

MAINE STATE LEGISLATURE

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

Legislative Document

No. 1443

S. P. 533

In Senate, April 22, 1947.

Reported by Senator Blanchard of Aroostook from Committee on Federal Relations and printed under joint rules No. 10.

CHESTER T. WINSLOW, Secretary.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-SEVEN

**AN ACT to Effect Certain Changes in Administrative Procedure Under the
Unemployment Compensation Law.**

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

Sec. 1. R. S., c. 24, § 11, sub-§ (a), amended. Subsection (a) of chapter 11 of chapter 24 of the revised statutes is hereby amended to read as follows:

'(a) **Duties and powers of commission.** It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. Not later than the first day of ~~February~~ **May** of each year, the commission shall submit to the governor a report covering the administration and operation of this act during the preceding calendar year and shall make

such recommendations for amendments to this act as the commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.'

Sec. 2. R. S., c. 24, § 6, sub-§ (b), amended. Subsection (b) of section 6 of chapter 24 of the revised statutes, as amended by chapter 164 of the public laws of 1945, is hereby further amended so that the 4th paragraph thereof shall read as follows:

'The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons therefor. Unless the claimant or any such interested party, within ~~5~~ 10 calendar days after the delivery of such notification, or within ~~7~~ 15 calendar days after such notification was mailed to his last known address, files an appeal from such determination, such determination 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 of any possible disqualification involved~~, shall be paid only after ~~such determination; the final determination of the commission~~; provided, that if an appeal tribunal affirms a determination of a deputy, or the commission affirms a determination of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such determination is finally reversed, no employer's account shall be charged with benefits so paid; provided further, if the claimant's appeal relates to the weekly benefit amount or maximum benefit amount potentially payable to him in the benefit year, benefits may nevertheless be paid to the extent of the deputy's determination and prior to the final determination of the commission.'

Sec. 3. R. S., c. 24, § 6, sub-§ (c), amended. Subsection (c) of section 6 of chapter 24 of the revised statutes, as amended by chapter 165 of the public laws of 1945, is hereby further amended to read as follows:

'(c) **Appeals.** Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall

affirm, modify or set aside the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ~~10~~ 15 days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section, **provided however, that when an employer appeals from a deputy's decision in favor of a claimant and such appeal is limited solely to the issue as to which of one or more employer experience rating records or the general fund shall be charged, such appeal shall not interrupt the payment of benefits for continuous unemployment.'**

Sec. 4. R. S., c. 24, § 7, sub-§ (c), ¶ (3), additional. Subsection (c) of section 7 of chapter 24 of the revised statutes is hereby amended by adding thereto a new paragraph to be numbered (3), to read as follows:

'(3) For the purposes of subsection (1) of subsection (c) of section 7, the experience rating record of the most recent subject employer shall not be charged with benefits paid to a claimant whose work record with such employer totalled 3 consecutive work weeks or less but in such case the most recent subject employer with whom claimant's work record exceeded 10 days shall be charged if such employer would have otherwise been chargeable had not subsequent employment intervened.'

Sec. 5. R. S., c. 24, § 19, sub-§ (f), ¶ (8), additional. Subsection (f) of section 19 of chapter 24 of the revised statutes is hereby amended by adding thereto a new paragraph to be numbered (8), to read as follows:

'(8) Any individual or employing unit which acquired any part of the organization, trade or business or assets of another which part had it been treated as a separate unit would have been an employer under paragraph (1) of this subsection.'

Sec. 6. R. S., c. 24, § 19, sub-§ (m), ¶ (1), repealed and replaced. Paragraph (1) of subsection (m) of section 19 of chapter 24 of the revised statutes is hereby repealed and the following enacted in place thereof:

'(1) That part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December 31, 1939, and prior to January 1, 1947, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to \$3,000 with respect to employment after 1938 has been paid to an individual by an employer during any calendar year after 1946, is paid to such individual by such

employer during such calendar year; and for the year 1947 and thereafter, the wages of an individual for employment with an employer shall be subject to this exception whether earned in this state or any other state when the employer-employee relationship is between the same legal entities.'

Sec. 7. R. S., c. 24, § 6, sub-§ (k), additional. Section 6 of chapter 24 of the revised statutes is hereby amended by adding thereto a new subsection (k), to read as follows:

'(k) Proceedings on appeal when either party fails to appear. In any hearing before any appeal tribunal or before the commission if any party to the proceedings, having received due notice thereof, fails, without good cause in the judgment of the hearing body, to appear by himself or his representative to prosecute or defend the appeal as the case may be, the hearing shall proceed to a determination on an ex parte presentation and the decision thereon shall be the decision of the commission even though rendered by an appeal tribunal. This decision shall be final and there shall be no appeal or review thereof; provided however, that an aggrieved party, by petition to the superior court for Kennebec county, may secure an order for the reopening of the case before the commission upon a finding that the ex parte proceedings resulted from an abuse of discretion as a matter of law. The time for filing such petition and the manner of proceeding thereon shall be in accordance with subsection (i) of this section. Provided, however, that nothing herein shall be construed to deny to the party appearing the same rights of appeal as are provided by law in any other unemployment compensation appeal.'

Sec. 8. R. S., c. 24, § 19, sub-§ (g), ¶ (7), sub-¶ (F), repealed. Subparagraph (F) of paragraph (7) of subsection (g) of section 19 of chapter 24 of the revised statutes is hereby repealed.

Sec. 9. R. S., c. 24, § 19, sub-§ (g), ¶ (5), sub-¶ (C), additional. Paragraph (5) of subsection (g) of section 19 of chapter 24 of the revised statutes is hereby amended by adding thereto a new subparagraph to be lettered (C), to read as follows:

'(C) Notwithstanding any other provisions of section 19, the term employment shall include all service performed after January 1, 1947, by an officer or member of the crew of an American vessel on or in connection with such vessel, providing that the operating office (from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed or controlled) is within this state.'

Sec. 10. R. S., c. 24, § 19, sub-§ (g), ¶ (7), sub-¶ (I), repealed. Sub-paragraph (I) of paragraph (7) of subsection (g) of section 19 of chapter 24 of the revised statutes is hereby repealed.

Sec. 11. R. S., c. 24, § 25, repealed. Section 25 of chapter 24 of the revised statutes is hereby repealed.

Sec. 12. R. S., c. 24, § 19, sub-§ (f), ¶ (5), amended. Paragraph (5) of subsection (f) of section 19 of chapter 24 of the revised statutes is hereby amended to read as follows:

‘(5) Any employing unit which, with respect to employment herein defined, is liable to pay an excise tax under **either** Title IX of the Social Security Act as amended **or the Federal Unemployment Tax Act as amended.**’

Sec. 12. R. S., c. 24, § 19, sub-§ (f), ¶ (5), amended. Paragraph (5) of section 8 of chapter 24 of the revised statutes, as amended by chapter 116 and chapter 176, both of the public laws of 1945, is hereby further amended by adding thereto a new paragraph to be numbered (3), to read as follows:

‘(3) **The commission may upon its own motion terminate coverage of any employer when 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; and the commission may, upon its own motion terminate the coverage of an employing unit which had become an employer by virtue of the provisions of subsection (c) of section 8 of chapter 24 of the revised statutes of 1944, as of January 1 of any calendar year when such employing unit has, by virtue of approval of its election to become a subject employer, been such a subject employer for the 2 or more preceding calendar years.**’

Sec. 14. R. S., c. 24, § 19, sub-§ (p), ¶ (1), amended. Paragraph (1) of subsection (p) of section 19 of chapter 24 of the revised statutes is hereby amended to read as follows:

‘(1) “Base period” for the benefit year current at the expiration of the period of such military service or enlistment, means the calendar year in effect at the time of the induction or enlistment, provided, however, that if the individual had unexhausted benefit credits in the base period in effect at the time of his induction or enlistment, his weekly benefit amount shall be whichever is higher with respect to the 2 base periods and his maximum available benefits shall be increased by such un-

exhausted benefit credits but in no event shall he be eligible to receive more than ~~6~~ 20 times such higher weekly benefit amount in such benefit year.'

Sec. 15. R. S., c. 24, § 7, sub-§ (c), ¶ (1), amended. Paragraph (1) of subsection (c) of section 7 of chapter 24 of the revised statutes, as amended by chapter 197 of the public laws of 1945, is hereby repealed and the following enacted in place thereof:

'(1) The commission shall maintain a separate "experience rating record" for each employer, and shall credit his "experience rating record" with all the contributions which he has paid on his own behalf. 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. Benefits paid to an eligible individual under the provisions of the Maine Unemployment Compensation Law shall be charged against the "experience rating record" of the claimant's most recent subject employer; except that no charge shall be made to an individual employer but shall be made to the general fund if the commission finds that:

- (a) Claimant's separation from his last employer was for misconduct in connection with his employment, or was voluntary without good cause attributable to such employer; or
- (b) Claimant has refused to accept reemployment in suitable work when offered by his last employer, without good cause attributable to such employer; or
- (c) Claimant's benefits are based, in whole or in part, on "frozen credits" under subsections (1) and (2) of section 19 (p) of the Unemployment Compensation Law; or
- (d) Benefits paid are not chargeable against any employer's experience rating record in accordance with section 6 (b); or
- (e) Claimant's benefits are predicted upon unemployment occurring in a foreign state when such claimant has been employed in any foreign state subsequent to his last period of employment in the state of Maine.'

Sec. 16. R. S., c. 24, § 11, sub-§ (e), amended. Subsection (e) of section 11 of chapter 24 of the revised statutes is hereby amended to read as follows:

'(e) **Advisory councils.** The commission may appoint a state advisory council consisting of not more than ~~6~~ 9 members composed of an equal

number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations and an equal number of members representing the general public. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this act and in assuring impartiality and freedom from political influence in the solution of such problems. Each member of the advisory council shall be compensated in the amount of \$10 for each day in attendance upon a meeting of the council in addition to reimbursement for any necessary expenses, provided, however, that such compensation paid to any one member of the council shall not exceed the sum of ~~\$60~~ \$120 in any one fiscal year.'