

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

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Legislative Document

No. 1878

H.P. 1318

House of Representatives, January 3, 2006

### An Act To Protect Small Payroll Processors

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 28, 2005. Referred to the Committee on Business, Research and Economic Development pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative ROBINSON of Raymond.  
Cosponsored by Senator DIAMOND of Cumberland and  
Representatives: AUSTIN of Gray, BEAUDETTE of Biddeford, CROSBY of Topsham,  
JACOBSEN of Waterboro, RECTOR of Thomaston, Senators: BROMLEY of Cumberland,  
DOW of Lincoln.

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

4 **Sec. 1. 10 MRSA §980-D** is enacted to read:

6 **§980-D. Payroll Processor Recovery Fund**

8 The Payroll Processor Recovery Fund, referred to in this  
10 section as "the fund," is created. The fund must be deposited  
12 with and maintained by the authority. The fund must be  
14 administered by the Director of the Office of Consumer Credit  
16 Regulation within the Department of Professional and Financial  
18 Regulation, referred to in this section as "the fund  
20 administrator," in accordance with the provisions of chapter  
22 222. All money received by the authority from the fund  
administrator for the purpose of providing a source of recovery  
for employers injured by a payroll processor's failure to pay  
taxes or unemployment premiums must be credited to the fund. A  
portion of the interest earned on money in the fund may be used  
to pay the fund maintenance expenses of the authority; the  
balance must be credited to the fund. The balance in the fund  
must revert to the fund administrator if the need for the fund is  
obviated.

24 **Sec. 2. 10 MRSA §1495, sub-§1-A**, as enacted by PL 2003, c.  
26 668, §1 and affected by §12, is amended to read:

28 **1-A. Administrator.** "Administrator" means, except in cases  
30 in which the payroll processor is a supervised financial  
32 organization or a wholly owned subsidiary of a supervised  
34 financial organization as--defined--by--Title--9-A,--section--1-301,  
36 subsection--38-A, the Director of the Office of Consumer Credit  
38 Regulation within the Department of Professional and Financial  
40 Regulation. In cases in which the payroll processor is a  
supervised financial organization or a wholly owned subsidiary of  
a supervised financial organization as--defined--by--Title--9-A,  
section--1-301,---subsection--38-A, "administrator" means the  
Superintendent of Financial Institutions within the Department of  
Professional and Financial Regulation. For the purposes of this  
subsection, "supervised financial organization" has the same  
meaning as in Title 9-A, section 1-301, subsection 38-A.

42 **Sec. 3. 10 MRSA §1495-E, sub-§2**, as amended by PL 2005, c.  
44 278, §4, is further amended to read:

46 **2. Modification of bond requirement.** ~~If--bonding--is~~  
48 ~~unavailable--under--the--terms--and--conditions--of--subsection--1,--the~~  
The administrator, within the administrator's discretion, may  
modify these terms and conditions specified in subsection 1 or  
may permit submission of an irrevocable letter of credit or other

2 alternative form of security so as to ensure the maximum  
3 practicable or appropriate protection for employers.

4 **Sec. 4. 10 MRSA §1495-E, sub-§2-A** is enacted to read:

6 **2-A. Alternative security: Payroll Processor Recovery**  
7 **Fund.** The Director of the Office of Consumer Credit Regulation  
8 within the Department of Professional and Financial Regulation,  
9 referred to in this subsection as "the fund administrator," shall  
10 administer the Payroll Processor Recovery Fund, established in  
11 section 980-D and referred to in this section as "the fund."  
12 Participation in the fund must be made available to any payroll  
13 processor that is not a supervised financial organization as  
14 defined in Title 9-A, section 1-301, subsection 38-A or a wholly  
15 owned subsidiary of such a supervised financial organization.  
16 The fund administrator may increase the fund, replenish the fund  
17 and seek reimbursement for the fund administrator's initial  
18 deposit into the fund through annual or special assessments  
19 against payroll processors using the fund. Before being eligible  
20 to participate in the fund, a payroll processor must provide a  
21 \$10,000 surety bond or irrevocable letter of credit in a form  
22 acceptable to the fund administrator. Assessments into the fund  
23 must be in amounts equal to 1% of the balance of bond coverage  
24 required pursuant to this section. An initial deposit into the  
25 fund must be made by the fund administrator in an amount not less  
26 than 1/2 of the maximum amount of a surety bond or other security  
27 required pursuant to subsection 1. All amounts assessed by the  
28 fund administrator must be paid into the fund until the fund  
29 reaches the maximum amount of a surety bond or other security  
30 required pursuant to subsection 1, after which time assessments  
31 must be equally divided between payments into the fund and  
32 payments to the fund administrator until the fund administrator  
33 is reimbursed for the fund administrator's initial deposit into  
34 the fund. If an employer's loss due to a participating payroll  
35 processor's failure to pay taxes or unemployment insurance  
36 premiums is demonstrated to the satisfaction of the fund  
37 administrator, the fund administrator shall require release of  
38 funds to the fund administrator for the benefit of the employer.  
39 If employer losses exceed the maximum amount recoverable pursuant  
40 to this subsection, funds are distributed to employers on a pro  
41 rata basis, based on the magnitude of the demonstrated loss. In  
42 the event an initial claim is made against the fund, any other  
43 claims arising within 45 days of the initial claim must be  
44 treated as having arisen on the same day as the initial claim for  
45 purposes of allocating recoveries to affected employers. Total  
46 funds released as a result of the failure of any one payroll  
47 processor to pay taxes or unemployment insurance premiums may not  
48 exceed 50% of the current fund balance. Fund proceeds must be  
49 used only for recovery of unpaid taxes and unemployment insurance  
50 premiums and may not be used for any other purpose.

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## SUMMARY

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6 This bill creates the Payroll Processor Recovery Fund, to be  
maintained by the Finance Authority of Maine and administered by  
the Department of Professional and Financial Regulation, Office  
8 of Consumer Credit Regulation. This bill protects employers and  
assists small payroll processors by giving those payroll  
10 processors the option of providing a \$10,000 bond or letter of  
credit and then using the fund in lieu of additional surety bonds  
12 or letters of credit. The Office of Consumer Credit Regulation  
provides an initial deposit into the fund and annually assesses  
14 those payroll processors that opt to participate in the fund.  
The annual assessments against payroll processors using the fund  
16 equal 1% of their total bond or letter of credit coverage  
requirement. The bill also clarifies that supervised financial  
18 organizations acting as payroll processors are subject to  
regulation by the Superintendent of Financial Institutions within  
20 the Department of Professional and Financial Regulation.