

MAINE STATE LEGISLATURE

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

Legislative Document

No. 1046

S. P. 515

In Senate, February 25, 1949.

Referred to Committee on Federal Relations. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary.

Presented by Senator Batchelder of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-NINE

AN ACT to Effect Certain Changes in 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, § 5, sub-§ (f), amended. Subsection (f) of section 5 of chapter 24 of the revised statutes is hereby amended to read as follows:

'(f) For any week for which the ~~examiner~~ **deputy** finds that the claimant made a wilful misrepresentation in his application to obtain benefits to which he would otherwise not be entitled, then and in that event, the ~~examiner~~ **deputy** shall notify the claimant of the ~~examiner's~~ **deputy's** findings, whereupon the claimant shall have the right to a hearing, appeal or review by the commission and appeal to the courts, as is provided by other provisions of this law.

If a hearing is not requested by the claimant, or an appeal taken therefrom, then the decision of the ~~examiner~~ **deputy** shall become final 5 days after personal notice thereof to the claimant, or 7 days after date of mailing notice thereof to the claimant, and the claimant's maximum benefit amount shall be reduced by an amount equivalent to the number of such weeks of disqualification times his weekly benefit amount.'

Sec. 2. R. S., c. 24, § 6, sub-§ (b), amended. The 2nd paragraph of subsection (b) of section 6 of chapter 24 of the revised statutes is hereby amended to read as follows:

'The deputy shall promptly examine all subsequent claims filed and, on the basis of the facts found by him, shall determine whether or not such claim is valid with respect to the provisions of sections 4 and 5 of this act, other than subsection (e) of section 4, 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 subject to the provisions of subsection (d) of section 5 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 this subsection~~ a report with respect to that subsection to the commission upon the basis of which the commission shall notify its appropriate deputies as to the applicability of that subsection.'

Sec. 3. R. S., c. 24, § 6, sub-§ (b), amended. The 4th paragraph of subsection (b) of section 6 of chapter 24 of the revised statutes, as amended, is hereby further amended to 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 ~~10~~ 5 calendar days after the delivery of such notification, or within ~~15~~ 7 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 of any possible disqualification involved, shall be paid only after 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. 4. 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, is hereby further amended to read as follows:

'The At the time the status of an employing unit is ascertained to be that of an employer, the commission shall establish and thereafter maintain until such employer status is terminated, a separate "experience rating record" for each such employer, and shall credit his "experience rating record" with all the contributions which he has paid thereafter pays 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 or to the general fund if the otherwise chargeable "experience rating record" is that of an employer whose status as such has been terminated; except that no charge shall be made to an individual employer but shall be made to the general fund if the commission finds that:'

Sec. 5. R. S., c. 24, § 7, sub-§ (d), amended. The 1st paragraph of subsection (d) of section 7 of chapter 24 of the revised statutes, as amended, is hereby further amended to read as follows:

'If and when as of the 1st day of February, 1943, and as of each 1st day of February thereafter, the commission finds that the net balance available for benefit amounts (the sum of the balances in the trust fund, the benefit fund and the clearing account after adjustment for outstanding checks and adjustments for funds in transit between either of said funds or said account) equals or exceeds 2 times the highest amount of benefits paid in any of the 5 immediately preceding calendar years, or \$12,000,000, whichever is greater, it shall compute contribution rates for each employer based on his own benefit experience from the time he first or most recently became an employer, whichever date is later, and up to and including December 31 of the preceding year, and his contributions on pay rolls up to December 31 of the preceding year although some part of the contributions due for that part may be payable on or before January 31 of the current year.'

Sec. 6. R. S., c. 24, § 7, sub-§ (e), ¶ (1), amended. Paragraph (1) of subsection (e) of section 7 of chapter 24 of the revised statutes is hereby amended to read as follows:

'(1) The executors, administrators, successors or assigns of any former employer who acquire the business of such employer in toto shall acquire

the experience of such ~~former~~ employer with pay rolls, contributions and benefits. Effective as of the date on which such business was acquired, the commission shall for purposes of rate determination transfer to the successor ~~employing unit employer~~ the pay roll record and experience rating records of the predecessor employer.'

Sec. 7. R. S., c. 24, § 10, sub-§ (d), repealed. Subsection (d) of section 10 of chapter 24 of the revised statutes is hereby repealed.

Sec. 8. R. S., c. 24, § 11, sub-§ (n), additional. Section 11 of chapter 24 of the revised statutes, as amended, is hereby further amended by adding thereto a new subsection (n), to read as follows:

'(n) **Determination of employer or employment; appeal.** Upon the motion of the director of unemployment compensation or if a member of the commission is also acting in that capacity upon the motion of a representative of the commission duly authorized by the commission to do so or upon application of an employing unit and after giving notice, the commission may hold a hearing, make findings of fact and on the basis thereof, determine whether an employing unit constitutes an employer and whether services performed for or in connection with the business of an employing unit constitute employment. In the absence of appeal therefrom, the determination of the commission, together with the record of the proceeding under this subsection shall be admissible in any subsequent proceeding under this chapter, and if supported by evidence, and in the absence of fraud, shall be conclusive, except as to errors of law, upon any employing unit which was a party to the proceeding under this subsection. Any such determination of the commission shall become final 10 days after the date of notification. If such notification is given by mail, it shall be registered and the date of receipt thereof by the employing unit shall control. Any employing unit aggrieved thereby shall have 15 days after the determination of the commission became final in which to perfect his appeal for judicial review thereof and on such appeal the commission shall be deemed to be a party and may be represented by counsel. Such appeals shall be commenced by filing a petition for review in the superior court of the county in which the employing unit has its principal place of business a copy of which petition shall be served upon the commission or upon such person as the commission may designate. With its answer, the commission shall certify and file with said court the original or certified copies of all documents and papers and a transcript of all testimony in the matter together with its findings of fact and decision therein. Upon the motion of any party to the review, the court may order additional testimony or evidence to

be offered and upon the basis of all the evidence before him shall determine the issues. An appeal may be taken from the decision of the superior court to the supreme judicial court in the same manner as is provided in civil cases.'

Sec. 9. R. S., c. 24, § 12, sub-§ (a), amended. Subsection (a) of section 12 of chapter 24 of the revised statutes is hereby amended to read as follows:

'(a) State employment service. The commission shall establish and maintain ~~as a division thereof~~ free public employment offices in such number and in such places as may be necessary for the proper administration of this act and for the purpose of performing such duties as are within the purview of the act of congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U. S. C., Title 29, sec. 49 (c)), as amended. ~~The said division shall be administered by a full time salaried director.~~ It shall be the duty of the commission to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The commission is ~~hereby~~ designated and constituted the agency of this state for the purpose of said act. ~~The commission is directed to appoint and fix the compensation of the director, other officers and employees of the Maine state employment service, subject to the approval of the governor and council.~~ The commission may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance and use of free employment service facilities.'

Sec. 10. R. S., c. 24, § 14, sub-§ (b), amended. Subsection (b) of section 14 of chapter 24 of the revised statutes is hereby amended to read as follows:

'(b) Collection. If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due ~~shall may~~ (in addition to or alternatively to any other method of collection prescribed in this chapter) be collected by civil action in the name of the commis-

sion, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation law of this state.'

Sec. 11. R. S., c. 24, § 14, sub-§§ (e)-(j), additional. Section 14 of chapter 24 of the revised statutes, as amended, is hereby further amended by adding thereto 6 new subsections to be lettered (e) to (j), inclusive, to read as follows:

'(e) Payments.

(1) If any employer files reports for the purpose of determining the amount of contribution due, but fails to pay any part of the contribution or interest due thereon, or fails to file such reports when due, or files an incorrect or insufficient report, the director of unemployment compensation or if a member of the commission is acting in that capacity a representative of the commission duly authorized by the commission so to do may assess the contribution or interest due on the basis of the information submitted by the employer, or on the basis of an estimate as to the amount due, and shall give written notice of such assessment to such employer. Within 15 days after the mailing of such notice to the employer's last known address, or, in the absence of such mailing, within 15 days after delivery of such notice, the employer may appeal to the commission, setting forth the grounds for such appeal. Proceedings on such appeal shall be had in accordance with the provisions of subsection (f) of this section.

(2) If the director of unemployment compensation or if a member of the commission is acting in that capacity a representative of the commission duly authorized by the commission so to do determines that the collection of any contribution or interest under the provisions of this chapter, as amended, will be jeopardized by delay, he may, whether or not the time prescribed by law or any regulations issued pursuant thereto for making reports and paying such contributions has expired, immediately assess such contributions, together with interest, and shall give written notice of such assessment to the employer. In such cases the right of appeal to the commission shall be conditioned upon payment of the contributions and interest so assessed, or upon giving appropriate security to the commission for the payment thereof.

(3) Upon the failure of an employer to pay the amount assessed pursuant to this section, the commission may file with the register of deeds in any county where the employer has real property and/or with the town or city clerk where the employer has his principal place of business, a certificate under its official seal, stating: (a) the name of the employer; (b) his address; (c) the amount of the contributions and interest assessed and in default; and (d) that the time in which a judicial review is permitted pursuant to subsection (g) of this section has expired without such appeal having been taken, or that delay will jeopardize collection, and when such certificate is duly filed and recorded, the amount of the assessment shall be a lien upon the entire interest of the employer, legal, or equitable, in any real or tangible personal property, situated within the jurisdiction of the office in which such certificate was filed. The priority of said liens shall be governed by the same rules as apply to that of a lien for taxes under the laws of this state. No lien for contributions or interest shall be valid against one who purchases personal property from the employer in the usual course of his business in good faith and without actual notice of such lien. Such lien may be enforced against any real or personal property by an action of debt in the name of the commission. Such action shall be begun by writ of attachment commanding the officer serving it to specially attach the property upon which the lien is claimed. The commission shall discharge any such lien upon receiving from any such employer against whose property a lien certificate has been filed a good and sufficient bond with sureties conditioned upon the payment of the amount of contributions and interest as finally determined, together with any additional amounts which may have become due or may have accrued under this chapter and costs of court, if any.

The foregoing remedies shall be in addition to all other remedies.

(4) Certificates of liens for contributions or interest or certificates discharging such liens prepared in accordance with this section shall be received, recorded, and indexed by registers of deeds or town or city clerks in the same manner as similar instruments are recorded and indexed. The fee to be paid by the commission for recording each such certificate is \$1, which need not be prepaid.

(f) Hearings before commission. Upon appeal from an assessment, the commission shall, after affording the appellant and the commission's designated representative a reasonable opportunity for a fair hearing, make finding of facts and render its decision which may affirm, modify, or reverse the action of its designated representative. The conduct of

such hearings shall be governed by rules of the commission consistent with the provisions of subsection (f) of section 6. The commission shall promptly notify the parties to the proceeding of its finding of facts and decision and such decision shall be final unless within 15 days after the mailing of notice thereof to a party's last known address or, in the absence of such mailing, within 15 days after the delivery of such notice, a proceeding for judicial review is initiated by such party pursuant to subsection (g) of this section.

(g) Judicial review. Within the time provided in subsection (f) of this section, any party to the proceedings before the commission may secure judicial review thereof by filing in the superior court of the county in which the employer has his principal place of business in this state, a petition for review of such decision and in such proceeding, any party to the proceeding before the commission shall be made a party thereto. The petition for review need not be verified, but shall state the ground upon which such review is sought. A copy of the petition shall be served upon the commission or upon such person as it may designate. Thereupon the commission shall cause to be certified and filed with the court, a copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings, and decision therein. Upon the motion of any party, the court may order additional testimony or evidence to be offered and upon the basis of all the evidence before it shall determine the assessment. An appeal may be taken from the decision of said court to the supreme judicial in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary as a condition precedent to judicial review of any decision of the commission to enter exceptions to the rulings of the commission. As a condition of initiating a proceeding for judicial review, or of entering an appeal from the decision of the superior court upon such review, the court may require that an employing unit make payment of the amount of contributions or interest adjudged to be due by the commission or by such court, respectively, together with the cost assessed, if any, or file an approved bond or other appropriate security, in a sum fixed by such court, conditioned upon the payment of the amount of contributions and interest as finally determined, together with any additional amounts which may have become due or may have accrued under this act and costs assessed by such court. Upon the final termination of judicial proceedings, hereunder, the commission shall enter an order in accordance with the mandate of the court.

(h) **Conclusiveness of determination.** Any determination or decision duly made in proceedings under subsection (b) of section 14, subsection (n) of section 11, or under subsections (e), (f), or (g) of this section, which determination or decision has become final, shall be binding in any proceedings relating to applications or requests for refunds or credit insofar as such determination or decision necessarily involves the issue of whether an employing unit constitutes an employer or whether services performed for, or in connection with, the business of such employing unit constitute employment.'

(i) **Liability of successor.** Any individual or organization (including the types of organizations described in subsection (e) of section 19, whether or not an employing unit, which acquires the organization, trade, or business or a substantial part of the assets thereof, from an employer, shall be liable, in an amount not to exceed the reasonable value of the organization, trade, business, or assets acquired, for any contributions or interest due or accrued and unpaid by such employer, and the amount of such liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other liens; provided, that the said lien shall not be valid as against one who acquires from the said successor any interest in the said property or assets in good faith, for value and without notice of the lien. The commission shall, upon written request made after such acquisition is completed, furnish such successor with a written statement of the amount of contributions and interest due or accrued and unpaid by the employer as of the date of such acquisition and the amount of the liability of the successor or the amount of the said lien shall in no event exceed the liability disclosed by such statement. The foregoing remedies shall be in addition to all other existing remedies against the employer or his successor.

(j) After any assessment has become final and rights of appeal exhausted or lost by virtue of failure to exercise such rights, any property real or personal upon which a lien has been claimed under the provisions of this chapter may be sold, after due notice, in conformity with provisions of law applicable to sales of real or personal property respectively on executions issued in personal actions in connection with which sales the commission shall have the same rights, privileges, duties and responsibilities as one in whose favor such an execution is issued.'

Sec. 12. R. S., c. 24, § 19, sub-§ (f), ¶ (6), amended. Paragraph (6) of subsection (f) of section 19 of chapter 24 of the revised statutes is hereby amended to read as follows:

'(6) Any employing unit which, having become an employer under para-

graph (1), (2), (3), ~~or~~ (4), **or** (8), has not, under section 8, ceased to be an employer subject to this act; ~~or~~'

Sec. 13. R. S., c. 24, § 20, sub-§ (2), amended. Subsection (2) of section 20 of chapter 24 of the revised statutes is hereby amended to read as follows:

'(2) The commission shall prescribe fair and reasonable ~~general rules~~ **regulations** applicable to the payment of benefits to individuals whose qualifying wages in whole or in part were earned in seasonal industries, ~~and to~~ the period during which benefits shall be payable to them **and to charges to be made to experience rating records or general funds as a result of benefits so paid.**'

Sec. 14. R. S., c. 24, § 27, additional. Chapter 24 of the revised statutes, as amended, is hereby further amended by adding thereto a new section to be numbered 27, to read as follows:

'Sec. 27. Information privileged. All information transmitted to the commission or its duly authorized representatives pursuant to the provisions of this chapter shall be absolutely privileged and shall not be made the subject matter or basis in any action of slander or libel in any court in this state.'