

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND SPECIAL SESSION-2004

Legislative Document

No. 1843

H.P. 1369

House of Representatives, February 5, 2004

An Act To Require Surety Bonding by Payroll Processing Companies

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DUNLAP of Old Town.
Cosponsored by Senator TREAT of Kennebec, Senator HALL of Lincoln and
Representatives: BENNETT of Caribou, BREault of Buxton, FINCH of Fairfield, GROSE
of Woolwich, MOODY of Manchester, PERRY of Calais, THOMPSON of China, WOTTON
of Littleton.

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

4 **Whereas,** payroll processing companies handle millions of
6 dollars belonging to Maine businesses and residents, the State of
Maine and the Federal Government; and

8 **Whereas,** although these payroll processing companies have a
10 fiduciary duty to the employers from whom the payroll processing
companies receive this money, the business of payroll processing
12 is relatively unregulated; and

14 **Whereas,** this lack of regulation occasionally leads to the
loss of large amounts of money through unscrupulous acts, the
16 remedy for which is deficient; and

18 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
20 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
22 safety; now, therefore,

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

26 **Sec. 1. 10 MRSA §1495-A.** as enacted by PL 1999, c. 172, §1
and affected by §2, is amended to read:

28 **§1495-A. Registration required**

30 **1. Generally.** A payroll processor that conducts business
32 in this State must register annually with the State-Tax-Assessor
Department of Professional and Financial Regulation by January
34 30th on a form designed and furnished by the assessor.

36 **2. Information required.** The information required of a
registrant must include the name and mailing address of the
38 payroll processor, the physical location or locations where
payroll processing services are performed, a list of the services
40 performed for clients by the payroll processor and any other
information the State-Tax-Assessor Department of Professional and
42 Financial Regulation determines to be necessary.

44 ~~**3. Proof of liability insurance.** Each registrant shall~~
provide to the State Tax Assessor proof of one of the following,
46 at the registrant's option, in an amount 2 times the highest
weekly payroll processed by the registrant in the preceding year
48 or \$5,000,000, whichever is less;

50 ~~A. Fidelity bond;~~

2 B.--Employee-dishonesty-bond;

4 C.--Third-party-fidelity-coverage;-or

6 D.--Liability-insurance,-including-crime-coverage-

8 4. Proof of surety bond. A registrant under subsection 1
10 shall provide to the Department of Professional and Financial
12 Regulation proof of the surety bond required pursuant to section
14 1495-D.

16 **Sec. 2. 10 MRSA §1495-B, sub-§1**, as enacted by PL 1997, c.
18 495, §1, is amended to read:

20 1. **Generally.** Except as provided by subsection 2, a
22 payroll processor shall provide a disclosure statement at the
24 time of contracting and by September 1st of each even-numbered
26 year to each employer for which it provides payroll processing
28 services. The statement must be made on a form designed jointly
30 by ~~the State Tax Assessor;~~ the Department of Labor, Bureau of
32 Employment Security; and the Department of Professional and
34 Financial Regulation, Office of Consumer Credit Regulation. The
disclosure statement form must be provided by the assessor to
payroll processors and must include at a minimum the following:

A. The length of time in which the payroll processor has
been in the business of providing payroll processing
services; and

B. A statement as to whether any payroll processing
services are contracted out to others and, if so, which
services are contracted out and to whom.

36 **Sec. 3. 10 MRSA §1495-C, sub-§1, ¶B**, as enacted by PL 1997, c.
38 495, §1, is amended to read:

40 B. A payroll processor that conducts business in this State
42 and fails to register with the ~~State Tax Assessor~~ Department
44 of Professional and Financial Regulation as required by
section 1495-A commits a civil violation for which a penalty
of not less than \$500 nor more than \$2,500 may be adjudged.

46 **Sec. 4. 10 MRSA §1495-C, sub-§1, ¶¶C and D** are enacted to read:

48 C. A payroll processor that fails to maintain the surety
bond required by section 1495-D or to provide proof of the
surety bond to the Department of Professional and Financial
Regulation as required by section 1495-A commits a civil

2 violation for which a fine of up to \$1,000 per day may be
3 adjudged for each day that the payroll processor is in
4 violation of the requirements of section 1495-A or 1495-D.

5 D. A payroll processor who violates the provisions of
6 section 1495-E commits a civil violation for which a fine up
7 to or equal to the amount invested in violation of section
8 1495-E may be adjudged.

10 **Sec. 5. 10 MRSA §§1495-D, 1495-E, 1495-F and 1495-G** are enacted
11 to read:

12 **§1495-D. Surety bonding**

13 **1. Bond required; duration.** Prior to commencing business
14 in this State, a payroll processor shall obtain a surety bond in
15 favor of the Treasurer of State for the benefit of persons as
16 their interest may appear, executed by a surety company
17 authorized to do business in this State and payable to any party
18 injured under the terms of the bond. The payroll processor shall
19 maintain the bond in full force while the payroll processor does
20 business in this State and for a period of one year following the
21 cessation of business in this State by that payroll processor.

22 **2. Minimum amount of bond.** The amount of the surety bond
23 required pursuant to this section must be at least equal to the
24 4-year aggregate of all employer and employee taxes handled by
25 the payroll processor. If a payroll processor does not have a
26 4-year history, the amount of the bond must be at least \$100,000.

27 **3. Cancellation notification.** A surety company insuring a
28 surety bond pursuant to this section shall immediately notify the
29 Department of Professional and Financial Regulation when that
30 bond is canceled or terminated or lapses. The notice must be in
31 writing and must be transmitted by the surety company by
32 electronic means as prescribed by the department. The notice
33 must include the name and address of the payroll processor and
34 the amount of the bond.

35 **§1495-E. Investment of funds**

36 A payroll processor may deposit or invest the funds handled
37 by it only as described in this section.

38 **1. Deposits in insured institutions.** Funds handled by a
39 payroll processor may be invested in deposits or share accounts
40 in any financial institution or credit union, as long as deposits
41 or shares in the financial institution or credit union are
42 insured by the Federal Deposit Insurance Corporation or the
43 National Credit Union Administration.

2 2. Legal investments. A payroll processor may invest in
the following:

4 A. Government unit bonds, such as:

6 (1) The bonds and other obligations of the United
8 States or the bonds and other obligations or
10 participation certificates issued by any agency,
 association, authority or instrumentality created by
 Congress or any executive order;

12 (2) The bonds and other obligations issued or
14 guaranteed by any state or by any instrumentality or
16 agency of any state or by any political subdivision of
18 any state, as long as those securities are rated within
 the 3 highest grades by a nationally recognized
 statistical rating organization;

20 (3) The bonds and other obligations issued or
22 guaranteed by this State or issued by an
24 instrumentality or agency of this State or any
 political subdivision of this State that is not in
 default on any of its outstanding funded obligations;
 and

26 (4) The bonds and other obligations issued or
28 guaranteed by the Dominion of Canada or issued or
30 guaranteed by any province or political subdivision of
32 a province of the Dominion of Canada, as long as those
 securities are rated within the 3 highest grades by a
 nationally recognized statistical rating organization
 and are payable in United States funds;

34 B. The bonds and other obligations of any United States
36 corporation, as long as those securities are rated within
38 the 3 highest grades by a nationally recognized statistical
40 rating organization. Not more than 2% of the annual
42 aggregate of funds handled by the payroll processor may be
 invested in the securities of any one such corporation, and
 the total of all such investments may not exceed 20% of the
 annual aggregate of funds handled by the payroll processor;

44 C. Any of the following:

46 (1) The bonds, debentures, acceptances and commercial
48 paper of a financial institution authorized to do
50 business within this State or incorporated under the
 laws of this State or the United States or of a
 financial institution holding company registered under

2 Title 9-B, chapter 101. For the purposes of this
3 subsection, an out-of-state owner of a Maine financial
4 institution or financial institution holding company is
5 not considered a Maine financial institution or
6 financial institution holding company;

7 (2) The bonds, debentures, acceptances and commercial
8 paper of a bank or bank holding company principally
9 domiciled outside the State, as long as the bank's or
10 holding company's bonds and debentures are rated in the
11 3 highest grades by a nationally recognized statistical
12 rating organization. In the case of commercial paper,
13 the commercial paper must be rated in the 2 highest
14 grades. In the case of acceptances, the bank's or
15 holding company's ratings of its other obligations so
16 listed must be rated in the 2 highest grades. The bank
17 must also be insured by the Federal Deposit Insurance
18 Corporation, and the holding company must be registered
19 under the federal Bank Holding Company Act of 1956; and

20 (3) Capital notes or debentures issued by a savings
21 bank or savings and loan association chartered under
22 the laws of any state or of the United States or of the
23 Commonwealth of Puerto Rico, as long as that
24 institution is insured by the Federal Deposit Insurance
25 Corporation or Federal Savings and Loan Insurance
26 Corporation or issued by a thrift institution holding
27 company registered under the United States Housing Act,
28 Section 408. These obligations must be rated in the 3
29 highest grades by a nationally recognized statistical
30 rating organization.

31 A payroll processor may not acquire obligations of any one
32 bank or thrift, or bank or thrift holding company, not
33 principally domiciled in this State in excess of 5% of the
34 annual aggregate of funds handled by the payroll processor;
35

36 D. Mutual funds or trusts, as long as all of the
37 investments of those mutual funds or trusts are permissible
38 investments under this section; and
39

40 E. United States or State Government guaranteed loans.
41

42 **§1495-F. Audits**

43 A payroll processor shall submit to an annual audit to be
44 conducted by the Department of Professional and Financial
45 Regulation.
46

47 **§1495-G. Rulemaking**

