

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

Eighty-seventh and Eighty-eighth
Legislatures

OF THE

STATE OF MAINE

From April 7, 1935 to April 24, 1937

AND MISCELLANEOUS STATE PAPERS

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PUBLIC LAWS
OF THE
STATE OF MAINE

As Passed by the Eighty-Seventh Legislature

AT THE
SPECIAL SESSION, DECEMBER 16-19

1936

Supplementary to Public Laws of the Regular Session, 1935

Chapter 192

AN ACT Relating to Unemployment Compensation.

Emergency preamble. Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state and involuntary unemployment is therefore a subject of general interest and concern requiring appropriate and immediate action by this legislature to prevent its spread and to lighten the burden which now so often falls heavily upon the unemployed worker and his family, and

Whereas, the attempt to provide for such distress solely through poor relief not only is inadequate for the need but productive of serious social consequences upon many self-respecting persons and if undertaken on an emergency basis taxes to the utmost the administrative facilities and financial stability of the state, and

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

CHAP. 192

Sec. 1. Statement of policy. This act is designed to create a sound unemployment compensation law to encourage employers to provide more steady work, to maintain the purchasing powers of workers becoming unemployed, and thus to prevent and limit the serious social consequences of poor relief assistance.

Sec. 2. Title of act. This act shall be known and may be cited as the "Unemployment Compensation Law."

Sec. 3. Benefits. (a) **Payment of benefits.** Twenty-four months after the date when contributions first accrue under this act, benefits shall become payable from the fund. All benefits shall be paid through public employment offices, or other agencies approved by the social security board, in accordance with such regulations as the commission may prescribe.

(b) **Weekly benefit amount for total unemployment.** Each eligible individual who is totally unemployed (as defined in section 19 (j) (1)) in any week shall be paid with respect to such week, benefits at the rate of 50 per cent of his full-time weekly wages but not more than \$15 per week, nor less than either \$5 or $\frac{3}{4}$ of his full-time weekly wage, whichever is the lesser.

(c) **Weekly benefit for partial unemployment.** Each eligible individual who is partially unemployed (as defined in section 19 (j) (2)), in any week shall be paid with respect to such week a partial benefit. Such partial benefit shall be an amount equal to the difference between his weekly benefit amount (as defined in section 19 (r)) and $\frac{5}{6}$ of his wages (as defined in section 19 (m)) for such week. If such partial benefit for any week equals less than \$2, it shall not be payable unless and until the accumulated total of such partial benefits with respect to weeks occurring within the 13 preceding weeks equals \$2 or more.

(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 employment by an employer in his base period and for the customary scheduled full-time week prevailing for his occupation in the enterprise in which he last earned wages in employment by an employer during his base 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 $\frac{1}{13}$ of his total wages in employment by an employer in that quarter in which such total wages were highest during his base period.

(e) **Duration of benefits.** The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the balance credited to his account with respect to wages earned in employment by an employer during his base period or 16 times his weekly benefit amount, whichever is the lesser. The commission shall maintain a separate account for each individual who subsequent to January 1, 1937 earns wages in employment by an employer. After the expiration of each calendar quarter, the commission shall credit each such account with 1/6 of such wages earned by such individual during such quarter, or \$65, whichever is the lesser. Benefits paid to an eligible individual shall be charged against amounts, which have been credited to his account on the basis of wages earned in employment by an employer during his base period, and which have not previously been charged hereunder, in the same chronological order as such wages were earned.

Sec. 4. Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe.

(b) He has made a claim for benefits in accordance with the provisions of section 6 (a) of this act.

(c) He is able to work, and is available for work.

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of 2 weeks (and for the purposes of this subsection, 2 weeks of partial unemployment shall be deemed to be equivalent to 1 week of total unemployment). Such weeks of total or partial unemployment or both need not be consecutive. No week shall be counted as a week of total unemployment for the purposes of this subsection;—

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsections (b) and (e) of this section;

(3) Unless it occurs within the 13 consecutive weeks preceding the week for which he claims benefits, provided that this condition shall not interrupt the payment of benefits for consecutive weeks of unemployment nor require any individual who, prior to the 1st day of his benefit year, shall have accumulated such 2 waiting period weeks, to accumulate more than 3 additional waiting period weeks during his ensuing benefit year;

CHAP. 192

(4) Unless it occurs after benefits first could become payable to any individual under this act.

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

Sec. 5. Disqualification for benefits. An individual shall be disqualified for benefits:

(a) For the week in which he has left work voluntarily without good cause, if so found by the commission, and for not less than the 1 nor more than the 5 weeks which immediately follow such week (in addition to the waiting period), as determined by the commission according to the circumstances in each case;

(b) For the week in which he has been discharged for misconduct connected with his work, if so found by the commission, and for not less than the 1 nor more than the 9 weeks which immediately follow such week (in addition to the waiting period), as determined by the commission in each case according to the seriousness of the misconduct;

(c) If the commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commission. Such disqualification shall continue for the week in which such failure occurred and for not less than the 1 nor more than the 5 weeks which immediately follow such week (in addition to the waiting period) as determined by the commission according to the circumstances in each case,—

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the wages, hours, or other conditions of work are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) if as a condition

of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that;—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

(e) For any week with respect to which he is receiving or has received remuneration in the form of;—

(1) Wages in lieu of notice:

(2) Compensation for temporary partial disability under the workmen's compensation law of any state or under a similar law of the United States; or

(3) Old-age benefits under title II of the social security act, as amended, or similar payments under any act of congress;

Provided, that if such remuneration is less than the benefits which would otherwise be due under this act, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

Sec. 6. Claims for benefits. (a) **Filing.** Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commission to each employer without cost to him.

(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

CHAP. 192

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. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. 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.

(c) **Appeals.** Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify 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 days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

(d) **Appeal tribunals.** To hear and decide disputed claims, the commission shall establish 1 or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of 3 members, 1 of whom shall be a salaried examiner, who shall serve as chairman, 1 of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter 2 members shall serve at the pleasure of the commission and be paid a fee of not more than \$10 per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the commission in any case in

which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) **Commission review.** The commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the commission shall be heard in accordance with the requirements in subsection (c) of this section. The commission shall promptly notify the interested parties of its findings and decisions.

(f) **Procedure.** The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the commission for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) **Witness fees.** Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission.

(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 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 the commission and has been designated by it for that purpose, or at the commission's request, by the attorney general.

(i) **Court review.** Within 10 days after the decision of the commis-

CHAP. 192

sion has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the superior court of Kennebec county against the commission for the review of its decision, in which action any other party to the proceeding before the commission shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the commission or upon such person as the commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the commissioner shall forthwith mail 1 such copy to each such defendant. With its answer, the commission shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The commission may also, in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state. An appeal may be taken from the decision of the superior court of Kennebec county to the supreme judicial court of the state of Maine, in the same manner, but not inconsistent with the provisions of this act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the commission shall so order.

Sec. 7. Contributions. (a) Payment. (1) On and after January 1, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in section 19 (g)) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to $\frac{1}{2}$ cent or more, in which case it shall be increased to 1 cent.

(b) **Rate of contribution.** Each employer shall pay contributions equal

to the following percentages of wages payable by him with respect to employment:

(1) Nine-tenths of 1 per centum with respect to employment during the calendar year 1936;

(2) One and 8/10 per centum with respect to employment during the calendar year 1937;

(3) Two and 7/10 per centum with respect to employment during the calendar year 1938, and during all years subsequent thereto.

(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. 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 against the account of his most recent employers against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred, but 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 \$65 per completed calendar quarter or portion thereof, whichever is the lesser. 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.

(2) The commission shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts and shall submit in its report to the governor, not later than the 1st day of February, 1941, the results of the actual experience in payment of contributions on behalf of the individual employers and with respect to benefits charged to their accounts together with its recommendations relative to the advisability of the adoption of the merit rating system as a design to encourage and reward steadier employment with a view to reducing contribution rates for those employers that have reduced their unemployment hazard as reflected by each employer's contributions and unemployment benefit experience.

Sec. 8. Period, election, and termination of employer's coverage.

(a) Any employing unit which is or becomes an employer subject to this act within any calendar year shall be subject to this act during the whole of such calendar year.

CHAP. 192

(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, 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 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.

(c) (1) An employing unit, not otherwise subject to this act, which files with the commission its written election to become an employer subject hereto for not less than 2 calendar years, shall, with the written approval of such election by the commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1st of any calendar year subsequent to such 2 calendar years, only if at least 30 days prior to such 1st day of January, it has filed with the commission a written notice to that effect.

(2) Any employing unit for which services that do not constitute employment as defined in this act are performed, may file with the commission a written election that all such services performed by individuals in its employ in 1 or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than 2 calendar years. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1st of any calendar year subsequent to such 2 calendar years, only if at least 30 days prior to such 1st day of January such employing unit has filed with the commission a written notice to that effect.

Sec. 9. Unemployment compensation fund. (a) **Establishment and control.** There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this act. This fund shall consist of (1) all contributions collected under this act, together with any interest thereon collected pursuant to section 14 of this act; (2) all fines and penalties collected pursuant to the provisions of this act; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such

property or securities. All moneys in the fund shall be mingled and undivided.

(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 three 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 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.

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 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

CHAP. 192

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.

(d) **Management of funds upon discontinuance of unemployment trust fund.** The provisions of subsections (a), (b), and (c) to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission in accordance with the provisions of this act: Provided, that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America or of any state in the said United States. And provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commission.

Sec. 10. Administrative organization. (a) Commission created. There is hereby created a commission to be known as the Maine unemployment compensation commission. The commission shall consist of three (3) members, one of whom shall be a representative of labor, one of whom shall be a representative of employers, and one of whom shall be impartial and shall represent the public generally, and shall be chairman. Each of the 3 members of the commission shall be appointed by the governor, with the advice

and consent of the council, after the effective date of this act, or after any vacancy occurs in the membership of the commission. Each member shall hold office for a term of six (6) years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this act shall expire, as designated by the governor at the time of appointment, 1 at the end of two (2) years, 1 at the end of four (4) years, and 1 at the end of six (6) years after the date of his appointment. During his or her term of membership on the commission, no member shall engage in any other business, vocation, or employment, or serve as an officer or committee member of any political party organization, and not more than 2 members of the commission shall be members of the same political party. The governor, with the advice and consent of the council, may at any time, after notice and hearing, remove any commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. All members shall serve until the qualification of their respective successors.

(b) **Salaries.** The chairman of the commission shall receive a fixed monthly salary, at the rate of \$4500 per year, and each of the other members shall receive a fixed monthly salary, at the rate of \$4000 per year, and shall be paid from the unemployment compensation administration fund.

(c) **Quorum.** Any 2 commissioners shall constitute a quorum, provided, however, that whenever the commission hears any case involving a disputed claim for benefits under the provisions of this act, the impartial member of the commission shall act alone in the absence or disqualification of any other member, and in no case shall such hearing proceed unless the impartial member of the commission is present. Except as hereinbefore provided, no vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission.

(d) **Divisions.** The commission shall establish 2 coordinate divisions: the Maine state employment service division, created pursuant to section 12 of this act, and the unemployment compensation division. Each division shall be responsible for the discharge of its distinctive function. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commission may find that such separation is impracticable.

Sec. 11. Administration. (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

CHAP. 192

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 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.

(b) **Regulations and general and special rules.** General and special rules may be adopted, amended, or rescinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective 10 days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission and shall become effective in the manner and at the time prescribed by the commission.

(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 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.

(d) **Personnel.** Subject to other provisions of this act, the commission is authorized to appoint, and fix the compensation, subject to the approval of the governor and council and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. On request of the commission the attorney general shall represent the commission and the state in any court action relating to this act or to its administration and enforcement; provided, however, that special counsel may be designated by the attorney

general at the request of the commission whose services and expenses subject to approval by the governor and council shall be paid from the funds provided for the administration of this act. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis. The commission shall not employ or pay any person who is an officer or committee member of any political party organization. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling moneys or signing checks hereunder.

(e) **Advisory councils.** The commission may appoint a state advisory council and local advisory councils, composed in each case 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 of such members representing the general public as the commission may designate. 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. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses.

(f) **Employment stabilization.** The commission with the advice and aid of such advisory councils as it may appoint, and through its appropriate divisions, may take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(g) **Records and reports.** Each employing unit shall keep true and accurate work records, containing such information as the commission may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commission deems necessary for the effective administration of this act. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant at a hear-

CHAP. 192

ing before an appeal tribunal or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any person who violates any provision of this section shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not more than 90 days, or both.

(h) **Oaths and witnesses.** In the discharge of the duties imposed by this act, the chairman of an appeal tribunal and any member or duly authorized representative of the commission 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.

(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 its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, or its duly authorized representative, 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, 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 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.

(k) **State-federal cooperation.** In the administration of this act, the commission shall cooperate to the fullest extent consistent with the provisions of this act, with the social security board, created by the social security act, approved August 14, 1935, as amended; shall make such reports, in such form and containing such information as the social security board may from time to time require, and shall comply with such provisions as the social security board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the social security board governing the expenditure of such sums as may be allotted and paid to this state under title III of the social security act for the purpose of assisting in the administration of this act. Upon request therefor the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

(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 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. 12. Employment service. (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, who shall be charged with the duty 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

CHAP. 192

4 of said act, and this state will observe and comply with the requirements thereof. The Maine state employment service division 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. Such appointments shall be made in accordance with regulations prescribed by the director of the United States employment service.

(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 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 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. 13. Unemployment compensation administration fund. (a) Special fund. There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commission. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this act, and for no other purpose whatsoever. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States of America, or any agency thereof, including the social security board and the United States employment service, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commission for expenditure consistent with this act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund in an amount to be fixed by the commission and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 9 of this act, shall be paid from the moneys in the unemployment compensation administration fund.

(b) **Employment service account.** A special "employment service account" shall be maintained as a part of the unemployment compensation administration fund for the purpose of maintaining the public employment offices established pursuant to section 12 of this act and for the purpose of cooperating with the United States Employment Service. There is hereby appropriated to the employment service account of the unemployment compensation administration fund, from any money in the state treasury not otherwise appropriated, on the effective date of this act and annually thereafter on the 1st of July, the sum of \$25,000. In addition, there shall be paid into such account the moneys designated in section 12 (b) of this act, and such moneys as are apportioned for the purposes of this account from any moneys received by this state under title III of the social security act, as amended.

Sec. 14. Collection of contributions. (a) **Interest on past-due contributions.** Contributions unpaid on the date on which they are due and payable as prescribed by the commission, shall bear interest at the rate of 1 per cent per month from and after such date until payment plus accrued interest is received by the commission. Interest collected pursuant to this subsection shall be paid into the unemployment compensation fund.

(b) **Collection.** If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the commission, 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.

(c) **Priorities under legal dissolutions or distributions.** In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than \$250 to each claimant, earned within 6 months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 (b) of that act (U.S.C., Title 11, Sec. 104 (b)), as amended.

(d) **Refunds.** If not later than 1 year after the date on which any

CHAP. 192

contributions or interest thereon became due, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and if the commission shall determine that such contributions, or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made the commission shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the commission's own initiative.

Sec. 15. Protection of rights and benefits. (a) Waiver of rights void. No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act shall be valid. No agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be punished by a fine of not less than \$100 nor more than \$1000 or by imprisonment for not more than 6 months, or both.

(b) Limitation of fees. No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the commission or his representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the commission or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the commission. Any person who violates any provision of this subsection shall, for each such offense, be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment for not more than 6 months, or both.

(c) No assignment of benefits; exemptions. No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or

dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

Sec. 16. Penalties. (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, either for himself or for any other person, shall be punished by a fine of not less than \$20 nor more than \$50, or by imprisonment for not more than 30 days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this act, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not more than 60 days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each such failure or refusal shall constitute a separate offense.

(c) Any person who shall wilfully violate any provision of this act or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not more than 60 days, or by both such fine and imprisonment.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (and such nondisclosure or misrepresentation was known to him or ought to have been known by him to be fraudulent) has received any sum as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission either be liable to have such sum deducted from any future benefits payable to him under this act or shall be liable to repay to the commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be

CHAP. 192

collectible in the manner provided in section 14 (b) of this act for the collection of past-due contributions.

Sec. 17. Representation in court. (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 the commission and is designated by it for this purpose or at the commission's request, by the attorney general.

(b) All criminal actions for violation of any provision of this act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his request and under his direction, by the prosecuting attorney of any county in which the employer has a place of business or the violator resides.

Sec. 18. Nonliability of state. Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commission shall be liable for any amount in excess of such sums.

Sec. 19. Definitions. As used in this act, unless the context clearly requires otherwise:

(a) (1) "Annual pay roll" means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual pay roll" means the average of the annual pay rolls of any employer for the last three or five preceding calendar years, whichever average is higher.

(b) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) "Commission" means the unemployment compensation commission established by this act.

(d) "Contributions" means the money payments to the state unemployment compensation fund required by this act.

(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, 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 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 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 and which, if 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, would be an employer under paragraph (1) of this subsection;

CHAP. 192

(5) 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) 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.

(g) (1) Except as otherwise provided in this subsection (g), "employment" means service, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) the service is localized in this state; or

(B) the service is not localized in any state but some of the service is performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Services performed within this state but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(4) Services not covered under paragraph (2) of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(5) Service shall be deemed to be localized within a state if:

(A) the service is performed entirely within such state; or

(B) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the commission that

(A) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

(B) such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) such individual is customarily engaged in an independently established trade, occupation, profession or business.

(7) The term "employment" shall not include: (A) Service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions;

(B) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States;

(C) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress: Provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective 10 days after publication thereof in the manner provided in section 11 (b) of this act for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this act;

(D) Agricultural labor;

(E) Domestic service in a private home;

(F) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(G) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

CHAP. 192

(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 prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(h) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

(i) "Fund" means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

(j) "Total and partial unemployment."

(I) An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services (other than odd jobs or subsidiary work for which no wages as used in this subsection, are payable to him).

(2) An individual shall be deemed "partially unemployed" in any week of less than full-time work if his wages payable for such week are less than $\frac{6}{5}$ s of the weekly benefit amount he would be entitled to receive if totally unemployed and eligible.

(3) As used in this subsection, the term "wages" shall include only that part of wages for odd jobs or subsidiary work, or both, which are in excess of \$3 in any 1 week.

(4) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(k) "State" includes, in addition to the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

(l) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.

(m) "Wages" means all compensation 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.

(o) "Benefit year" with respect to any individual means the 52 consecutive week period beginning with the 1st day of the week with respect to which benefits are first payable to him, and thereafter, the 52 consecutive week period beginning with the 1st day of the 1st week with respect to which benefits are next payable to him after the termination of his last preceding benefit year.

(p) The term "base period" means the first 8 of the last 9 completed calendar quarters immediately preceding the 1st day of an individual's benefit year.

(q) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30 or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe.

(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.

Sec. 20. Seasonal workers. (1) As used in this section the term "seasonal industry" means an occupation or industry in which, because of the seasonal nature thereof it is customary to operate only during a regularly recurring period or periods of less than 40 weeks in a calendar year. The commission shall, after investigation and hearing, determine, and may thereafter from time to time redetermine, the longest seasonal period or periods during which, by the best practice of the occupation or industry in question, operations are conducted. Until such determination by the commission, no occupation or industry shall be deemed seasonal.

(2) The term "seasonal worker" means an individual who is ordinarily engaged in a seasonal industry and who, during the portion or portions of the year when such industry is not in operation, is ordinarily not engaged in any other work.

(3) The commission shall prescribe fair and reasonable general rules applicable to seasonal workers for determining the total wages in employment by an employer required to qualify such workers for benefits and the period during which benefits shall be payable to them.

Sec. 21. Part time workers. (1) As used in this section the term "part time worker" means an individual whose normal work is in an occu-

CHAP. 192

pation in which his services are not required for the customary scheduled full-time hours prevailing in the establishment in which he is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

(2) The commission shall prescribe fair and reasonable general rules applicable to part-time workers for determining their full-time weekly wage, and the total wages in employment by an employer required to qualify such workers for benefits. Such rules shall, with respect to such workers, supersede any inconsistent provisions of this act, but, so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of this act.

Sec. 22. Separability of provisions. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 23. Saving clause. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this act at any time.

Sec. 24. Termination. If at any time the provisions of this act requiring the payment of contributions and benefits have been held invalid under the constitution of this state by the supreme judicial court of this state or under the United States constitution by the supreme court of the United States in such manner that any person or concern required to pay contributions under this act might secure a similar decision, or that the tax imposed by title IX of the social security act, as amended, or any other federal tax against which contributions under this act may be credited has been amended or repealed by congress or has been held unconstitutional by the supreme court of the United States, with the result that no portion of the contributions required by this act may be credited against such federal tax, the governor shall forthwith publicly so proclaim and upon the date of such proclamation the provisions of this act requiring the payment of contributions and benefits shall be suspended. The commission shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit and shall direct the treasurer of state to deposit such moneys, together with any other moneys in the fund, as a special fund in any banks or public depositories in this state in which general funds of the state may be deposited, and to hold such moneys for such disposition as the legislature shall prescribe. The commission shall thereupon refund, as the legislature shall prescribe, without interest and in accordance with regulations prescribed by it, to each person or concern by whom contributions have been

CHAP. 192

paid, their pro rata share of the total contributions paid under this act. Any interest or earnings of the fund shall be available to the commission to pay for the costs of making such refunds. When the commission shall have executed the duties herein prescribed and performed such other acts as are incidental to the termination of its duties under this act, the governor shall by proclamation declare that the provisions of this act shall cease to be operative.

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

Approved December 18, 1936.