

MAINE STATE LEGISLATURE

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(After Deadline)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1029

H.P. 766 House of Representatives, March 31, 1987
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Senator DUTREMBLE of York and
Representative McHENRY of Madawaska.

STATE OF MAINE

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

1 **AN ACT to Provide Due Process in Unemployment**
2 **Insurance Appeals.**
3

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

6 **Sec. 1. 26 MRSA §1081, sub-§1, as amended by PL**
7 **1983, c. 351, §6, is further amended to read:**

8 1. Commission. The Maine Unemployment Insurance
9 Commission, as heretofore created, shall consist of 3
10 members, one of whom shall be a representative of la-
11 bor, one of whom shall be a representative of employ-
12 ers, and one of whom shall be a representative of the
13 general public who shall be impartial and shall be
14 the chairman of the commission. In addition to other
15 qualifications, one member shall be an attorney ad-

mitted to the practice of law in this State. Except as provided in this subsection, the 3 members and their successors shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over labor and to confirmation by the Senate, to hold office for a term of 6 years or until a successor has been duly appointed and qualified, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term. During his term of membership on the commission, a member shall not engage in any other business, vocation or employment, nor serve as an officer or committee member of any political organization.

Sec. 2. 26 MRSA §1081, sub-§4 is enacted to read:

4. Separate administrative unit. For budgetary purposes, the commission shall be a separate administrative unit within the Department of Labor. The commission shall annually prepare a budget request for the next fiscal year covering the necessary administrative costs of the commission and the office of administrative law judges, including those personnel and nonpersonnel items necessary to fulfill its responsibilities. Upon approval by the commissioner, the commission budget shall be incorporated into the Department of Labor budget request. Once approved, the chairman shall authorize expenditures for the operations of the commission.

Sec. 3. 26 MRSA §1082, sub-§8, as amended by PL 1985, c. 348, §4, is further amended to read:

8. Oaths and witnesses. In the discharge of the duties imposed by this chapter, the commissioner, the commission, the ~~chairman of an appeal tribunal~~ Chief Administrative Law Judge and any duly authorized representative of them shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a

1 disputed claim or the administration of this chapter.
2 Oaths and affirmations required by reason of duties
3 performed pursuant to this chapter may be adminis-
4 tered by any of such persons as may be designated for
5 the purpose by the commissioner. In the discharge of
6 the duties imposed by this chapter, the commissioner,
7 the commission, the ~~chairman-of-an-appeal-tribunal~~
8 Chief Administrative Law Judge or any duly authorized
9 representative of them, when the interests of any in-
10 terested party demand, may issue commissions to take
11 depositions to any unemployment compensation or em-
12 ployment security official empowered to take such
13 depositions under this chapter or the laws of any
14 other state, for either of the following causes:

15 A. When the deponent resides out of, or is ab-
16 sent from, the State;

17 B. When the deponent is bound to sea or is about
18 to go out of the State; or

19 C. When the deponent is so aged, infirm or sick
20 as to be unable to attend at the place of hear-
21 ing.

22 Such depositions shall be taken by written interroga-
23 tories to be compiled by the commission or the ~~appeal~~
24 ~~tribunal~~ administrative law judge, and the adverse
25 party shall be afforded an opportunity to refute such
26 testimony before a determination is made. The depo-
27 nent shall be sworn and the deposition shall be
28 signed and sworn to by the deponent before admissible
29 as testimony at a hearing before the ~~appeal--tribunal~~
30 administrative law judge or the commission.

31 Subpoenas shall be issued pursuant to Title 5, sec-
32 tion 9060.

33 Sec. 4. 26 MRS §1082, sub-§9-A, as enacted by
34 PL 1979, c. 515, §11, is amended to read:

35 9-A. Refusal to appear. Any person who shall
36 without just cause fail or refuse to attend and tes-
37 tify or to answer any lawful inquiry or to produce
38 books, papers, correspondence, memoranda and other
39 records, if it is in his power to do so, in obedience

1 to a subpoena of the commission, the ~~appeal-tribunal~~
2 administrative law judge or the duly authorized rep-
3 resentative of either of them shall be guilty of a
4 Class E crime. Whenever a person refuses to obey a
5 subpoena duly issued by the commission, the ~~appeal~~
6 ~~tribunal~~ administrative law judge or the duly autho-
7 rized representative of either of them, any court of
8 this State within the jurisdiction of which the per-
9 son resides or transacts business, shall have juris-
10 diction to issue to that person an order requiring
11 him to appear and produce evidence or testimony and
12 any failure to obey that order may be punished by the
13 court as contempt thereof.

14 **Sec. 5.** 26 MRSa §1082, sub-§10 is amended to
15 read:

16 10. Protection against self-incrimination. No
17 person ~~shall~~ may be excused from attending and testi-
18 fying or from producing books, papers, correspon-
19 dence, memoranda and other records before the commis-
20 sion, the ~~chairman-of-an-appeal-tribunal~~ administra-
21 tive law judge or the duly authorized representative
22 of either of them, or in obedience to the subpoena of
23 the commission, the ~~chairman-of-an-appeal-tribunal~~
24 administrative law judge or the duly authorized rep-
25 resentative of either of them in any cause or pro-
26 ceeding before the commission, the ~~chairman-of-an-ap-~~
27 ~~peal-tribunal~~ administrative law judge or duly autho-
28 rized representative of either of them, on the ground
29 that the testimony or evidence, documentary or other-
30 wise, required of him may tend to incriminate him or
31 subject him to a penalty or forfeiture; but no indi-
32 vidual ~~shall~~ may be prosecuted or subjected to any
33 penalty or forfeiture for or on account of any trans-
34 action, matter or thing concerning which he is com-
35 pelled, after having claimed his privilege against
36 self-incrimination, to testify or produce evidence,
37 documentary or otherwise, except that such individual
38 so testifying shall not be exempt from prosecution
39 and punishment for perjury committed in so testify-
40 ing.

41 **Sec. 6.** 26 MRSa §1194, sub-§3, as amended by PL
42 1981, c. 145, is repealed and the following enacted
43 in its place:

1 3. Appeals. Unless such appeal is withdrawn, an
2 administrative law judge or administrative hearing
3 officer, after affording the parties reasonable op-
4 portunity for fair hearing, shall affirm, modify or
5 set aside the findings of fact and decision of the
6 deputy. The parties shall be then duly notified of
7 the decision, together with the reasons therefor,
8 which subject to subsection 11 shall be deemed to be
9 the final decision of the commission. Within 15 cal-
10 endar days after that notification was mailed to his
11 last known address, the claimant and employer may ap-
12 peal to the commission by filing an appeal in accord-
13 ance with such rules as the commission shall pre-
14 scribe, provided that the appealing party appeared at
15 the administrative hearing and was given notice of
16 the effect of the failure to appear in writing prior
17 to the hearing.

18 Sec. 7. 26 MRSa §1194, sub-§4, as amended by PL
19 1983, c. 351, §20, is repealed and the following en-
20 acted in its place:

21 4. Office of Administrative Law Judges. To hear
22 and decide disputed claims, the commissioner with the
23 advice of the commission shall establish, administer
24 and supervise the Office of Administrative Law
25 Judges.

26 A. The office, through its administrative law
27 judges or hearing officers, shall hear and decide
28 appeals from deputy decisions as provided by this
29 chapter and shall hear such other appeals as the
30 commission may require.

31 B. The office shall be administered by a Chief
32 Administrative Law Judge appointed by the commis-
33 sion subject to the Civil Service Law. He shall
34 be an attorney admitted to practice law in the
35 State. He shall administer the office, super-
36 vising and assign the cases, other administrative
37 law judges or administrative hearing officers and
38 represent the commission in court when a conflict
39 of interest exists between the commission and
40 commissioner. His compensation shall be no lower
41 than the classification of the division directors
42 of the bureau.

1 C. Administrative law judges and administrative
2 hearing officers shall hear and decide appeals.
3 Each shall be appointed by the Chief Administra-
4 tive Law Judge, subject to the Civil Service Law.
5 Administrative law judges shall be attorneys ad-
6 mitted to practice law in the State. Administra-
7 tive hearing officers shall have experience in
8 unemployment insurance matters and adjudicatory
9 procedures. Their compensation shall be no lower
10 than the classification of hearing officers of
11 the Department of Human Services.

12 **Sec. 8. 26 MRSA §1194, sub-§5, as amended by PL**
13 **1977, c. 587, is further amended to read:**

14 5. Commission review. The commission may on its
15 own motion affirm, modify or set aside a decision
16 of an ~~appeal-tribunal~~ administrative law judge or ad-
17 ministrative hearing officer on the basis of the evi-
18 dence previously submitted in such case, or direct
19 the taking of additional evidence, or may permit any
20 of the parties of such decision to initiate further
21 appeals before it. The commission shall permit such
22 further appeal by any of the parties interested in a
23 decision of an ~~appeal-tribunal~~ which-is-not-unanimous
24 administrative law judge or administrative hearing
25 officer and by the deputy whose decision has been
26 overruled or modified by an ~~appeal-tribunal~~ adminis-
27 trative law judge or administrative hearing officer.
28 The commission may remove to itself or transfer to
29 another ~~appeal--tribunal~~ administrative law judge or
30 administrative hearing officer the proceedings on any
31 claim pending before an ~~appeal--tribunal~~ administra-
32 tive law judge or administrative hearing officer.
33 Any proceedings so removed to the commission shall be
34 heard in accordance with the requirements in subsec-
35 tion 3. All hearings conducted pursuant to this sec-
36 tion may be heard by a quorum of commissioners, as
37 defined in section 1081, subsection 3. The commission
38 shall promptly notify the interested parties of its
39 findings and decisions.

40 **Sec. 9. 26 MRSA §1194, sub-§10, as amended by PL**
41 **1985, c. 348, §8, is further amended to read:**

42 10. Determination may be reconsidered; appeal.
43 The deputy may reconsider a determination with re-

1 spect to the weekly benefit amount and maximum total
2 amount of benefits for a claimant for any given bene-
3 fit year, if he finds that an error has occurred in
4 connection therewith, or that wages have been erro-
5 neously reported, but no such redetermination shall
6 be made after one year from the date of the original
7 determination. Notice of any such redetermination
8 shall be promptly given to the parties entitled to
9 notice of the original determination, in the manner
10 prescribed in this section with respect to notice of
11 an original determination. If the maximum amount of
12 benefits is increased upon such redetermination, an
13 appeal therefrom solely with respect to the matters
14 involved in such increase may be filed in the manner
15 and subject to the limitations provided in subsection
16 2. If the amount of benefits is decreased upon such
17 redetermination, the matters involved in such de-
18 crease shall be subject to an appeal by claimant with
19 respect to subsequent benefits which may be affected
20 by the redetermination. An appeal may be filed in
21 the manner and subject to the limitations provided in
22 subsection 2.

23 The deputy may reconsider a benefit payment for any
24 particular week or weeks whenever he finds that an
25 error has occurred, but no such redetermination may
26 be made after one year from the date of payment for
27 such week or weeks. Notice of any such redetermina-
28 tion shall be promptly given to the claimant. Sub-
29 ject to subsection 11, unless the claimant files an
30 appeal from such redetermination within 15 calendar
31 days after such redetermination was mailed to his
32 last known address, such redetermination shall be fi-
33 nal, provided that the period within which an appeal
34 may be filed may be extended for a period not to ex-
35 ceed an additional 15 calendar days for good cause
36 shown.

37 Subject to the same limitations and for the same rea-
38 sons, the commission may reconsider the determination
39 in any case in which the final decision has been ren-
40 dered by an ~~appeal-tribunal~~ administrative law judge
41 or administrative hearing officer, the commission or
42 a court, and may apply to the body or court which
43 rendered such final decision to issue a revised deci-
44 sion. In the event that an appeal involving an origi-
45 nal determination is pending as of the date a rede-

1 termination thereof is issued, such appeal, unless
2 withdrawn, shall be treated as an appeal from such
3 redetermination.

4 Sec. 10. 26 MRSA §1194, sub-§11, ¶A, as enacted
5 by PL 1971, c. 538, §34, is amended to read:

6 A. Benefits shall be paid promptly in accordance
7 with a determination, reconsidered determination,
8 redetermination, decision of an ~~appeal--tribunal~~
9 administrative law judge or administrative hear-
10 ing officer, the commission or a reviewing court
11 under this section upon the issuance of such de-
12 termination, reconsidered determination, redeter-
13 mination or decision, regardless of the pendency
14 of the period to apply for reconsideration, file
15 an appeal or petition for judicial review that is
16 provided with respect thereto in this section or
17 the pendency of any such application, filing or
18 petition, unless and until such determination,
19 redetermination or decision has been modified or
20 reversed by a subsequent reconsidered determina-
21 tion, redetermination or decision. In which
22 event, benefits will be paid or denied for weeks
23 of unemployment thereafter in accordance with
24 such reconsidered determination, modified or re-
25 versed determination, redetermination or deci-
26 sion.

27 Sec. 11. Transitional provisions. The Division
28 of Appeals, Bureau of Employment Security within the
29 Department of Labor, identified as the appeal tribu-
30 nal under the Maine Revised Statutes, Title 26,
31 former section 1194, subsection 4, shall become the
32 Office of Administrative Law Judges upon enactment of
33 this bill. The person serving as the director, adju-
34 dication, also known as Director of Appeals Division,
35 shall become the Chief Administrative Law Judge and
36 the person serving as adjudication officers shall be-
37 come administrative hearing officers, provided that
38 they meet the minimum qualifications included in this
39 bill. The other employees of the Department of Labor
40 employed in the former Division of Appeals subject to
41 the Civil Service Law, shall continue in their exist-
42 ing classifications.

1

STATEMENT OF FACT

2 This bill protects all parties to adjudicatory
3 proceedings under the Employment Security Law from
4 conflicts of interest. It removes the Appeals Divi-
5 sion, now in the Bureau of Employment Security, to
6 the independent Maine Unemployment Insurance Commis-
7 sion. When the Commissioner of Labor will not defend
8 the commission, through the Attorney General, the
9 Chief Administrative Law Judge is authorized to
10 represent its interests in court. As an independent
11 authority, appointed by the Governor, the commission
12 will have its own budget, subject to initial approval
13 by the Commissioner of Labor. The commission and the
14 Office of Administrative Law Judges shall continue to
15 be funded through the United States Department of La-
16 bor.

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