

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
and
SECOND REGULAR SESSION
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ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

C. Upon request of any abutting landowner, the municipal officers shall conduct an inspection of the borrow pit. The municipal officers may request the Department of Transportation, Bureau of Project Development, Construction Division, to conduct an inspection of the borrow pit in lieu of the municipal inspection.

D. The Construction Division shall conduct an inspection of the borrow pit in question when requested to do so by the municipal officers and shall report its findings to the municipal officers, the abutting landowner initiating the request and the owner of the borrow pit. The division shall make its measurements from the property line designated by the abutting property owner initiating the request. The liability of the department and its personnel for any activities connected with such inspections shall be governed by the provisions of Title 14, chapter 741.

E. If the borrow pit is in violation of the provisions of this subsection, the owner is liable for the cost of the inspection. If the borrow pit is not in violation of the provisions of this subsection, the abutting landowner initiating the request is liable for the cost of the inspection.

F. Upon notification of any violation under this subsection, the owner of the borrow pit shall bring the borrow pit into compliance with the provisions of this subsection within 60 days. The municipal officers may require a shorter compliance period if they find that the violation poses an imminent danger to public safety or private property.

4. Civil penalty. Any person who violates the provisions of subsection 3 is subject to a civil penalty not to exceed \$50 per day for every day elapsing after the expiration of the compliance schedule established under subsection 3, payable to the municipality in which the borrow pit is located, to be recovered in a civil action brought by the municipality.

Effective August 4, 1988.

CHAPTER 641

H.P. 1795 — L.D. 2459

AN ACT to Clarify the Unemployment Compensation Appeals Process.

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

Sec. 1. 26 MRSA §1081, sub-§1, as amended by PL 1983, c. 351, §6, is further amended to read:

1. Commission. The Maine Unemployment Insurance Commission, as heretofore created, shall consist of 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 a representative of the general public who shall be impartial and an attorney admitted to the practice of law in the State and shall be the chairman of the commission. Except as provided in this subsection, the 3 members and their successors shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over labor and to confirmation by the Senate, to hold office for a term of 6 years or until a successor has been duly appointed and qualified confirmed, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his a predecessor was appointed shall be appointed for the remainder of the term. During his a term of membership on the commission, a member shall not engage in any other business, vocation or employment, nor serve as an officer or committee member of any political organization.

Sec. 2. 26 MRSA §1081, sub-§3 as amended by PL 1983, c. 351, §7, is further amended to read:

3. Quorum. Any 2 members of the commission shall constitute a quorum. Whenever the commission hears any case involving a disputed claim for benefits under this chapter and Title 36, chapter 831, the chairman shall act alone in the absence or disqualification of any other member, provided that in the event of illness or extended absence on the part of the chairman or in the event of a vacancy in that position, the remaining members may act on appeals, and conduct hearings, and render a decision decisions, provided both members agree. Except as otherwise provided, no vacancy shall may impair the right of the remaining members to exercise all of the powers of the commission. Any action, decision, order, rule or recommendation which is required by law to be made by the Maine Unemployment Insurance Commission shall not be made until the commission has held a meeting in the regular course of its business for which all members have been provided with reasonable notice of the meeting and its agenda.

Sec. 3. 26 MRSA §1082, sub-§4-A is enacted to read:

4-A. Division of Administrative Hearings. There is established within the Department of Labor the Division of Administrative Hearings to hear and decide appeals from decisions of the deputy as provided by this chapter and any other appeals as the commission or commissioner may require.

A. The division shall be under the direction of the chief administrative hearing officer appointed by the commissioner and subject to the Civil Service Law. The chief administrative hearing officer must be an attorney admitted to practice law in the State.

B. The chief administrative hearing officer shall administer the office, supervise and assign cases to the administrative hearing officers, and preside at hearings as necessary.

C. Administrative hearing officers shall preside at appeal proceedings. These administrative hearing officers shall be under the direction of the chief administrative hearing officer and hired subject to the Civil Service Law.

Sec. 4. 26 MRSA §1082, sub-§8, as amended by PL 1985, c. 348, §4, is further amended to read:

8. Oaths and witnesses. In the discharge of the duties imposed by this chapter, the commissioner, the commission, the ~~chairman of an appeal tribunal~~ chief administrative hearing officer and any duly authorized representative of them shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter. Oaths and affirmations required by reason of duties performed pursuant to this chapter may be administered by any of such persons as may be designated for the purpose by the commissioner. In the discharge of the duties imposed by this chapter, the commissioner, the commission, the ~~chairman of an appeal tribunal~~ chief administrative hearing officer or any duly authorized representative of them, when the interests of any interested party demand, may issue commissions to take depositions to any unemployment compensation or employment security official empowered to take such depositions under this chapter or the laws of any other state, for either of the following causes:

- A. When the deponent resides out of, or is absent from, the State;
- B. When the deponent is bound to sea or is about to go out of the State; or
- C. When the deponent is so aged, infirm or sick as to be unable to attend at the place of hearing.

Such depositions shall be taken by written interrogatories to be compiled by the commission or the ~~appeal tribunal~~ Division of Administrative Hearings, and the adverse party shall be afforded an opportunity to refute such testimony before a determination is made. The deponent shall be sworn and the deposition shall be signed and sworn to by the deponent before admissible as testimony at a hearing before the ~~appeal tribunal~~ Division of Administrative Hearings or the commission.

Subpoenas shall be issued pursuant to Title 5, section 9060.

Sec. 5. 26 MRSA §1082, sub-§9-A, as amended by PL 1987, c. 338, §4, is further amended to read:

9-A. Refusal to appear. Any person who without just cause fails or refuses 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

that person's power to do so, in obedience to a subpoena of the commissioner, the commission, the ~~appeal tribunal~~ Division of Administrative Hearings or the duly authorized representative of any of them shall be guilty of a Class E crime. Whenever a person refuses to obey a subpoena duly issued by the commissioner, the commission, the ~~appeal tribunal~~ Division of Administrative Hearings or the duly authorized representative of any of them, any court of this State within the jurisdiction of which the person resides or transacts business, shall have jurisdiction to issue to that person an order requiring ~~him~~ the person to appear and produce evidence or testimony and any failure to obey that order may be punished by the court as contempt ~~thereof~~ of court.

Sec. 6. 26 MRSA §1082, sub-§10 is amended to read:

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

Sec. 7. 26 MRSA §1194, sub-§2, as amended by PL 1987, c. 365, §2, is further amended to read:

2. Determination. A representative designated by the commissioner, and in this chapter referred to as a deputy, shall promptly examine the first claim filed by a claimant in each benefit year and shall determine the weekly benefit amount and maximum benefit amount potentially payable to the claimant during that benefit year in accordance with section 1192, subsection 5.

The deputy shall promptly examine all subsequent claims filed and, on the basis of facts ~~found by him~~, shall determine whether or not that claim is valid with respect to sections 1192 and 1193, other than section 1192, subsection 5, or shall refer that claim or any question involved therein to ~~an appeal tribunal~~ the Division of Administrative Hearings or to the commission, which shall make a determination with respect thereto in accordance with the procedure described in subsection 3, except that in

any case in which the payment or denial of benefits will be subject to section 1193, subsection 4, the deputy shall promptly transmit a report with respect to that subsection to the Director of Unemployment Compensation upon the basis of which the director shall notify appropriate deputies as to the applicability of that subsection.

The deputy shall determine in accordance with section 1221, subsection 3, paragraph A, the proper employer's experience rating record, if any, against which benefits of an eligible individual shall be charged, if and when paid.

The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons therefor. Subject to subsection 11, unless the claimant or any such interested party, within 15 calendar days after that notification was mailed to his last known address, files an appeal from that determination, that determination shall be final, provided that the period within which an appeal may be filed may be extended, for a period not to exceed an additional 15 calendar days, for good cause shown. If new evidence or pertinent facts that would alter that determination become known to the deputy prior to the date that determination becomes final, a redetermination is authorized, but that redetermination must be mailed before the original determination becomes final.

If an employer's separation report for an employee is not received by the office specified thereon within 10 days after that report was requested, the claim shall be adjudicated on the basis of information at hand. If the employer's separation report containing possible disqualifying information is received after the 10-day period and the claimant is denied benefits by a revised deputy's decision, benefits paid prior to the date of the revised decision shall not constitute an overpayment of benefits. Any benefits paid after the date of the revised decision shall constitute an overpayment.

If an employer files an amended separation report or otherwise raises a new issue as to the employee's eligibility or changes the wages or weeks used in determining benefits which results in a denial of benefits or a reduction of the weekly benefit amount, the benefits paid prior to the date the determination is mailed shall not constitute an overpayment. Any benefits received after that date to which the claimant is not entitled pursuant to a new determination based on that new employer information shall constitute an overpayment.

If, during the period a claimant is receiving benefits, new information or a new issue arises concerning the claimant's eligibility for benefits or which affects the claimant's weekly benefit amount, no benefits may be withheld until a determination is made on the issue. Before a determination is made, written notice shall be mailed to the claimant and other interested parties, which shall include the issue to be decided, the law upon which it is based, any factual allegations known to the bureau, the right to a fact-finding interview, the date and location

of the scheduled interview and the conduct of the interview and appeal. The fact-finding interview shall be scheduled not less than 5 days nor more than 14 days after the notice is mailed. The bureau shall include in the notice a statement notifying the claimant that any benefits paid prior to the determination may be an overpayment under applicable law and recoverable by the bureau if it is later determined that the claimant was not entitled to the benefits. If the claimant does not appear for the scheduled interview, the deputy shall make a determination on the basis of available evidence. The deputy shall make a prompt determination of the issue based solely on any written statements of interested parties filed with the bureau before the interview, together with the evidence presented by interested parties who personally appeared at the interview. Upon request and notice to all parties at the interview, the deputy may accept corroborative documentary evidence after the interview. In no other case may the deputy base ~~his~~ a decision on evidence received after the interview has been held.

A. This subsection does not apply when the claimant reports that, in the week claimed:

- (1) The claimant worked and reports a specific amount of earnings for that work;
- (2) The claimant worked and had earnings from that work, but does not furnish the amount of earnings;
- (3) The claimant was not able or available for work for a specific portion of the week and there is sufficient information for the deputy to determine that the inability or unavailability for work was for good cause; or
- (4) The claimant received a specific amount of other remuneration as described in section 1193, subsection 5.

B. The commissioner shall notify all claimants when a weekly claim is filed that they must provide an estimate of their earnings if they do not know the actual amount and, if no estimate is provided, benefits will be withheld pending receipt of that information. Benefits shall be paid on the basis of the estimate provided until actual information is available.

Sec. 8. 26 MRS §1194, sub-§3, as amended by PL 1981, c. 145, is further amended to read:

3. Appeals. Unless such appeal is withdrawn, ~~an appeal tribunal~~ the Division of Administrative Hearings after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or set aside the findings of fact and decision of the deputy. The parties shall be then duly notified of ~~such tribunal's~~ the division's decision, together with its reasons therefor, which subject to subsection 11 shall be deemed to be the final decision of the commission unless, within 15 calendar days after

that notification was mailed to his last known address, the claimant and employer may appeal to the commission by filing an appeal in accordance with such rules as the commission shall prescribe, provided that the appealing party appeared at the hearing and was given notice of the effect of the failure to appear in writing prior to the hearing.

Sec. 9. 26 MRSA §1194, sub-§4, as amended by PL 1983, c. 351, §20, is repealed.

Sec. 10. 26 MRSA §1194, sub-§5, as amended by PL 1977, c. 587, is further amended to read:

5. Commission review. The commission may on its own motion affirm, modify or set aside any decision of an appeal tribunal the Division of Administrative Hearings on the basis of the evidence previously submitted in such that case or direct the taking of additional evidence, or may permit any of the parties of such that 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 the Division of Administrative Hearings and by the deputy whose decision has been overruled or modified by an appeal tribunal the Division of Administrative Hearings. The commission may remove to itself or transfer to another appeal tribunal the chief administrative hearing officer or to another administrative hearing officer the proceedings on any claim pending before an appeal tribunal the Division of Administrative Hearings. Any proceedings so removed to the commission shall be heard in accordance with the requirements in subsection 3. All hearings conducted pursuant to this section may be heard by a quorum of commissioners, as defined in section 1081, subsection 3. The commission shall promptly notify the interested parties of its findings and decisions.

Sec. 11. 26 MRSA §1194, sub-§8, as amended by PL 1983, c. 351, §21, is further amended to read:

8. Appeals to courts. Any decision of the commission shall become final 10 days after receipt of written notification and any person aggrieved thereby by the decision may appeal by commencing an action pursuant to Title 5, section 11001 et seq subchapter VII. The commissioner commission shall be made a party defendant in any such appeal.

Sec. 12. 26 MRSA §1194, sub-§10, as amended by PL 1985, c. 348, §8, is further amended to read:

10. Determination may be reconsidered; appeal. The deputy may reconsider a determination with respect to the weekly benefit amount and maximum total amount of benefits for a claimant for any given benefit year, if he the deputy finds that an error has occurred in connection therewith, or that wages have been erroneously reported, but no such redetermination shall be made after one year from the date of the original determination. Notice of any such redetermination shall be

promptly given to the parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. If the maximum amount of benefits is increased upon such that redetermination, an appeal therefrom solely with respect to the matters involved in such that increase may be filed in the manner and subject to the limitations provided in subsection 2. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to an appeal by claimant with respect to subsequent benefits which may be affected by the redetermination. An appeal may be filed in the manner and subject to the limitations provided in subsection 2.

The deputy may reconsider a benefit payment for any particular week or weeks whenever he finds that an error has occurred, but no such redetermination may be made after one year from the date of payment for such that week or weeks. Notice of any such redetermination shall be promptly given to the claimant. Subject to subsection 11, unless the claimant files an appeal from such that redetermination within 15 calendar days after such that redetermination was mailed to his the claimant's last known address, such the redetermination shall be final, provided that the period within which an appeal may be filed may be extended for a period not to exceed an additional 15 calendar days for good cause shown.

Subject to the same limitations and for the same reasons, the commission may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal the Division of Administrative Hearings, the commission or a court, and may apply to the body or court which rendered such that final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such that appeal, unless withdrawn, shall be treated as an appeal from such the redetermination.

Sec. 13. 26 MRSA §1194, sub-§11, ¶A, as enacted by PL 1971, c. 538, §34, is amended to read:

A. Benefits shall be paid promptly in accordance with a determination, reconsidered determination, redetermination, decision of an appeal tribunal the Division of Administrative Hearings, the commission or a reviewing court under this section upon the issuance of such the determination, reconsidered determination, redetermination or decision, regardless of the pendency of the period to apply for reconsideration, file an appeal or petition for judicial review that is provided with respect thereto in this section or the pendency of any such application, filing or petition, unless and until such that determination, redetermination or decision has been modified or reversed by a subsequent reconsidered determination, redetermination or decision. In which event, benefits will be paid or denied for weeks of unemployment thereafter in accordance with such that reconsidered determination, modified or reversed determination, redetermination or decision.

Sec. 14. Transitional provisions. Transitional provisions are as follows.

1. **Personnel transferred.** The chairman of the Unemployment Insurance Commission shall serve until his term expires and a successor has been nominated and confirmed. The person serving as the director, adjudication, also known as the Director of the Division of Appeals, shall become the Chief Administrative Hearing Officer of the Division of Administrative Hearings. The persons serving as adjudication officers shall become administrative hearing officers. Personnel and support staff of the Appeals Division shall continue as staff for the Division of Administrative Hearings.

2. **Funds.** Funds allocated to the Division of Appeals shall be allocated in the same manner to the Division of Administrative Hearings.

3. **Equipment and property.** All equipment and property of the State used by the Division of Appeals shall be used by the Division of Administrative Hearings.

4. **Rules and procedures.** All rules and procedures currently in effect for the Division of Appeals shall be in effect for the Division of Administrative Hearings until amended or rescinded as provided by state law.

Effective August 4, 1988.

CHAPTER 642

H.P. 1817 — L.D. 2487

AN ACT to Prohibit Publication of Names of Concealed Weapon Permit Holders.

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

30 MRSA §2225, sub-§5-A is enacted to read:

5-A. Names of those issued concealed firearms permits. The names of persons issued concealed firearms permits under Title 25, chapter 252, may not be printed in the annual report.

Effective August 4, 1988.

CHAPTER 643

H.P. 1819 — L.D. 2493

AN ACT to Amend the Animal Control Laws.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, some courts have expressed concern that the

laws regarding dog control do not make it clear that the owner of the dog is responsible for its control; and

Whereas, in at least one case a law suit has been dismissed on this basis; and

Whereas, it is necessary to revise the laws promptly so that similar dismissals will not occur; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine 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:

Sec. 1. 7 MRSA §§3911 and 3912, as enacted by PL 1987, c. 383, §3, are amended to read:

§3911. Dogs not to run at large

It is unlawful for any dog, licensed or unlicensed, to run at large, except when used for hunting. The owner or keeper of any dog found running at large shall be subject to the penalties provided in this chapter.

§3912. Disposition of dogs at large

Any animal control officer or person acting in that capacity shall seize, impound or restrain any dog found in violation of section 3911 and deliver it to any shelter as provided for in section 3913, subsection 2, or shall take the dog to its owner, if known. ~~Such dogs shall be handled as stray and abandoned dogs.~~ If ownership cannot be established, such animals may be handled as strays for the purposes of acceptance by an approved shelter.

Sec. 2. 7 MRSA §3922, sub-§3, as enacted by PL 1987, c. 383, §3, is amended to read:

3. **Proof of immunization.** No municipal clerk may issue a license for any dog until the applicant has filed with the clerk proof that the dog has been immunized against rabies in accordance with rules promulgated by the Commissioner of Human Services, provided that the requirement of immunization may be waived by the clerk under conditions set forth by the Commissioner of Human Services.

~~In the case of any guide dog or hearing dog kept prior to training or for breeding purposes, the board shall accept valid proof of immunization against rabies provided by another state. The commissioner shall promulgate rules which allow the clerk and the board to accept valid proof of immunization against rabies provided by another state.~~

Sec. 3. 7 MRSA §3947, as enacted by PL 1987, c. 383, §3, is amended to read: