

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 973

H. P. 811

House of Representatives, March 7, 1975

Referred to Committee on Labor. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Tierney of Durham.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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### AN ACT Amending the Employment Security Law.

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

Sec. 1. 26 MRSA §§ 1223 and 1224, as amended, are repealed.

Sec. 2. 26 MRSA §§ 1225 - 1231 are enacted to read:

§ 1225. Assessment of contributions, interest and penalties

1. Assessment procedure. If any employer files reports for the purpose of determining the amount of contribution due, but fails to pay any part of the contribution, interest or penalties due thereon as prescribed by the commission, or fails to file such reports when due, or files an incorrect or insufficient report, the Director of Unemployment Compensation, or if a member of the commission is acting in that capacity, a representative of the commission duly authorized by the commission to do so, may assess the contribution and any interest or penalties due on the basis of the information submitted by the employer or on the basis of an estimate as to the amount due and shall give written notice of the assessment to the employer.

2. Jeopardy assessment. If the Director of Unemployment Compensation, or if a member of the commission is acting in that capacity, a representative of the commission duly authorized by the commission to do so, determines that the collection of any contribution, interest or penalty under this subchapter, as amended, will be jeopardized by delay, he may immediately assess such contributions, interest or penalties, whether or not the time prescribed by law or any regulations issued pursuant to section 1082, subsection 2, of this chapter for making reports and paying such contributions has expired, and shall give written notice of the assessment to the employer. In such

cases, the right of appeal to the commission, as provided in section 1226, shall be conditioned upon payment of the contributions, interest or penalties so assessed, or upon giving appropriate security to the commission for the payment thereof.

3. Interest on past-due contributions. Contributions which are 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 the due date, until payment is received by the commission. If it is shown to the satisfaction of the commission that the delinquency arose from reasonable questions of liability under this subchapter, the commission, in its discretion, may abate part of the interest not to exceed 75% of the total interest.

4. Penalty on past-due contributions. If quarterly contributions are not paid when due, the commission shall assess a penalty of 5% of the amount of the contributions, but such penalty shall not be less than \$5 nor more than \$100. The commission may waive such penalty if it finds that the delay was occasioned by the illness or death of the person in charge of the records of the employing unit or by some other unavoidable occurrence. The commission may allow an extension of time up to 30 days beyond the due date for good cause upon written request made on or before the due date.

## § 1226. Appeal of assessment

### 1. Appeal to the commission.

A. An employer may appeal an assessment made under section 1225 to the commission by filing an appeal, in accordance with such rules as the commission shall prescribe, within 15 days after notification of the assessment is mailed to the employer's last known address as it appears in the records of the commission or, in the absence of such mailing, within 15 days after the notification is delivered. If the employer fails to perfect such appeal, the assessment shall be final as to law and fact.

B. Upon appeal from an assessment, the commission shall, after affording the appellant and the commission's designated representative a reasonable opportunity for a fair hearing, make finding of facts and render its decision, which may affirm, modify or reverse the action of its designated representative. The conduct of such hearings shall be governed by rules of the commission consistent with section 1194, subsection 6. The commission shall promptly notify the parties to the proceeding of its finding of facts and its decision.

### 2. Appeal to Superior Court.

A. Within 15 days after the decision of the commission has become final, any party to the proceedings before the commission may appeal by commencing an action in the Superior Court of Kennebec County, and any party to the proceeding before the commission shall be made a party thereto. The complaint need not be verified, but shall state the ground upon which such appeal is based. A copy of the complaint shall be served upon the commission or upon such person as it may designate. The commission shall certify and file with its answer to the complaint the original or certi-

fied copies of all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings and decision therein. Upon the motion of any party, the court may order additional testimony or evidence to be offered and, upon the basis of all the evidence before it, shall determine the assessment. An appeal may be taken from the decision of said court to the Supreme Judicial Court in the same manner, but not inconsistent with this chapter, as is provided in civil actions.

B. It shall not be necessary, as a condition precedent to an appeal from any decision of the commission, to enter exceptions to the rulings of the commission. As a condition of hearing an appeal from the proceedings before the commission, or of entering an appeal from the decision of the Superior Court, the court may require that an employing unit pay the amount of contributions or interest adjudged to be due by the commission or by such court, together with the cost assessed, or file an approved bond or other appropriate security in a sum fixed by such court. Upon the final termination of judicial proceedings, the commission shall enter an order in accordance with the mandate of the court.

3. **Conclusiveness of determination.** Any determination or decision duly made in proceedings under section 1082, subsection 14, or this subchapter, which has become final, shall be binding in any proceedings relating to applications or requests for refunds or credit, insofar as such determination or decision necessarily involves the issue of whether an employing unit constitutes an employer or whether services performed for, or in connection with, the business of such employing unit constitute employment.

#### § 1227. Liens

1. **Form and effect.** Upon the failure of an employer to pay the amount assessed pursuant to section 1225, the commission may file in the register of deeds of any county or with any town or city clerk a certificate under its official seal, stating: The name of the employer; his address; the amount of the contributions and interest or penalties assessed and in default; and that the time in which an appeal is permitted pursuant to section 1226 has expired without such appeal having been taken or that delay will jeopardize collection. When such certificate is duly filed and recorded, the amount of the assessment shall be a lien upon the entire interest of the employer, legal or equitable, in any real or tangible personal property situated within the jurisdiction of the office in which such certificate was filed. A lien obtained in this manner is a lien for taxes and the priority of the lien shall be governed by the laws of this State. Said liens shall be subordinate to any real estate mortgage previously recorded as required by law. No lien for contributions or interest shall be valid against one who purchases personal property from the employer in the usual course of his business, in good faith and without actual notice of such lien. Such lien may be enforced against any real or personal property by a civil action in the name of the commission. The commission shall discharge any such lien upon receiving, from any such employer against whose property a lien certificate has been filed, a good and sufficient bond with sureties conditioned upon the payment of the amount of contributions and in-

terest as finally determined, together with any additional amount which may have become due or may have accrued under this chapter and costs of court, if any.

The foregoing remedies shall be in addition to all other remedies.

2. Filing lien. Certificates of liens for contributions or interest, or certificates discharging such liens prepared in accordance with this section, shall be received, recorded and indexed by registrars of deeds or town or city clerks in the same manner as similar instruments are recorded and indexed. The fee to be paid by the commission for recording each such certificate is \$1, which need not be prepaid.

3. Enforcement of lien. After any assessment has become final and rights of appeal exhausted or lost by virtue of failure to exercise such rights, any property, real or personal, upon which a lien has been claimed under this chapter may be sold, after due notice, in conformity with the law applicable to sales of real or personal property on executions issued in personal actions, in connection with which sales the commission shall have the same rights, privileges, duties and responsibilities as one in whose favor an execution is issued.

#### § 1228. Liability of successor

Any individual or organization, including the types of organizations described in section 1043, subsection 10, whether or not an employing unit, which acquires the organization, trade or business or a substantial part of the assets thereof from an employer, shall be liable, in an amount not to exceed the reasonable value of the organization, trade, business or assets acquired, for any contributions or interest due or accrued and unpaid by the employer, and the amount of the liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other liens. The lien shall not be valid as against one who acquires from the successor any interest in the property or assets in good faith, for value and without notice of the lien. Upon written request made after such acquisition is completed, the commission shall furnish the successor with a written statement of the amount of contributions and interest due or accrued and unpaid by the employer as of the date of the acquisition and the amount of the liability of the successor or the amount of the lien shall in no event exceed the liability disclosed by the statement. The foregoing remedies shall be in addition to all other existing remedies against the employer or his successor.

#### § 1229. Collection by civil action

If any employer fails to make any payment of contributions, interest or penalties after notice of an assessment under section 1225, subsection 1, and after the assessment has become final as to law and fact, in addition to or alternatively to any other method of collection prescribed in this chapter, the amount due may be collected by civil action in the name of the commission and the employer shall pay the costs of such action. Civil actions brought under this section to collect contributions and interest, or penalties due 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 chapter and cases arising under the Workmen's Compensation Law of this State. The foregoing remedies shall be in addition to all other existing remedies against the employer of his successor.

§ 1230. Collection by warrant

1. Request for warrant. If any contribution required to be paid and any interest or penalty or both payable to the commission under this chapter is not paid when due and has become final as to law and fact under section 1226, the commission may, within 3 years thereafter, notify the employer who is liable according to the records of the commission, specifying the amount due and demanding payment within 12 days after the date the notice is mailed. The notice shall inform the employer that if he does not make the payment as demanded, the commission will certify to the Attorney General the amount due for collection by warrant as provided in this section. If the employer does not make the payment as demanded within the 12-day period or within an extended period which the commission may allow, the commission shall certify to the Attorney General the amount due for collection. The Attorney General may file in the office of the clerk of the Superior Court of Kennebec County, or any county, a certificate addressed to the clerk specifying the contribution required to be paid, interest and penalties due, the name and address of the liable employer as it appears on the records of the commission, the facts whereby the amount has become final as to law and fact and the notice given, and requesting that a warrant be issued against the employer for the contribution required to be paid, together with interest and penalties, as set forth in the certificate, and with costs. If the commission has reasonable grounds to believe that the employer may abscond within the 12-day period, the commission may certify to the Attorney General the amount due for collection, without notice to the employer.

2. Issuance of warrant. When the certificate is filed, the clerk of the Superior Court shall issue a warrant in favor of the commission against the employer for the contribution required to be paid, together with interest and penalties, as set forth in the certificate and with costs. The clerk of the Superior Court shall file the certificate in a separate docket entitled "Special Warrants for Unemployment Compensation Tax." These records are not to become a part of the extended record of the court.

3. Warrant effective as lien. An abstract or copy of the warrant may be filed for record in the register of deeds of any county or with any town or city clerk. From the time of filing, the amount specified in the warrant shall constitute a lien upon all real property and other tangible assets in the county or town owned by the liable employer or acquired by him during the period of the lien. The lien shall have the force, effect and priority of a judgment lien and shall continue for 5 years from the date of recording, unless sooner released or otherwise discharged or extended as prescribed herein. The lien may be extended for an additional 5-year period by filing, for record in the register of deeds or with the town or city clerk, an abstract or copy of the warrant within the original 5-year period or within 5 years from the date of the last extension of the lien.

4. Form and effect of warrant.

A. The warrant shall have the force and effect of an execution issued upon a judgment in a civil action for the collection of taxes and may be in substantially the following form:

“..... SS. — To the sheriffs of our  
(Name of County)

respective counties or their deputies

Whereas, the Maine Employment Security Commission and the Attorney General have certified that, pursuant to the terms of Title 26, section 1230, subsection 1, of the Revised Statutes, the amount of certain unemployment compensation tax, assessed against ..... of ..... with interest and penalties, has become final as to law and fact, to wit:

Period	Contributions	Interest	Penalties
Interest will accrue at \$ .00 per day			
for each day after .....			
Total \$ ..... and \$ ..... costs			
of this proceeding, .....			

We command you, therefore, that of the money, goods and chattels of said debtor, in your precinct, or the value thereof in money, you cause to be paid and satisfied unto the Maine Employment Security Commission, to satisfy the sums aforesaid and ..... cents more for this warrant, together with your own fees.

Hereof fail not, and make due return of this warrant, with your doings thereon, unto my office within one year from the date hereof.

.....  
Clerk of Courts, County of

.....  
Date .....

B. Warrants shall be returnable within one year. New warrants may be issued on any such certificate within 2 years from the return day of the last preceding warrant for sums remaining unsatisfied. Warrants shall be served by the sheriff of any county, or by any if his deputies, in the county where the employer may be found.

C. The remedy provided by this section is in addition to or an alternative to all other remedies given to the commission in this chapter.

§ 1231. 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 claims for wages of not more than \$250 to each claimant, earned within 6 months of the commencement of the proceeding.

#### STATEMENT OF FACT

The purpose of this bill is to amend the Employment Security Law by providing a warrant procedure for collection of delinquent unemployment tax contributions, interest and penalties and to reorganize and clarify the provisions of the existing section on collection of contributions (26 MRSA 1225). The warrant procedure described in the new section 1230 is modelled after the procedure used for collection of state sales taxes (36 MRSA 1959-64). This procedure will provide a more streamlined and efficient method for collecting delinquent amounts owed by employers to the Employment Security Commission.

The bill would also amend the existing procedures for judicial appeal of employment tax assessments by making such appeal available only in the Superior Court of Kennebec County. The procedures would then be consistent with those for judicial appeals by benefit claimants. The bill will also clarify the tax status of employment security contributions.