

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)

FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1454

H.P. 1071 House of Representatives, May 6, 1987
Submitted by the Department of Labor pursuant to Joint
Rule 24.

Reference to the Committee on Labor suggested and ordered
printed.

EDWIN H. PERT, Clerk
Presented by Representative ZIRNKILTON of Mount Desert.

Cosponsored by Representatives DUTREMBLE of Biddeford,
TAMMARO of Baileyville, and HEPBURN of Skowhegan.

STATE OF MAINE

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

1 AN ACT Relating to Determination of Benefit
2 Claims under the Unemployment
3 Compensation Law.
4

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

7 26 MRSA §1194, sub-§2, as amended by PL 1985, c.
8 348, §7, is further amended to read:

9 2. Determination. A representative designated
10 by the commissioner, and in this chapter referred to
11 as a deputy, shall promptly examine the first claim
12 filed by a claimant in each benefit year and shall
13 determine the weekly benefit amount and maximum bene-
14 fit amount potentially payable to the claimant during
15 that benefit year in accordance with section 1192,
16 subsection 5.

1 The deputy shall promptly examine all subsequent
2 claims filed and, on the basis of the facts found by
3 him, shall determine whether or not that claim is
4 valid with respect to sections 1192 and 1193, other
5 than section 1192, subsection 5, or shall refer that
6 claim or any question involved therein to an appeal
7 tribunal or to the commission, which shall make a de-
8 termination with respect thereto in accordance with
9 the procedure described in subsection 3, except that
10 in any case in which the payment or denial of bene-
11 fits will be subject to section 1193, subsection 4,
12 the deputy shall promptly transmit a report with re-
13 spect to that subsection to the Director of Unemploy-
14 ment Compensation upon the basis of which the direc-
15 tor shall notify appropriate deputies as to the ap-
16 plicability of that subsection.

17 The deputy shall determine in accordance with section
18 1221, subsection 3, paragraph A, the proper employ-
19 er's experience rating record, if any, against which
20 benefits of an eligible individual shall be charged,
21 if and when paid.

22 The deputy shall promptly notify the claimant and any
23 other interested party of the determinations and rea-
24 sons therefor. Subject to subsection 11, unless the
25 claimant or any such interested party, within 15 cal-
26 endar days after that notification was mailed to his
27 last known address, files an appeal from that deter-
28 mination, that determination shall be final, provided
29 that the period within which an appeal may be filed
30 may be extended, for a period not to exceed an addi-
31 tional 15 calendar days, for good cause shown. If
32 new evidence or pertinent facts that would alter that
33 determination become known to the deputy prior to the
34 date that determination becomes final, a redetermina-
35 tion is authorized, but that redetermination must be
36 mailed before the original determination becomes fi-
37 nal.

38 If an employer's separation report for an employee is
39 not received by the office specified thereon within
40 10 days after that report was requested, the claim
41 shall be adjudicated on the basis of information at
42 hand. If the employer's separation report containing
43 possible disqualifying information is received after
44 the 10-day period and the claimant is denied benefits

1 by a revised deputy's decision, benefits paid prior
2 to the date of the revised decision shall not consti-
3 tute an overpayment of benefits. Any benefits paid
4 after the date of the revised decision shall consti-
5 tute an overpayment.

6 If an employer files an amended separation report or
7 otherwise raises a new issue as to the employee's el-
8 igibility or changes the wages or weeks used in de-
9 termining benefits which results in a denial of bene-
10 fits or a reduction of the weekly benefit amount, the
11 benefits paid prior to the date the determination is
12 mailed shall not constitute an overpayment. Any ben-
13 efits received after that date to which the claimant
14 is not entitled pursuant to a new determination based
15 on that new employer information shall constitute an
16 overpayment.

17 If, during the period a claimant is receiving bene-
18 fits, new information or a new issue arises concern-
19 ing the claimant's eligibility for benefits or which
20 affects the claimant's weekly benefit amount, no ben-
21 efits may be withheld until a determination is made
22 on the issue, ~~unless authorized by the claimant.~~ Be-
23 fore a determination is made, written notice shall be
24 mailed to the claimant and other interested parties,
25 which shall include the issue to be decided, the law
26 upon which it is based, any factual allegations known
27 to the bureau, the right to a fact-finding interview,
28 the date and location of the scheduled interview, and
29 the ~~claimant's rights regarding the continuation of~~
30 ~~benefits,~~ conduct of the interview and appeal. The
31 fact-finding interview shall be scheduled not less
32 than 5 days nor more than 14 days after the notice is
33 mailed. The bureau shall include with in the notice
34 ~~a preprinted form, which the claimant may sign and~~
35 ~~return to the bureau after indicating thereon whether~~
36 ~~he wishes to continue to receive benefits until a de-~~
37 ~~termination is made, acknowledging an understanding a~~
38 statement notifying the claimant that any benefits
39 paid prior to the determination may be an overpayment
40 under applicable law and recoverable by the bureau if
41 it is later determined that the claimant was not en-
42 titled to the benefits. If the claimant does not ap-
43 pear for the scheduled interview, the deputy shall
44 make a determination on the basis of available evi-
45 dence. The deputy shall make a prompt determination

1 of the issue based solely on any written statements
2 of interested parties filed with the bureau before
3 the interview, together with the evidence presented
4 by interested parties who personally appeared at the
5 interview. Upon request and notice to all parties at
6 the interview, the deputy may accept corroborative
7 documentary evidence after the interview. In no other
8 case may the deputy base his decision on evidence
9 received after the interview has been held. This sub-
10 section shall not apply when the claimant reports a
11 specific amount of earnings or type of remuneration
12 during the week claimed, reports that he worked or
13 had earnings but does not furnish the amount of the
14 earnings or reports he was neither able nor available
15 for work for a specified portion of the week claimed
16 and there is sufficient information for the deputy to
17 determine that the inability or unavailability for
18 work was for good cause.

19 STATEMENT OF FACT

20 The 1977 Supreme Court decision of California Hu-
21 man Resources Department v. Java ruled that unemploy-
22 ment benefits must be paid "when due," as defined un-
23 der the United States Social Security Act, Section
24 303(a)(1), without exception.

25 The United States Department of Labor has found
26 the current language of the law to be unacceptable
27 and out of conformity with federal law. This bill
28 corrects that problem.

29 In addition, the bill stipulates that this sub-
30 section will not apply in certain situations. This
31 reduces overpayments and relieves the claimant from
32 the requirement that he attend a fact-finding inter-
33 view in these cases only when such an interview would
34 be a burden on the claimant and the agency.

35 2540042287