

MAINE STATE LEGISLATURE

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E I G H T Y - E I G H T H L E G I S L A T U R E

Legislative Document

No. 729

H. P. 1519

House of Representatives, February 16, 1937.

Referred to Committee on Judiciary. Sent up for concurrence and 1000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Philbrick of Cape Elizabeth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-SEVEN

AN ACT Amending the Law Relating to Unemployment Compensation.

Emergency preamble. Whereas on the 18th day of December, 1936, there was passed to be enacted by the legislature of Maine and approved by the governor an emergency measure entitled "An Act Relating to Unemployment Compensation," and

Whereas, through inadvertence, the object intended to be accomplished by said act is not fully possible without amendment of said act, and

Whereas, a failure to amend said act at once will result in depriving many individuals of substantial rights to which they are entitled, and

Whereas, to deprive such individuals of said rights would be a serious menace to the health, morals and welfare of the people of the state which constitute a subject of general interest and concern requiring appropriate and immediate action, and

Whereas, the foregoing facts in the judgment of the legislature constitute an emergency within the meaning of the constitution of this state and

requires the following legislation as immediately necessary for the preservation of the public peace, health, and safety;

Now, therefore,

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

Sec. 1. P. L., 1935, c. 192, § 3 ¶ (d), amended. Paragraph (d) of section 3 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(d) Determination of full-time weekly wage. (1) The full-time weekly wage of any individual means the weekly wages that such individual would receive if he were employed at the most recent wage rate earned by him ~~in~~ for employment by an employer ~~in his base period~~ during the period prescribed pursuant to paragraph (3) of this subsection and for the customary scheduled full-time ~~week~~ weekly hours prevailing for his occupation in the enterprise in which he last earned wages ~~in~~ for employment by an employer during ~~his base~~ the same period.

(2) If the commission finds that the full-time weekly wage, as above defined, would be unreasonable or arbitrary or not readily determinable with respect to any individual, the full-time weekly wage of such individual shall be deemed to be 1/13 of his total wages ~~in~~ for employment by ~~an employer~~ employers ~~in~~ during that quarter in which such total wages were highest during ~~his base period~~ the period prescribed pursuant to paragraph (3) of this subsection.

(3) The full-time weekly wage of any individual shall be determined and redetermined at such reasonable times as the commission may find necessary to administer this act and may by regulation prescribe. The period hereinabove referred to shall consist of the next to the last completed calendar quarter immediately preceding the date with respect to which an individual's full-time weekly wage is determined, and such of the 7 immediately preceding consecutive calendar quarters as the commission may by regulation prescribe.'

Sec. 2. P. L., 1935, c. 192, § 3, ¶ (e), amended. Paragraph (e) of section 3 of chapter 192 of the public laws of 1935 is hereby repealed and the following enacted in place thereof:

(e) **Duration of benefits.** The commission shall compute wage credits for each individual by crediting him with the wages earned by him for employment by employers during each quarter, or \$390, whichever is the lesser. Benefits paid to any eligible individual shall be charged, in the same chronological order as such wages were earned, against 1/6 of his

wage credits which are based upon wages earned during his base period and which have not been previously charged hereunder. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed whichever is the lesser of (1) 16 times his weekly benefit amount, and (2) 1/6 of such uncharged wage credits with respect to his base period.'

Sec. 3. P. L., 1935, c. 192, § 4, amended. Paragraph (e) of section 4 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(e) He has within the 1st ~~4~~ 3 out of the last ~~5~~ 4 completed calendar quarters immediately preceding the 1st day of his benefit year, earned wages ~~in~~ for employment by ~~an employer or~~ employers equal to not less than 16 times his weekly benefit amount.'

Sec. 4. P. L., 1935, c. 192, § 6, ¶¶ (b), (g), (h), amended. Paragraphs (b), (g) and (h) of section 6 of chapter 192 of the public laws of 1935 are hereby amended to read as follows:

'(b) **Initial determination.** A representative designated by the commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal or to the commission which shall make a determination with respect thereto in accordance with the procedure described in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 5 (d) of this act, the deputy shall promptly transmit his full finding of fact with respect to that subsection to the commission which on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection, **which shall be deemed the decision of the deputy.** The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor; **and upon application of the claimant or any interested party, the deputy may reconsider his decision and shall promptly notify the claimant and such other interested parties of the denial of such application or of his amended decision and the reasons therefor, as the case may be.** Unless the claimant or any such interested party, within 5 calendar days after the delivery of such notification, or within 7 calendar days

after such notification was mailed to his last-known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the commission, shall be paid only after such determination: provided, that if an appeal tribunal affirms a decision of a deputy, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.'

'(g) **Witness fees.** Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission. **Such fees shall be deemed a part of the expense of administering this act.'**

'(h) **Appeal to courts.** Any decision of the commission in the absence of an appeal therefrom as herein provided shall become final 10 days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his **administrative** remedies before the commission as provided by this act. The commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney ~~who is a regular salaried employee of employed by~~ the commission and ~~has been~~ designated by it for that purpose, or at the commission's request, by the attorney-general.'

Sec. 5. P. L., 1935, c. 192, § 7, ¶ c, amended. Paragraph (c) of section 7 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(c) **Study of merit rating.** (1) The commission shall maintain a separate account for each employer, and shall credit his account with all the contributions ~~which he has~~ paid on his own behalf **in excess of 1% of his annual payroll for each calendar year.** But nothing in this act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, **in the amount hereinafter provided,** against the account of his most recent ~~employers against whose accounts the maximum charges hereunder have not previously been made~~ employer, **except that if such individual had not earned within the completed calendar quarter and the expired portion of the uncompleted calendar quarter immediately preceding the first week of any continuous period of unemployment, wages for employment by such most recent employer equal to**

more than 16 times his weekly benefit amount, such benefits may also be charged against the account of his next most recent employer, in the inverse chronological order in which the employment of such individual occurred. ~~but the~~ The maximum amount so charged against the account of any employer shall not exceed 1/6 of the wages payable to such individual by each such employer for employment which occurs on and after the 1st day of such individual's base period, ~~or~~ but not more than \$65 per completed calendar quarter or portion thereof ~~whichever is the lesser~~ which occurs within such base period; but nothing in this section shall be construed to limit benefits payable pursuant to section 3 of this act. The commission shall by general rules prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment ~~during the same week at the same time.'~~

Sec. 6. P. L., 1935, c. 192, § 8, amended. Paragraph (b) of section 8 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(b) Except as otherwise provided in subsection (c) of this section, an employing unit shall cease to be an employer subject to this act only as of the 1st day of January of any calendar year, **only** if it files with the commission, prior to the 5th day of January of such year, a written application for termination of coverage, and the commission finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed 8 or more individuals in employment subject to this act. For the ~~purpose~~ **purposes** of this subsection, the 2 or more employing units mentioned in paragraph (2) or (3) or (4) of section 19 (f) shall be treated as a single employing unit.'

Sec. 7. P. L., 1935, c. 192, § 9, ¶¶ (b), (c) amended. Paragraphs (b) and (c) of section 9 of chapter 192 of the public laws of 1935 are hereby amended to read as follows:

'(b) **Accounts and deposit.** The treasurer of state shall be the ex-officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the commission and shall issue his warrants, vouchers or checks upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund 3 separate accounts: (1) A clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pur-

suant to section 14 of this act may be paid from the clearing account upon warrants, vouchers or checks issued by the treasurer under the direction of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund.

Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the commission and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund.'

'(c) Withdrawals. Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to ~~its~~ **this state's** account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants, vouchers or checks for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants, vouchers or checks issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in

the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.'

Sec. 8. P. L., 1935, c. 192, § 11, §§ (c), (h), (i), (j), (l), amended. Paragraphs (c), (h), (i), (j) and (l) of section 11 of chapter 192 of the public laws of 1935 are hereby amended to read as follows:

'(c) **Publication.** The commission shall cause to be printed for distribution to the public the text of this act, the commission's regulations and general **and special** rules, its annual reports to the governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor.'

'(h) **Oaths and witnesses.** In the discharge of the duties imposed by this act, the chairman of an appeal tribunal, ~~and any member~~ **members of the commission** or any duly authorized representative of ~~the commission~~ **any 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 disputed claim or the administration of this act. **Oaths and affirmations required by reason of duties performed pursuant to this act may be administered by any of such persons as may be designated for the purpose by the commission.'**

'(i) **Subpoenas.** In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission, **or any member thereof, the chairman of an appeal tribunal, or its** any duly authorized representative **of any of them**, shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, **or any member thereof, the chairman of an appeal tribunal, or its** any duly authorized representative **of any of them**, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the commission shall be punished by a fine of not less than \$200 or by imprisonment for not longer than 60 days, or by both such fine and imprisonment.'

'(j) Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission **or any member thereof, the chairman of an appeal tribunal or a member thereof,** or in obedience to the subpoena of ~~the commission or an appeal tribunal, or a member thereof or any duly authorized representative of the commission~~ **any of them** in any cause or proceeding before the commission or an appeal tribunal or a member thereof, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.'

'(l) Reciprocal benefit arrangements. The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby **individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in section 19 (g) of this act, or under similar provisions in the unemployment-compensation laws of such other states, shall be deemed to be employment performed entirely within this state or within one of such other states and whereby** potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.'

Sec. 9. P. L., 1935, c. 192, § 12, ¶ (b), amended. Paragraph (b) of section 12 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(b) Financing. All moneys received by this state under the said act of congress, as amended, shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the ~~Maine state employment service commission~~ **to be expended as provided by this section and by said act of congress.** For the purpose of establishing and maintaining free public employment offices, ~~said division~~ **the commission** is authorized to enter into agreements with any political subdivision of this state or with

any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service account.'

Sec. 10. P. L., 1935, c. 192, § 17, amended. Paragraph (a) of section 17 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(a) In any civil action to enforce the provisions of this act the commission and the state may be represented by any qualified attorney who is ~~a regular salaried employee of~~ **employed by** the commission and is designated by it for this purpose or at the commission's request, by the attorney-general.'

Sec. 11. P. L., 1935, c. 192, § 19, amended. Paragraphs (e), (f), (m), (n), (p) and (r) of section 19 of chapter 192 of the public laws of 1935 are hereby amended to read as follows:

'(e) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, ~~1935~~, **1936**, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of section 19 (f) or section 8 (c) of this act, the employing unit shall for all the purposes of this act be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of section 19 (f) or section 8 (c) of this act shall alone be liable for the **employer's** contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of section 19 (f) or section 8 (c) of this act, may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such

individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work.'

(f) "Employer" means: (1) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment, 8 or more individuals (irrespective of whether the same individuals are or were employed in each such day);

(2) Any **individual or** employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit **not an employer subject to this act** and which, if **subsequent to such acquisition it were** treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls 1 or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing ~~unit~~ **units or interests**, would be an employer under paragraph (1) of this subsection;

(5) **Any employing unit liable to pay an excise tax under Title IX of the Social Security Act with respect to the wages of an individual or individuals in its service.**

~~(5)~~ (6) Any employing unit which, having become an employer under paragraph (1), (2), (3) or (4), has not, under section 8, ceased to be an employer subject to this act; or

~~(6)~~ (7) For the effective period of its election pursuant to section 8 (c) any other employing unit which has elected to become fully subject to this act.'

(m) "Wages" means all ~~compensation~~ **remuneration** payable for personal services, including commissions and bonuses and the cash value of all compensation payable in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as remuneration payable by his employing unit. The reasonable cash value of compensation payable in any medium other than cash, and the reasonable amount of

gratuities, shall be estimated and determined in accordance with rules prescribed by the commission.'

'(n) "Week" means such period or periods of 7 calendar days ~~ending at midnight~~, as the commission may by regulation prescribe.'

'(p) ~~The term "base~~ **Base period**" means the **period beginning with the first 8 day** of the ~~last~~ 9 completed calendar quarters immediately preceding the 1st day of an individual's benefit year **and ending with the last day of the next to the last completed calendar quarter immediately preceding any week with respect to which benefits are payable.**'

'(r) "Weekly benefit amount." An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment. ~~An individual's weekly benefit amount, as determined for the first week of his benefit year, shall constitute his weekly benefit amount throughout such benefit year.~~

Emergency clause. In view of the emergency set forth in the preamble hereof this act shall take effect when approved.