32 one or more of the foregoing which is wholly
33 owned by one or more states or political
34 subdivisions; and any services performed in
35 the employ of any instrumentality of one or
36 more other states or their political subdivi-
37 sions to the extent that the instrumentality
38 is, with respect to such service, immune
39 under the Constitution of the United States
40 from the tax imposed by section 3301 of the
41 Federal Internal Revenue Code; except as

1 provided in paragraph A-1, subparagraph (1);

2 (11) Service performed in any calendar
3 quarter in the employ of any organization
4 exempt from income tax under section 501(a)
5 of the Federal Internal Revenue Code, other
6 than an organization described in section
7 401(a) or under section 521, of such Code,
8 if the remuneration for such service is less
9 than \$150;

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

14 (17) Service performed in the employ of an
15 instrumentality wholly owned by a foreign
16 government:

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

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

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

1 chartered or approved pursuant to state law;

2 (19) Service performed by an individual for
3 a person as a real estate broker, real es-
4 tate salesman, an insurance agent or as an
5 insurance solicitor, if all such service
6 performed by such individual for such person
7 is performed for remuneration solely by way
8 of commission;

9 (20) Service performed by an individual un-
10 der the age of 18 in the delivery or distri-
11 bution of newspapers or shopping news, not
12 including delivery or distribution to any
13 point for subsequent delivery or distribu-
14 tion;

15 (21) Service performed in the employ of any
16 organization which is excluded from the term
17 "employment" as defined in the Federal Unem-
18 ployment Tax Act solely by reason of section
19 3306(c)(7) or (8) if:

20 (a) Service performed in the employ of
21 a church or convention or association
22 of churches, or an organization which
23 is operated primarily for religious
24 purposes and which is operated, super-
25 vised, controlled or principally sup-
26 ported by a church or convention or as-
27 sociation of churches;

28 (b) Service performed by a duly or-
29 dained, commissioned or licensed minis-
30 ter of a church in the exercise of his
31 ministry or by a member of a religious
32 order in the exercise of duties re-
33 quired by such order;

34 (c) Prior to January 1, 1978, service
35 performed in the employ of a school
36 primarily operated as an elementary,
37 secondary or preparatory school for
38 higher education, which is not an in-
39 stitution of higher education;

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

13 (e) Service performed as part of an
14 unemployment work - relief or work -
15 training program assisted or financed
16 in whole or in part by any federal
17 agency or an agency of a state or po-
18 litical subdivision thereof by an indi-
19 vidual receiving such work-relief or
20 work-training;

21 (f) Service performed in the employ of
22 a hospital as defined in subsection 26
23 by a patient of such hospital;

24 (g) Services performed prior to Janu-
25 ary 1, 1978, for a hospital in a state
26 prison or other state correctional in-
27 stitution by an inmate of such prison
28 or correctional institution and after
29 December 31, 1977, by an inmate of a
30 custodial or penal institution;

31 (h) Service performed in the employ of
32 a school, college or university, if
33 such service is performed by a student
34 who is enrolled and is regularly at-
35 tending classes at such school, college
36 or university; or

37 (i) Prior to January 1, 1978, service
38 performed in the employ of a school
39 which is not an institution of higher
40 education; after December 31, 1977,
41 service performed in the employ of a
42 governmental entity referred to in par-

1 agraph A-1, subparagraph (1) if such
2 service is performed by an individual
3 in the exercise of duties:

4 (i) As an elected official;

5 (ii) As a member of a legislative
6 body, or a member of the judi-
7 ciary, of a state or political
8 subdivision thereof;

9 (iii) As a member of the State
10 National Guard or Air National
11 Guard;

12 (iv) As an employee serving on a
13 temporary basis in case of fire,
14 storm, snow, earthquake, flood or
15 similar emergency; or

16 (v) In a position which, under or
17 pursuant to the laws of this
18 State, is designated as a major
19 nontenured policymaking or advis-
20 ory position, or a policymaking or
21 advisory position the performance
22 of the duties of which ordinarily
23 does not require more than 8 hours
24 per week;

25 (29) Services performed by a hairdresser
26 who holds a booth license and operates with-
27 in another hairdressing establishment if op-
28 erated under a booth rental agreement or
29 other rental agreement;

30 (30) Services performed by a barber who
31 holds a booth license and operates within
32 another barbering establishment if operated
33 under a booth rental agreement or other
34 rental agreement;

35 (31) Services performed by a contract
36 interviewer engaged in marketing research or
37 public opinion interviewing, when such
38 interviewing is conducted in the field or
39 over the telephone on premises not used or

1 controlled by the person for whom such con-
2 tract services are being provided;

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

12 (a) Such individual does not receive
13 any cash remuneration, other than as
14 provided in division (b);

15 (b) Such individual receives a share
16 of the boat's, or the boats' in the
17 case of a fishing operation involving
18 more than one boat, catch of fish or
19 other forms of aquatic animal life or a
20 share of the proceeds from the sale of
21 such catch; and

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

34 (33) Services performed by a member or
35 leader of a musical group, band or orchestra
36 or an entertainer when the services are per-
37 formed under terms of a contract entered in-
38 to by the leader or an agent of the musical
39 group, band, orchestra or entertainer with
40 an employing unit for whom the services are
41 being performed, provided the leader or
42 agent is not an employer by reason of sub-

1 section 9 or of section 1222, subsection 3;
2 (34) Services performed in the delivery or
3 distribution of periodicals to the ultimate
4 consumer by an individual who is compensated
5 by receiving or retaining a commission or
6 profit on the sale of the periodical; and
7 (35) Services performed by a homemaker in
8 the knitted outerwear industry as those
9 terms are defined, on the effective date of
10 this subparagraph, in the 29 Code of Federal
11 Regulations, Part 530, Section 530.1-; and
12 (36) Service performed by a full-time stu-
13 dent, as defined in subsection 30, in the
14 employ of an organized camp if the full-time
15 student performed services in the employ of
16 the camp for less than 13 calendar weeks in
17 the calendar year and the camp:

18 (a) Did not operate for more than 7
19 months in the calendar year and did not
20 operate for more than 7 months in the
21 preceding calendar year; or

22 (b) Had average gross receipts for any
23 6 months in the preceding calendar year
24 which were not more than 33 1/3% of its
25 average gross receipts for the other 6
26 months in the preceding calendar year.

27 Sec. 2. 26 MRSA §1043, sub-§30 is enacted to
28 read:

29 30. Full-time student. "Full-time student" for
30 purposes of subsection 11, paragraph F, subparagraph
31 (36), means an individual who is a student for any
32 period:

33 A. During which the individual is enrolled as a
34 full-time student at an educational institution;
35 or

36 B. Which is between academic years or terms if:

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(1) The individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term; and

(2) There is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (1).

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STATEMENT OF FACT

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The purpose of this bill is to conform the Employment Security Law with the Federal Unemployment Tax Act relating to full-time students in the employ of organized camps. The federal law exempts from employment the service performed by the students because they are normally not eligible for unemployment benefits.

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