

MAINE STATE LEGISLATURE

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SPECIAL SESSION

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

Legislative Document

No. 1261

H. P. 2277

House of Representatives, July 24, 1940.

Reported by Conference Committee and laid on table to be printed under joint rules and 500 copies ordered printed.

HARVEY R. PEASE, Clerk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY

**AN ACT Amending the Unemployment Compensation Law Relating to
Employer Liability and Coverage.**

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

Sec. 1. P. L., 1935, c. 192, § 19 (m) amended. Subsection (m) of section 19 of chapter 192 of the public laws of 1935, as amended, is hereby further amended to read as follows:

(m) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the Commission: **Except that for the purposes of section 3 (b), section 3 (d), section 4 (e) and section 7 of chapter 192 of the public laws of 1935 as amended, such terms shall not include:**

(1) That part of the remuneration which, after remuneration equal to \$3000 has become payable to an individual by an employer with respect to employment during any calendar year, becomes payable to such individual by such employer with respect to employment during such calendar year and after December 31, 1939.

(2) The amount of any payment with respect to services performed after the effective date of this act made to, or on behalf of, an employee under a plan or system established by an employing unit which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expense in connection with sickness or accident disability, or (D) death, provided the employee (1) has not the option to receive, instead of provisions for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employing unit, and (2) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employing unit.

(3) The payment by an employing unit (without deductions from the remuneration of the employee) of the tax imposed upon an employee under Section 1400 of the Federal Insurance Contributions Act as amended, with respect to service performed after the effective date of this act.

(4) Dismissal payments after the effective date of this act which the employing unit is not legally required to make.

Sec. 2. P. L., 1935, c. 192, § 19 (D), amended. Subsection (D) of subsection (7) of subsection (g) of section 19 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

(D) Agricultural labor (as defined in subsection (u) of section 19 as amended)

Sec. 3. P. L., 1935, c. 192, § 19, additional subsection. Section 19 of chapter 192 of the public laws of 1935, as amended, is hereby amended by adding thereto a new subsection (u) to read as follows:

(u) After the effective date of this act, the term "agricultural labor" includes all services performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wild life.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Federal Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

Sec. 4. P. L., 1935, c. 192, § 19 (g) (7) (B), amended. Subsection (B) of subsection (7) of subsection (g) of section 19 of chapter 192 of the public laws of 1935, as amended, is hereby repealed and the following is enacted in place thereof.

(B) Service performed in the employ of the United States Government or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by this act, except that on and after January 1, 1940 to the extent that the Congress of the United States shall permit States to require any instrumentalities of the United States to make payments into an unemployment fund under a State unemployment compensation act, all of the provisions of this act shall be applicable to such instrumentalities and to services performed for such in-

strumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this State shall not be certified for any year by the Social Security Board under section 1603 of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in section 14 (d) of the unemployment compensation law, as amended, with respect to contributions erroneously collected.

Sec. 5. P. L., 1935, c. 192, § 9 (b) and (c), amended. Subsections (b) and (c) of section 9 of chapter 192 of the public laws of 1935, as amended, 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. The treasurer of state 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 pursuant to section 14 or section 19 (g) (7) (B) of this act may be paid from the clearing account or the benefit account upon warrants prepared by the commission and signed by the state controller. 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 benefits 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 the state's account in the unemployment trust fund solely for the payment of benefits **and for the payment of refunds pursuant to sections 14 and 19 (g) (7) (B)** 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 this state's account therein, as it deems necessary for the payment of **such benefits and refunds** for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and warrants shall be issued for the payment of benefits **and refunds** solely from such benefit account. All such warrants for the payment of benefits from the benefit account and of refunds from the clearing account shall be prepared by the commission and shall be signed by the state controller or on his behalf by his duly authorized representative for that purpose, and countersigned by the state treasurer or on his behalf by his duly authorized representative for that purpose, and when so signed and countersigned and delivered to the payee shall become a check against a designated bank or trust company acting as a depository of the state government. The commission shall be the sole judge of the legality or propriety of any award of benefits, or the amount thereof, appearing in any such warrant prepared by the commission, subject only to the right of appeal as provided in subsections (h) and (i) of section 6 of chapter 192 of the public laws of 1935 as amended. 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 **and refunds** 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. 6. P. L., 1935, c. 192, § 19 (g) (7), additional subsection. Subsection (7) of subsection (g) of section 19 of chapter 192 of the public laws of 1935, as amended, is hereby amended by adding thereto a new subsection (L) reading as follows:

(L) Services performed in the employ of any other State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any services performed in the employ of any instrumentality of one or more other States or their political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the

constitution of the United States from the tax imposed by section 1600 of the Federal Internal Revenue Code.

Sec. 7. P. L., 1935, c. 192, § 19 (g) (7), additional subsections. Subsection (7) of subsection (g) of section 19 of chapter 192 of the public laws of 1935, as amended, is hereby amended by adding thereto new subsections (M), (N), (O), (P), (Q), and (R), and reading as follows:

(M) (1) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101 of the Federal Internal Revenue Code, if

(I) the remuneration for such service does not exceed \$45, or

(II) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(III) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university:

(2) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1) of the Federal Internal Revenue Code;

(3) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (I) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (II) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(4) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (I) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (II) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(5) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section

101 of the Federal Internal Revenue Code, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed \$45 (exclusive of room, board, and tuition).

(N) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative).

(O) Service performed in the employ of an instrumentality wholly owned by a foreign government—

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

(2) If the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

(P) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law.

(Q) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(R) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

Sec. 8. P. L., 1935, c. 192, § 19 (g) (7) (H), amended. Subsection (H) of subsection (7) of subsection (g) of section 19 of chapter 192 of the public laws of 1935, as amended, is hereby amended to read as follows:

(H) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the preven-

tion of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, **and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.**

Sec. 9. P. L., 1935, c. 192, § 19 (g), additional subsection. Subsection (g) of section 19 of chapter 192 of the public laws of 1935, as amended, is hereby amended by adding thereto a new subsection (8) to read as follows:

(8) If the services performed during one-half or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an individual for the person employing him, where any of such service is exempted by section 19 (g) (7) (C).

Sec. 10. Subsection (1) of subsection (g) of section 19 of chapter 192 of the public laws of 1935, as amended, is hereby amended by adding thereto a new section (v) reading as follows:

(1) Except as otherwise provided in subparagraph 7 (B) of subsection (g), 'employment' means any service performed prior to the effective date of this act which was employment as defined in this section prior to such date, and subject to the other provisions of subsection (g) service performed after the effective date of this act including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied.

Sec. 11. Subsection (1) of subsection (e) of section 5 of chapter 192 of the public laws of 1935 as amended is hereby repealed and a new subsection is hereby enacted in place thereof reading as follows:

(1) Dismissal wages or wages in lieu of notice which the employing unit is required by law to pay.