

MAINE STATE LEGISLATURE

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EIGHTH REVISION

T H E

REVISED STATUTES

OF THE

STATE OF MAINE

PASSED SEPTEMBER 20, 1944, AND TAKING EFFECT
DECEMBER 30, 1944

VOLUME I



By the Authority of the Legislature

AUGUSTA
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CHAPTER 24.

MAINE UNEMPLOYMENT COMPENSATION LAW.

Sec. 1. Statement of policy. 1935, c. 192, § 1. 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. 1935, c. 192, § 2. This act shall be known and may be cited as the "Unemployment Compensation Law."

Sec. 3. Benefits. 1935, c. 192, § 3. 1937, c. 228, § 1. 1939, c. 163, §§ 1, 2, 3, 4, 6; c. 274, § 2. 1941, c. 55, §§ 5, 6, 7, 8; c. 141, § 6.

(a) Payment of benefits. (1937, c. 228, § 1) (1939, c. 274, § 2) Twenty-four months after the date when contributions first accrue under this act, benefits shall become payable from the fund: provided, that wages earned for services defined in section 19 (g) (7) (K) of this act, irrespective of when performed, shall not constitute wages for insured work for the purpose of any benefit year commencing on or after July 1, 1939, nor shall benefits be paid with respect to such wages for unemployment occurring after July 1, 1939. All benefits shall be paid through public employment offices, or such other agencies as the commission may by regulation prescribe, and in accordance with such regulations as the commission may prescribe.

(b) Weekly benefit amount for total unemployment. (1939, c. 163, § 1) (1941, c. 55, §§ 5, 8; c. 141, § 6) 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 shown in column (C) of the schedule below on the line on which in column (A) there is indicated the individual's wage class and such rate shall be the individual's weekly benefit amount; and the maximum total amount of benefits payable to any eligible individual during any benefit year shall be the amount listed in column (D). The individual's wage class shall be determined by the total amount of wages payable to him for insured work during his base period as shown in column (B); provided that on and after April 1, 1942, the individual's wage class shall be determined by the total amount of wages paid to him for insured work, during his base period as shown in column (B).

Column A	Column B		Column C	Column D
	Under	\$	None	None
1.		\$ 144.00		
2.	\$144.00	185.41	\$ 5.00	\$ 48.00
3.	185.42	228.24	5.00	56.00
4.	228.25	272.63	5.00	64.00
5.	272.64	318.58	5.00	72.00
6.	318.59	366.09	5.00	80.00
7.	366.10	415.16	5.50	88.00
8.	415.17	465.78	6.00	96.00
9.	465.79	517.82	6.50	104.00
10.	517.83	571.42	7.00	112.00
11.	571.43	626.57	7.50	120.00
12.	626.58	683.28	8.00	128.00
13.	683.29	741.54	8.50	136.00

Column A	Column B	Column C	Column D	
14.	741.55	801.37	9.00	144.00
15.	801.38	862.61	9.50	152.00
16.	862.62	925.41	10.00	160.00
17.	925.42	989.77	10.50	168.00
18.	989.78	1055.69	11.00	176.00
19.	1055.70	1123.16	11.50	184.00
20.	1123.17	1192.19	12.00	192.00
21.	1192.20	1262.64	12.50	200.00
22.	1262.65	1334.64	13.00	208.00
23.	1334.65	1408.20	13.50	216.00
24.	1408.21	1483.32	14.00	224.00
25.	1483.33	1559.99	14.50	232.00
26.	1560.00 and over		15.00	240.00

(c) **Weekly benefit for partial unemployment.** (1939, c. 163, § 2) Each eligible individual who is partially unemployed and who has earned less than his weekly benefit amount in any week shall be paid with respect to such week a partial benefit. Such partial benefit shall be the individual's weekly benefit amount reduced by the amount shown in column (C) in the schedule below on the line on which in column (A) there is indicated the individual's weekly earning class.

The individual's weekly earning class shall be determined by the wages payable to him for employment during the week for which he claims a partial benefit as shown in column (B).

Column A	Column B	Column C	
1.	Up to	\$ 2.99	None
2.	\$ 3.00	3.49	\$.50
3.	3.50	3.99	1.00
4.	4.00	4.49	1.50
5.	4.50	4.99	2.00
6.	5.00	5.49	2.50
7.	5.50	5.99	3.00
8.	6.00	6.49	3.50
9.	6.50	6.99	4.00
10.	7.00	7.49	4.50
11.	7.50	7.99	5.00
12.	8.00	8.49	5.50
13.	8.50	8.99	6.00
14.	9.00	9.49	6.50
15.	9.50	9.99	7.00
16.	10.00	10.49	7.50
17.	10.50	10.99	8.00
18.	11.00	11.49	8.50
19.	11.50	11.99	9.00
20.	12.00	12.49	9.50
21.	12.50	12.99	10.00
22.	13.00	13.49	10.50
23.	13.50	13.99	11.00
24.	14.00	14.49	11.50
25.	14.50	14.99	12.00

(d) **Maximum amount of benefits to be reduced in certain cases; restoration.** (1937, c. 228, § 1) (1939, c. 163, § 3) (1941, c. 55, §§ 6, 7, 8) If the com-

mission finds, after reasonable notice and hearing, that benefit payments at the amounts prescribed in sections 3 (b) and 3 (c), if continued, are in the aggregate such an amount as to imperil the solvency of the unemployment compensation fund, the commission shall, by regulation, reduce the maximum amount of benefits as prescribed in column (D) of subsection (b) of section 3 by not to exceed 6/16 of the maximum amount and subsequently, if the commission finds, after reasonable notice and hearing, that the solvency of the unemployment compensation fund will permit the restoration of benefits as prescribed in column (D) of subsection (b) of section 3 it shall make such restoration in full or in part at the rate of 1/16 of such maximum amounts or multiples thereof.

(e) Amount of benefits may be increased in certain cases. (1939, c. 163, § 4) (1941, c. 55, §§ 6, 8) If the commission finds, after reasonable notice and hearing, that benefit payments at the amounts prescribed in section (3) (b) and (3) (c) are in the aggregate, such an amount as will permit an increase in benefit payments without imperiling the solvency of the unemployment compensation fund, the commission shall, by regulation, increase the weekly benefit amounts set forth in the schedule in section (3) (b) by not to exceed 20%. Providing, however, that no weekly benefit amount shall exceed \$18 and subsequently, if the commission finds, after reasonable notice and hearing, that increased weekly benefit amounts as provided herein are in the aggregate such an amount as to imperil the solvency of the unemployment compensation fund, the commission shall, by regulation, reduce such increased weekly benefit amounts by not to exceed 20% of the weekly benefit amounts set forth in the schedule in section (3) (b) but in making such reduction, no weekly benefit amount shall be reduced below the amounts shown in column (C) of section (3) (b).

(f) Unemployment benefit rights, adjusted. (1939, c. 163, § 6) (1941, c. 55, §§ 6, 8) Unemployment benefit rights, credits and charges heretofore provided for or made under previously existing legislation shall be adjusted to the unemployment benefit rights, payments and charges hereby provided in accordance with such regulations as the commission may prescribe. Provided, however, that any individual who has a current benefit year established prior to the effective date of this act, shall be paid benefits, in accordance with his last determination applicable to the first calendar quarter of 1939, with his benefit amount adjusted to the next highest one-half dollar, until the expiration of such individual's current benefit year or the exhaustion of his benefit credits under such determination whichever occurs first and such individual shall thereafter be paid unemployment benefits under the provisions of sections (3) (b), (c), (d), (e) and (f) of the unemployment compensation law as amended, provided further, however, that if such individual's current benefit year terminates or he exhausts his wage credits subsequent to the effective date of this act and prior to April 1, 1940, the maximum amount of benefits payable to such individual until March 31, 1940 as provided in sections (3) (b), (c) and (d) of the unemployment compensation law as amended shall be reduced by the amount of benefits previously paid to such individual by virtue of his benefit credits established during the first 3 calendar quarters of 1938 and no additional waiting period shall be required when the transition occurs during filing of claims for continuous unemployment, and provided further that any individual who has completed a benefit year prior to the effective date of this act, and who be-

comes eligible for benefits in the benefit year April 1, 1939, to March 31, 1940, shall have his maximum benefits reduced only by the amount of benefits previously paid on the basis of benefit credits established during the first 3 calendar quarters of 1938.

Sec. 4. Benefit eligibility conditions. 1935, c. 192, § 4. 1937, c. 228, § 2. 1939, c. 163, § 9. 1941, c. 55, §§ 2, 8; c. 141, § 7. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that—

(a) (1939, c. 163, § 9) He has made a claim for benefits with respect to such week in accordance with such regulations as the commission may prescribe.

(b) (1939, c. 163, § 9) He has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the commission may prescribe, except that the commission may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act; provided that no such regulation shall conflict with section 3 (a) of this act.

(c) (1939, c. 163, § 9) He is able to work and is available for work at his usual or customary trade, occupation, profession or business or in such other trade, occupation, profession or business as his prior training or experience shows him to be fitted or qualified.

(d) (1939, c. 163, § 9) (1941, c. 55, §§ 2, 8) He has served a waiting period of one week of total unemployment or 2 weeks of partial unemployment. Such weeks of partial unemployment need not be consecutive. No week shall be counted as a week of partial or total unemployment for the purpose of this subsection:

(1) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits.

(2) If benefits have been paid with respect thereto.

(3) Unless the individual was eligible for benefits with respect thereto as provided in sections 4 and 5 of this act, except for the requirements of this subsection and of subsection (4) of section 5 (e).

(e) (1937, c. 228, § 2) (1939, c. 163, § 9) (1941, c. 141, § 7) He has during his base period earned wages for insured work equal to not less than the amount appearing in column (B) of the total unemployment benefit table, on the line of which, in column (C) of that table, appears his weekly benefit amount. For the purpose of this subsection wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer from whom such wages were earned has satisfied the conditions of section 19 (f) or section 8 (c) with respect to becoming an employer; provided that after March 31, 1942, he has during his base period been paid wages for insured work equal to not less than the amount appearing in column (B) of the total unemployment benefit table, on the line of which, in column (C) of that table, appears his weekly benefit amount. For the purpose of this subsection wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on

which the employer by whom such wages were paid has satisfied the conditions of section 19 (f) or section 8 (c) with respect to becoming an employer.

Sec. 5. Disqualification for benefits. 1935, c. 192, § 5. 1939, c. 110; c. 163, § 7; c. 312, § 11. 1941, cc. 114, 115. 1943, c. 254, § 1. An individual shall be disqualified for benefits:

(a) (1939, c. 110) 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, and his maximum benefit amount shall be reduced by an amount equivalent to the number of such weeks of disqualification times his weekly benefit amount;

(b) (1939, c. 110) 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, and his maximum benefit amount shall be reduced by an amount equivalent to the number of such weeks of disqualification times his weekly benefit amount;

(c) (1939, c. 110) 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, and his maximum benefit amount shall be reduced by an amount equivalent to the number of weeks of disqualification times his weekly benefit amount.

(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) (1941, c. 114) For any week with respect to which he is receiving or has received remuneration in the form of:

(1) (1939, c. 312, § 11) Dismissal wages or wages in lieu of notice which the employing unit is required by law to pay.

(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) Repealed by C. 114 P. L. 1941.

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.

(4) (1939, c. 163, § 7) Benefits under the unemployment compensation law of any state or similar law of the United States.

(f) (1941, c. 115) (1943, c. 254, § 1) For any week for which the examiner finds that the claimant made a wilful misrepresentation in his application to obtain benefits to which he would otherwise not be entitled, then and in that event, the examiner shall notify the claimant of the examiner's findings, whereupon the claimant shall have the right to a hearing, appeal, or review by the commission and appeal to the courts, as is provided by other provisions of this law.

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

Sec. 6. Claims for Benefits. 1935, c. 192, §6. 1937, c. 228, § 3. 1941, cc. 73, 188. 1943, c. 254, § 2.

(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) **Determination.** (1943, c. 254, § 2) A representative designated by the commission, and hereinafter 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 such benefit year in accordance with the provisions of subsection (e) of section 4 of this act.

The deputy shall promptly examine all subsequent claims filed and, on the basis of the facts found by him, shall determine whether or not such claim is valid with respect to the provisions of sections 4 and 5 of this act, other than subsection (e) of section 4, or shall refer such claim or any question involved therein to an appeal tribunal or to the commission, which shall make a determination with respect thereto in accordance with the procedure described in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be subject to the provisions of subsection (d) of section 5 of this act, the deputy shall promptly transmit his full finding of fact with respect to that subsection to the commission, which on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection.

The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons therefor. Unless the claimant or any such interested party, within 5 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 determination, such determination shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the commission, shall be paid only after such determination; provided, that if an appeal tribunal affirms a determination of a deputy, or the commission affirms a determination of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such determination is finally reversed, no employer's account shall be charged with benefits so paid; provided further, if the claimant's appeal relates to the weekly benefit amount or maximum benefit amount potentially payable to him in the benefit year, benefits may nevertheless be paid to the extent of the deputy's determination and prior to the final determination of the commission.

(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 proceedings 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.** (1937, c. 228, § 3) Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission to be paid out of the unemployment compensation administration fund.

(h) **Appeal to courts.** (1937, c. 228, § 3) 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 administrative 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 employed by the commission and designated by it for that purpose, or at the commission's request, by the attorney-general.

(i) **Court review.** (1941, c. 73) Within 10 days after the decision of the commission 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 proceedings 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 the original or certified copies of 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.

(j) **Determination may be reconsidered; appeal.** (1941, c. 188) The commission may reconsider a determination whenever it finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to such determination but not considered in connection therewith, have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentations of fact, 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 amount of benefits is increased upon such redetermination an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in subsection (b) of this section. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to review in connection with an appeal by claimant from any determination upon a subsequent claim for benefits which may be affected in amount or duration by such redetermination. 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 commission or a court, and may apply to the body or court which rendered such 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 appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

Sec. 7. Contributions. 1935, c. 192, § 7. 1939, c. 163, § 5. 1941, c. 141, §§ 2, 3. 1943, c. 331.

(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 for employment (as defined in section 19 (g)). 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) .9% with respect to employment during the calendar year 1936;
- (2) 1.8% with respect to employment during the calendar year 1937;
- (3) 2.7% with respect to employment during the calendar years 1938, 1939, and 1940;
- (4) (1941, c. 141, § 3) Each employer shall pay contributions equal to 2.7% of wages paid by him during the calendar year 1941 and during each calendar year thereafter, except as otherwise prescribed in subsection (d) of this section with respect to wages paid on and after July 1, 1943.

(c) **Experience rating record.**

(1) (1939, c. 163, § 5) The commission shall maintain a separate "experience rating record" for each employer, and shall credit his "experience rating record" with all the contributions which he has paid on his own behalf. But nothing in this act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund. Benefits paid to an eligible individual under the provisions of the Maine Unemployment Compensation Law shall be charged against the "experience rating record" of his employers in his base period in the inverse chronological order in which such individual was employed by such employers, but the maximum amount so charged against the "experience rating record" of any employer shall not exceed, to the nearest dollar, that proportion of 16 times the individual's weekly benefit amount, which his earnings in the base period for that employer bears to his total earnings for all employers in the same base period. The commission shall by general rules prescribe the manner in which benefits shall be charged against the "experience rating records" of several employers for whom an individual performed employment during the same calendar quarter.

(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 "experience rating records" and shall submit in its annual report to the governor, the results of the actual experience in payment of contributions on behalf of the individual employers and with respect to benefits charged to their "experience rating records" together with the recommendations relative to the advisability of the continuance of the rates based on benefit experience.

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

(1) No employer's rate shall be varied from 2.7% for any year unless and until his experience rating record has been chargeable with benefits through-

out the 36-consecutive-calendar month period ending on the computation date.

(2) Subject to the provisions of the preceding paragraph, each employer's rate for the 12-month period commencing July 1, 1943, and for each 12-month period thereafter shall be based upon his actual experience as follows:

(A) 2.7% if his contributions credited exceed his benefits charged by an amount equivalent to less than 5% of his average annual payroll for the 36-consecutive-months period ending on the computation date.

(B) 2.4% if his contributions credited exceed his benefits charged by an amount equivalent to 5% of his average annual pay roll for the 36-consecutive-months period ending on the computation date, and such excess is less than 7.5% of such average annual pay roll.

(C) 2.1% if his contributions credited exceed his benefits charged by an amount equivalent to 7.5% of his average annual pay roll for the 36-consecutive-months period ending on the computation date, and such excess is less than 10% of such average annual pay roll.

(D) 1.8% if his contributions credited exceed his benefits charged by an amount equivalent to 10% of his average annual pay roll for the 36-consecutive-months period ending on the computation date, and such excess is less than 12.5% of such average annual pay roll.

(E) 1.5% if his contributions credited exceed his benefits charged by an amount equivalent to or greater than 12.5% of his average annual pay roll for the 36-consecutive-months period ending on the computation date.

(3) Any employer who under the provisions of this act would otherwise be entitled to a rate of less than 2.7% shall nevertheless pay a rate of 2.7% for any quarter during which he was in arrears in the payment of contributions or interest, and his rate shall continue at 2.7% for the remainder of the contribution year.

(4) If the total benefits paid from the fund within the first six months of any calendar year are equal to or exceed 4.5% of the total pay rolls subject to contributions, reported by employers for such 6-months period, the commission shall forthwith reestablish all rates at 2.7%, and such rate shall continue in force for the remainder of such calendar year; and provided further that if, in the opinion of the commission, an emergency exists and the benefits currently being paid, if continued at approximately the same level, will seriously impair the fund, the commission may, after reasonable notices and public hearing, forthwith reestablish all rates at 2.7% and continue said rates in force until, in the opinion of the commission, such emergency no longer exists, or until the date set by this law for the computation of rates.

(5) As used in this section, the words "contributions credited" and "benefits charged" mean the contributions credited to and the benefits paid and chargeable against the "experience rating record" of an employer as provided in subsection (c) of this section, including all contributions due and paid on or before January 30 of the year that immediately follows the computation date and all benefits paid and chargeable on or before the computation date.

(6) The commission:

(1) Shall promptly notify each employer of his rate of contributions as determined for any calendar year pursuant to this section. Such determina-

tion shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to his last known address or in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth his reasons therefor. If the commission grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a hearing, but no employer shall have standing, in any proceedings involving his rate of contributions or contribution liability, to contest the chargeability to his "experience rating record" of any benefits paid in accordance with a determination, redetermination or decision pursuant to section 6 of this act except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination or decision or to any other proceedings under this act in which the character of such services was determined. The employer shall be promptly notified of the commission's denial of his application, or of the commission's redetermination, both of which shall become final unless within 15 days after the mailing of notice thereof to his last known address or in the absence of mailing, within 15 days after the delivery of such notice, a petition for judicial review is filed in the superior court of Kennebec county, State of Maine. In any proceedings under this subsection 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. No additional evidence shall be received by the court but the court may order additional evidence to be taken before the commission and the commission may, after hearing such additional evidence, modify its determination, and file such modified determination, together with a transcript of the additional record, with the court. Such proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under section 6 of this act and 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 Maine in the same manner, but not inconsistent with the provisions of this act, as is provided in civil cases;

(2) May provide by regulation for periodic notification to employers of benefits paid and chargeable to their "experience rating record" of the status of such "experience rating record", and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the commission may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redetermination, made after notice and opportunity for hearing, and the commission's findings of fact in connection therewith, may be introduced in any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for any calendar year and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact made by the commission in proceedings to redetermine the contribution rates of an employer.

(e)

(1) The executors, administrators, successors, or assigns of any former employer who acquire the business of such employer in toto shall acquire the experience of such former employer with pay rolls, contributions and benefits. Effective as of the date on which such business was acquired, the com-

mission shall for purposes of rate determination transfer to the successor employing unit the pay roll record and experience rating records of the predecessor employer.

(2) From the date of the acquisition to the end of the current rate period, the contribution rate of the successor employer shall be a newly computed rate determined in accordance with the provisions of this subsection and based upon the combined experience of the predecessor and successor as of the regular computation date for the rate period in which the acquisition took place.

(f) The computation date shall be December 31st of each calendar year, and the rates of each employer entitled to the provisions of this act shall be determined by the commission as of that date.

(g) The commission shall have the following period of time for the purpose of computing the rates of each employer entitled to the benefits of this provision, January 1st to June 30th of each calendar year.

(h) The term "effective date" shall mean the date on which the new rates shall become effective and shall be July 1st of each calendar year.

Sec. 8. Period, election, and termination of employer's coverage. 1935, c. 192, § 8. (1937, c. 228, § 4) 1939, c. 113. 1941, c. 190.

(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.

(b) (1937, c. 228, § 4) (1941, c. 190) 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 first day of January of any calendar year, only if it files with the commission, prior to the 20th 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 two 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) (1939, c. 113) 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 two 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 two calendar years, only if it files with the commission, prior to the 5th day of January of such year, a written application for termination of coverage.

(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 one 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 two 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 two calendar years, only if at least 30 days prior to such first day of January such employing unit has filed with the commission a written notice to that effect.

Sec. 9. Unemployment compensation fund. 1935, c. 192, § 9. 1937, c. 228, § 5; c. 248. 1939, c. 274, § 3; c. 309; c. 312, § 5. 1943, c. 254, § 3.

(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.** (1937, c. 228, § 5; c. 248) (1939, c. 309; c. 312, § 5) (1943, c. 254, § 3) The treasurer of state shall be the ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the commission. The treasurer of state shall maintain within the fund 3 separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 14 or section 19 (g) (7) (B) of this act may be paid from the clearing account or the benefit account upon warrants prepared by the commission and signed by the state controller. After clearance thereof all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund.

Except as herein otherwise provided, moneys in the clearing and 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.

(c) **Withdrawals.** (1937, c. 228, § 5; c. 248) (1939, c. 309; c. 312, § 5) Moneys shall be requisitioned from the state's account in the unemployment trust fund solely for the payment of benefits and for the payment of refunds pursuant to sections 14 and 19 (g) (7) (B) in accordance with regulations prescribed by the commission. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as it deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and warrants shall be issued for

the payment of benefits and refunds solely from such benefit account. All such warrants for the payment of benefits from the benefit account and of refunds from the clearing account shall be prepared by the commission and shall be signed by the state controller or on his behalf by his duly authorized representative for that purpose, and countersigned by the state treasurer or on his behalf by his duly authorized representative for that purpose, and when so signed and countersigned and delivered to the payee shall become a check against a designated bank or trust company acting as a depository of the state government. The commission shall be the sole judge of the legality or propriety of any award of benefits, or the amount thereof, appearing in any such warrant prepared by the commission, subject only to the right of appeal as provided in subsections (h) and (i) of section 6 of chapter 192 of the public laws of 1935 as amended. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or, in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.

(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 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.

(e) (1939, c. 274, § 3) Notwithstanding any requirements of the foregoing subsections of this section, the commission shall, prior to whichever is the later of (i) 30 days after the close of this session of the legislature and (ii) July 1, 1939, authorize and direct the Secretary of the Treasury of the United States to transfer from this state's account in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act as amended, to the railroad unemployment insurance account, established and maintained pursuant to section 10 of the railroad unemployment insurance act, an amount hereinafter referred to as the preliminary amount; and shall, prior to whichever is the later

of (i) 30 days after the close of this session of the legislature and (ii) January 1, 1940, authorize and direct the Secretary of the Treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account an additional amount, hereinafter referred to as the liquidating amount. The social security board shall determine both such amounts after consultation with the commission and the railroad retirement board. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contributions collected from 'employers' (as the term 'employer' is defined in section (1) (a) of the railroad unemployment insurance act) and credited to the unemployment compensation fund bears to all contributions theretofore collected under this act and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from 'employers' (as the term 'employer' is defined in section (1) (a) of the railroad unemployment insurance act) pursuant to the provisions of this act during the period July 1, 1939, to December 31, 1939, inclusive.

Sec. 10. Administrative organization. 1935, c. 192, § 10. 1937, c. 228, § 6.

(a) **Commission created.** (1937, c. 228, § 6) There is hereby created a commission to be known as the Maine unemployment compensation commission. The commission 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 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 6 years, or during the pleasure of the governor and council, 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 2 years, 1 at the end of 4 years, and 1 at the end of 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.

(b) **Salaries.** (1937, c. 228, § 6) The chairman of the commission shall receive a fixed weekly salary, at the rate of \$4,500 per year, and each of the other members shall receive a fixed weekly salary, at the rate of \$4,000 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. 1935, c. 192, § 11. 1937, c. 228, § 7. 1939, c. 274, § 4. 1941, c. 187. 1943, c. 254, §§ 4, 5.

(a) **Duties and powers of commission.** It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. Not later than the first day of February 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.** (1937, c. 228, § 7) The commission shall cause to be printed for distribution to the public the text of this act, the commission's regulations and general and special 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.** (1941, c. 187) The commission may appoint a state advisory council consisting of not more than 6 members composed of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations and an equal number of members representing the general public. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this act and in assuring impartiality and freedom from political influence in the solution of such problems. Each member of the advisory council shall be compensated in the amount of \$10 for each day in attendance upon a meeting of the council in addition to reimbursement for any necessary expenses, provided, however, that such compensation paid to any one member of the council shall not exceed the sum of \$60 in any one fiscal year.

(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.** (1937, c. 228, § 7) 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 or obtained from any individual pursuant to the administration of this act shall, except to the extent necessary for proper presentation of a claim, be held confidential and 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 individual's or employing unit's identity, but any claimant (or his legal representative) at a hearing 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. (1937, c. 228, § 7) (1943, c. 254, § 4) In the discharge of the duties imposed by this act, the commission, the chairman of an appeal tribunal and any duly authorized representative of either 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 act. Oaths and affirmations required by reason of duties performed pursuant to this act may be administered by any of such persons as may be designated for the purpose by the commission.

In the discharge of the duties imposed by this act, the commission, the chairman of an appeal tribunal, or any duly authorized representative of either of them, when the interests of any interested party demand, may issue commissions to take depositions to any unemployment compensation official empowered to take such depositions under this act or the laws of any other state, for either of the following causes: (1) when the deponent resides out of, or is absent from, the state; (2) when the deponent is bound to sea, or is about to go out of the state; or (3) 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, 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 or the commission.

The form of subpoena to be used to subpoena witnesses shall be the same as used in the courts of the state and the same rule shall apply to the form of subpoena duces tecum.

(i) Subpoenas. (1937, c. 228, § 7) 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, the chairman of an appeal tribunal, or the duly authorized representative of either of them, shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, the chairman of an appeal tribunal, or the duly authorized representative of either of them, 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, the chairman of an appeal tribunal, or the duly authorized representative of either of them, 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. (1937, c. 228, § 7) No person shall 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 or the duly authorized representative of either of them, or in obedience to the subpoena of the commission, the chairman of an appeal

tribunal, or the duly authorized representative of either of them in any cause or proceeding before the commission, the chairman of an appeal tribunal or duly authorized representative of either of them, 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 co-operation.** (1939, c. 274, § 4) 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. The commission may make the state's records relating to the administration of this act available to the railroad retirement board and may furnish the railroad retirement board, at the expense of such board, such copies thereof as the railroad retirement board deems necessary for its purposes. The commission may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

(l) **Reciprocal benefit arrangements.** (1937, c. 228, § 7) The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in section 19 (g) of this act or under similar provisions in the unemployment compensation laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and 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.

(m) **Rules for filing pay roll reports; penalty.** (1943, c. 254, § 5) The commission may prescribe rules for the filing of pay roll reports from the employing units in the state and the failure on the part of any employing unit to file the pay roll reports within the time stated by the rule of the commission shall render the employing unit liable to a penalty of \$5 a day for each calendar day thereafter until the pay roll report is filed.

CHAP. 24

Sec. 12. Employment service. 1935, c. 192, § 12. 1937, c. 228, § 8. 1939, c. 274, § 5. 1941, c. 107, § 2.

(a) **State employment service.** (1937, c. 228, § 8) (1939, c. 274, § 5) The commission shall establish and maintain, as a division thereof, free public employment offices in such number and in such places as may be necessary for the proper administration of this act and for the purpose of performing such duties as are within the purview of the act of congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C., Title 29, Sec. 49 (c)), as amended. The said division shall be administered by a full-time salaried director. It shall be the duty of the commission to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The commission is hereby designated and constituted the agency of this state for the purpose of said act. The commission is directed to appoint and fix the compensation of the director, other officers and employees of the Maine state employment service, subject to the approval of the governor and council. The commission may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance and use of free employment service facilities.

(b) **Financing.** (1937, c. 228, § 8) (1939, c. 274, § 5) (1941, c. 107, § 2) All moneys received by this state under the said act of congress, as amended, shall be paid into the employment compensation administration fund, and said moneys are hereby made available to the commission 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, the commission is authorized to enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state or with any private, non-profit 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. 1935, c. 192, § 13. 1939, c. 274, § 6. 1941, c. 107, § 1; c. 113. 1943, c. 254, § 6.

(a) **Special fund.** (1939, c. 274, § 6) (1943, c. 254, § 6) 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, railroad retirement board and the United States employment service, or from any other source, for such purpose. Moneys received from the railroad retirement board as compensation for services or facilities supplied to said board shall be paid into this fund and the employment service

account thereof, on the same basis as expenditures are made for such services or facilities from such fund and account. 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.

(b) **Employment service account.** (1941, c. 107, § 1) The unemployment compensation administration fund shall be used by the unemployment compensation commission to the extent deemed necessary by the commission 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 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 not more than \$20,000. In addition, there shall be paid into such fund the moneys designated in section 12 (b) of this act, and such moneys as are apportioned for the purposes of this fund from any moneys received by this state under title III of the social security act, as amended.

(c) **Reimbursement of fund.** (1941, c. 113) If any moneys received after June 30, 1941, from the Social Security Board under title III of the Social Security Act or any unencumbered balances in the Unemployment Compensation Administration Fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the Social Security Board, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Social Security Board for the proper administration of this act, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the Unemployment Compensation Administration Fund for expenditure as provided in subsection (a) of this section. Upon receipt of notice of such a finding by the Social Security Board the commissioner shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the Social Security Act.

Sec. 14. Collection of contributions. 1935, c. 192, § 14. 1939, cc. 93, 112.

(a) **Interest on past-due contributions.** (1939, c. 93) 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 month from and after such date until payment plus accrued interest is received by the commission; provided, however, in such cases of delinquency as are shown to the satisfaction of the commission to arise from reasonable questions of liability under the terms of this act, the commission may, in its discretion, abate not exceeding 75% of the interest herein imposed. 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.** (1939, c. 112) If not later than 4 years after the date on which any 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. Provided, however, that any such adjustment or refund, involving contributions with respect to wages upon the basis of which benefits have been paid for unemployment, shall be reduced by the amount of benefits so paid.

Sec. 15. Protection of rights and benefits. 1935, c. 192, § 15. 1937, c. 228, § 9.

(a) **Waiver of rights void.** (1937, c. 228, § 9) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act shall be void. Any 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 void. 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.** (1937, c. 228, § 9) No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the commission or its 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.** (1937, c. 228, § 9) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be void; 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. 1935, c. 192, § 16. 1939, cc. 114, 115.

(a) (1939, c. 114) 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 or by the suspension of the right to receive unemployment benefits for not more than 1 year, or by both such fine and imprisonment and suspension; 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 collectible in the manner provided in section 14 (b) of this act for the collection of past-due contributions.

(e) (1939, c. 115) If, after due notice, any person refuses to repay amounts erroneously paid to him as unemployment benefits the amount due from such person may be collected by an action in assumpsit with account annexed brought in the name of the commission or in the discretion of the commission the amount erroneously paid to such person may be deducted from any future benefits payable to him under this act.

Sec. 17. Representation in court. 1935, c. 192, § 17. 1937, c. 228, § 10.

(a) (1937, c. 228, § 10) 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 employed by the commission and 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. 1935, c. 192, § 18. 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. 1935, c. 192, § 19. 1937, c. 228, § 11. 1939, c. 104; c. 163, §§ 8, 10, 11, 12, 13, 14, 15, 16; c. 183; c. 274, §§ 1, 7; c. 312, §§ 1, 2, 3, 4, 6, 7, 8, 9, 10. 1941, c. 55, §§ 1, 3, 4, 8; c. 141, §§ 1, 4, 5, 8; cc. 186, 326. 1943, c. 254, §§ 7, 8. As used in this act, unless the context clearly requires otherwise:

(a) (1) (1941, c. 141, § 4) (1943, c. 254, §§ 7, 8) "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; except that, for calendar years after December 31, 1940, "annual pay roll" means the total amount of wages paid by an employer during a calendar year, not meaning, however, to include that part of individual wages or salaries in excess of \$3,000 in any calendar year.

(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) (1937, c. 228, § 11) (1941, c. 141, § 5) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether do-

mestic 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 work 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 work; 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 employer's contributions measured by wages 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) (1937, c. 228, § 11) "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) (1937, c. 228, § 11) Any individual or 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) (1937, c. 228, § 11) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit not an employer subject to this act and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection:

(4) (1937, c. 228, § 11) 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, or interests, or both, would be an employer under paragraph (1) of this subsection:

(5) (1937, c. 228, § 11) Any employing unit which, with respect to em-

ployment herein defined, is liable to pay an excise tax under Title IX of the Social Security Act as amended.

(6) 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

(7) 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) (1939, c. 312, § 10) (1941, c. 186) Except as otherwise provided in subparagraph 7 (B) of subsection (g), 'employment' means any service performed prior to the effective date of this act which was employment as defined in this section prior to such date, and subject to the other provisions of subsection (g) service performed after the effective date of this act including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied.

(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 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) (1939, c. 274, § 1) 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) (1939, c. 312, § 4) Service performed in the employ of the United States Government or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by this act, except that on and after January 1, 1940 to the extent that the Congress of the United States has permitted States to require any instrumentalities of the United States to make payments into an unemployment fund under a State unemployment compensation act, all of the provisions of this act shall be applicable to such instrumentalities and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this State shall not be certified for any year by the Social Security Board under section 1603 of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in section 14 (d) of the unemployment compensation law, as amended, with respect to contributions erroneously collected.

(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) (1939, c. 312, § 2) Agricultural labor (as defined in subsection (u) of section 19 as amended);

(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;

(H) (1939, c. 312, § 8) 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, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.

(I) (1939, c. 183) Services performed as part-time work by minor whose principal occupation during the school year is a student actually attending a public or private educational institution.

(J) (1939, c. 183) Service performed in the employ of a college fraternity or sorority, or any of its chapters, lodges, branches, subsidiaries, or chapter house corporations.

(K) (1939, c. 274, § 1) Service performed after June 30, 1939, with respect to which unemployment compensation is payable under the railroad unemployment insurance act (52 Stat. 1094).

(L) (1939, c. 312, § 6) Services performed in the employ of any other State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any services performed in the employ of any instrumentality of one or more other States or their political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the constitution of the United States from the tax imposed by section 1600 of the Federal Internal Revenue Code.

(M) (1939, c. 312, § 7)

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

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

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

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

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

(3) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if

(I) no part of its net earnings inures (other than through such payment) to the benefit of any private shareholder or individual, and (II) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

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

- (5) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101 of the Federal Internal Revenue Code, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed \$45 (exclusive of room, board, and tuition).
- (N) (1939, c. 312, § 7) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative).
- (O) (1939, c. 312, § 7) Service performed in the employ of an instrumentality wholly owned by a foreign government—
- (1) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and
 - (2) If the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof.
- (P) (1939, c. 312, § 7) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law.
- (Q) (1939, c. 312, § 7) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.
- (R) (1939, c. 312, § 7) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.
- (8) (1939, c. 312, § 9) If the services performed during one-half or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an individual for the person employing him, where any of such service is expected by section 19 (g) (7) (C).

CHAP. 24

(h) (1941, c. 326) "Employment office" means a free public employment office, or branch thereof, operated by this state or the United States 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."

(1) (1939, c. 163, § 10) 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.

(2) (1939, c. 163, § 11) (1941, c. 55, §§ 4, 8) An individual shall be deemed partially unemployed in any week of less than full-time work if his wages payable from any source for such week are less than the weekly benefit amount he would be entitled to receive if totally unemployed and eligible; except that for the purpose of establishing waiting period only, any week of less than full-time work for which his wages payable from any source are less than \$3 shall be counted as a week of total unemployment.

(3) (1939, c. 163, §§ 12, 13) 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) (1937, c. 228, § 11) (1939, c. 104; c. 312, § 1) (1941, c. 141, § 1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the commission, except that for the purposes of section 3 (b), section 3 (d), and section 4 (e) and section 7 of chapter 192 of the public laws of 1935 as amended, such terms shall not include:

(1) (1939, c. 312, § 1) (1941, c. 141, § 1) That part of the remuneration which, after remuneration equal to \$3,000 has become payable to an individual by an employer with respect to employment during any calendar year, becomes payable to such individual by such employer with respect to employment during such calendar year and after December 31, 1939; and for the year 1941 and each calendar year thereafter, that part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment occurring during such calendar year and after December 31, 1940.

(2) (1939, c. 312, § 1) The amount of any payment with respect to services performed after the effective date of this act made to, or on behalf of, an employee under a plan or system established by an employing unit which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on

account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expense in connection with sickness or accident disability, or (D) death, provided the employee (1) has not the option to receive, instead of provisions for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employing unit, and (2) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employing unit.

(3) (1939, c. 312, § 1) The payment of an employing unit (without deductions from the remuneration of the employee) of the tax imposed upon an employee under section 1400 of the Federal Insurance Contributions Act as amended, with respect to service performed after the effective date of this act.

(4) (1939, c. 312, § 1) Dismissal payments after the effective date of this act which the employing unit is not legally required to make.

(n) (1937, c. 228, § 11) (1939, c. 163, § 16) "Week" means such period or periods of 7 calendar days as the commission may by regulation prescribe. The commission may, by regulation, prescribe that a week shall be deemed to be "in", "within", or "during" a benefit year which includes any part of such week.

(o) (1939, c. 163, § 14) "Benefit year" means the 12 consecutive month period ending March 31.

(p) (1937, c. 228, § 11) (1939, c. 163, § 15) (1941, c. 55, § 1) "Base period" means the calendar year immediately preceding any benefit year; except that with respect to individuals inducted into the military service or who voluntarily enlist after January 1, 1940;

(1) "Base period" for the benefit year current at the expiration of the period of such military service or enlistment, means the calendar year in effect at the time of induction or enlistment, provided, however, that if the individual had unexhausted benefit credits in the base period in effect at the time of his induction or enlistment, his weekly benefit amount shall be whichever is higher with respect to the 2 base periods and his maximum available benefits shall be increased by such unexhausted benefit credits but in no event shall he be eligible to receive more than 16 times such higher weekly benefit amount in such benefit year.

(2) "Base period" for such individuals in the benefit year next following the benefit year in effect at the expiration of such period of military service, means the calendar year in which such military service began, plus the calendar year in which such military service terminated, provided, however, that the individual's maximum available benefits shall be reduced by an amount equivalent to the amount of benefits previously paid to such individual on account of credits established by earnings in the calendar year in which induction or enlistment took place.

Provided further, however, that these exceptions as to "base period" shall not be effective with respect to individuals inducted into or enlisting in military service who choose to continue voluntarily in such service beyond the established period for which first inducted or enlisted.

(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) (1937, c. 228, § 11) "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.

(s) (1939, c. 163, § 8) "Insured work" means employment by employers.

(t) Repealed by section (3) Chap. 55, P. L. 1941.

(u) (1939, c. 312, § 3) After the effective date of this act, the term "agricultural labor" includes all services performed—

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

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

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

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

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

(v) (1941, c. 141, § 8) "Unpaid wages." Wages earned by an employee for employment from employers which remain unpaid because the assets of the employer for whom such employment was rendered are in the custody or control of an assignee for the benefit of creditors, receiver, trustee or any other fiduciary appointed by, or under the control of a court of competent jurisdiction shall, for all the purposes of the unemployment compensation law, as amended, be deemed

to be and shall be treated as though such wages had been paid to such employee during the calendar year within which such wages were earned.

Sec. 20. Seasonal workers. 1935, c. 192, § 20. 1939, c. 111.

(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) (1939, c. 111) The commission shall prescribe fair and reasonable general rules applicable to the payment of benefits to individuals whose qualifying wages in whole or in part were earned in seasonal industries and the period during which benefits shall be payable to them.

Sec. 21. Repealed by P. L. 1939, c. 163, § 17.

Sec. 22. Separability of provisions. 1935, c. 192, § 22. 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. 1935, c. 192, § 23. 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. 1935, c. 192, § 24. 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 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.

Sec. 25. Destruction of records, etc.; reproduction; evidence in court. 1935, c. 192, § 25. 1939, c. 120. The commission may, in its discretion, provide for the destruction of records, reports and claims in its possession pursuant to its administration of the unemployment compensation law provided that prior to such destruction any such records, reports or claims shall have been photographed or duplicated or reproduced by some process adopted by the commission which reproduction or process shall preserve the identical information contained in such records, reports or claims. Such reproduction as set forth herein shall be admissible in evidence in any court in this state if the original would have been admissible.

Sec. 26. Employers exempt from the provisions of the weekly payment of wage law to make report on accrued wages. 1941, c. 141, § 9. All employers exempt from the provision of the weekly payment of wage law of this state shall report to the unemployment compensation commission all accrued wages payable for employment during the calendar year up to and including December 31 of such calendar year under such regulations as the commission may prescribe; except that nothing in this section shall be construed to make contributions due and payable on any part of such reported wages which have not actually been paid, but wages so reported shall be deemed to be wages paid for unemployment benefit purposes.

Revisor's note: See foreword.

CHAPTER 25.

DEPARTMENT OF LABOR AND INDUSTRY.

Sections	1- 9	Departmental Organization.
Sections	10- 16	State Board of Arbitration and Conciliation.
Sections	17- 35	Labor of Women and Children.
Section	36	Seats for Female Employees.
Section	37	Custodians of Elevators.
Sections	38- 40	Payment of Wages.
Section	41	Unfair Wage Agreements.
Sections	42- 43	Preference to Maine Workmen and Contractors.
Sections	44- 50	Labels of Workingmen's Unions.
Sections	51- 73	Boilers and Unfired Steam Pressure Vessels.
Sections	74- 99	Compressed Air Work.
Section	100	Pick Clocks.
Sections	101-115	Industry of Packing of Fish and Fish Products.
Sections	116-120	Voluntary Apprenticeship System.

Departmental Organization

Sec. 1. Appointment of commissioner; deputy; assistants; salaries; expenses to be audited. R. S. c. 54, § 9; c. 125, §§ 20, 33. 1937, c. 221. 1943, c. 356, §§ 2, 3. A state department of labor and industry, as heretofore established and hereinafter in this chapter called the "department", shall be maintained under the direction of an officer whose title shall be commissioner of labor and industry