

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 796

S.P. 298

In Senate, February 26, 1991

Submitted by the Department of Labor pursuant to Joint Rule 24.
Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator COLLINS of Aroostook
Cosponsored by Senator ESTY of Cumberland, Representative HASTINGS of Fryeburg and
Senator CARPENTER of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Improve the Employer Contribution Collection Process under
the Employment Security Law.

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

2
3 **Sec. 1. 26 MRSA §1082, sub-§13**, as amended by PL 1983, c. 351,
4 §14, is further amended to read:

6 **13. Filing payroll reports; penalty.** The commission may
7 prescribe ~~regulations~~ rules for the filing of payroll reports for
8 the employing units in the State ~~and the~~. The failure on the
9 part of any employing unit to file the payroll reports within the
10 time stated by ~~the regulation rule~~ of the commission ~~shall render~~
11 renders the employing unit liable to a penalty of ~~\$10~~ \$25, unless
12 the delay was occasioned by the illness or death of the person in
13 charge of the records of the employing unit or by other
14 unavoidable occurrence ~~which shall excuse~~ that excuses the
15 employing unit from the penalty, except that an extension of time
16 up to 30 days beyond the prescribed due date for a quarterly
17 payroll report may be allowed for good cause upon written request
18 made on or before the due date.

20 Provided that in the case of executive, administrative and
21 professional employees, and outside salesmen sales
22 representatives, as defined in Part 541 of the Rules and
23 Regulations promulgated under the Fair Labor Standards Act of
24 1938, as amended as of June 30, 1971, the commissioner, upon the
25 request of an employer of those individuals, may approve an
26 alternative method for obtaining from that employer necessary
27 wage information relative to those employees.

28
29 **Sec. 2. 26 MRSA §1221, sub-§4, ¶F**, as amended by PL 1983, c.
30 351, §22, is further amended to read:

32 F. Notwithstanding any other inconsistent law, any
33 employer, who has been notified of ~~his~~ the employer's rate
34 of contribution as required by paragraph E, subparagraph
35 (1), for any year commencing January 1st, may voluntarily
36 make payment of additional contributions, and, upon that
37 payment, ~~shall~~ is entitled to promptly receive a
38 recomputation and renotification of ~~his~~ the employer's
39 contribution rate for that year, including in the
40 calculation the additional contributions so made. Any such
41 additional contribution ~~shall~~ must be made during the 30-day
42 period following the date of the mailing to the employer of
43 the notice of ~~his~~ the employer's contribution rate in any
44 year, unless, for good cause, the time of payment has been
45 extended by the commissioner for a period not to exceed an
46 additional 10 days.

48 **Sec. 3. 26 MRSA §1225**, as amended by PL 1985, c. 348, §12, is
49 further amended to read:

50 **§1225. Assessment of contributions, interest, penalties and**
51 **filing fees**

2 **1. Assessment procedure.** If any employer files reports for
4 the purpose of determining the amount of contribution due, but
6 fails to pay any part of the contribution, interest or penalties
8 due thereon as prescribed by the commissioner, or fails to file
10 such the reports when due, or files an incorrect or insufficient
12 report, the Director of Unemployment Compensation 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.

14 **2. Jeopardy assessment.** If the Director of Unemployment
16 Compensation determines that the collection of any contribution,
18 interest or penalty under this subchapter, as amended, will be
20 jeopardized by delay, he the director may immediately assess such
22 the contributions, interest or penalties, whether or not the time
24 prescribed by law or any regulations issued pursuant to section
26 1082, subsection 2, for making reports and paying such the
contributions has expired, and shall give written notice of the
assessment to the employer. In such cases, the right to appeal to
the commission, as provided in section 1226, shall--be is
conditioned upon payment of the contributions, interest or
penalties so assessed, or upon giving appropriate security to the
commissioner for the payment thereof.

28 **3. Interest on past-due contributions.** Contributions which
30 are unpaid on the date on which they are due and payable, as
32 prescribed by regulation, shall bear interest at the rate
34 determined by the State Tax Assessor as established by Title 36,
36 section 186, from and after the due date, until payment is
38 received by the bureau. The interest rate determined by the
State Tax Assessor, for the purposes of this section, shall--be is
in effect for the full calendar year following the year in which
it is determined. If it is shown to the satisfaction of the
commissioner that the delinquency arose from reasonable questions
of liability under this subchapter, the commissioner, in his the
40 commissioner's discretion, may abate part of the interest not to
42 exceed 75% of the total interest. If it is shown to the
satisfaction of the commissioner that the delinquency arose
through no fault of the employer, no assessment of interest shall
may be made.

44 **4. Penalty on past-due contributions.** If quarterly
46 contributions are not paid when due, the commissioner shall
48 assess, for the first 30 days after the due date or a waiver, a
penalty of 2% of the amount of the contributions and thereafter a
penalty of 5% of the amount of the unpaid contributions. The
50 commissioner may waive that penalty if he finds it is determined
52 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 commissioner may allow an

2 extension of time up to 30 days beyond the due date for good
3 cause upon written request made on or before the due date.

4 **5. Refunds.** If not later than 4 years after the date on
5 which any contributions or interest thereon became due, an
6 employer who has paid the contributions or interest thereon shall
7 make application for an adjustment thereof in connection with
8 subsequent contribution payments, or for a refund thereof because
9 that adjustment cannot be made, and if the commissioner shall
10 determine that the contributions, or interest or any portion
11 thereof was erroneously collected, the commissioner shall allow
12 the employer to make an adjustment thereof, without interest, in
13 connection with subsequent contribution payments by ~~him~~ the
14 employer, or if the adjustment cannot be made, the commissioner
15 shall refund that amount, without interest, from the fund. For
16 like cause and within the same period, adjustment or refund may
17 be so made on the commissioner's own initiative. Any such
18 adjustment or refund, involving contributions with respect to
19 wages upon the basis of which benefits have been paid for
20 unemployment, shall must be reduced by the amount of benefits so
21 paid. If the commissioner determines that contributions or
22 interest were erroneously paid to this State on wages insured
23 under the employment security law of some other state or of the
24 Federal Government, refund or adjustment thereof may be made
25 without interest, irrespective of the time limits provided in
26 this subsection, on satisfactory proof that contributions or
27 interest on the wages have been paid to such the other state or
28 to the Federal Government. Nothing in this chapter, or any part
29 thereof of this chapter, may be construed to authorize any refund
30 or credit of money due and payable under the law and regulation
31 in effect at the time the money was paid.

32 **6. Limitations on assessment.** ~~Notification of assessments~~
33 ~~shall be mailed to the employer not later than 4 years after a~~
34 ~~report was due or filed, whichever is later, except that if, with~~
35 ~~intent to evade the liabilities imposed by this chapter, no~~
36 ~~return is filed or a false report is filed, a notification of~~
37 ~~assessment may be mailed to the employer not later than 6 years~~
38 ~~after the report was due or filed. Before the expiration of the~~
39 ~~time prescribed in this subsection, the commissioner and the~~
40 ~~employer may consent in writing to an assessment after such time,~~
41 ~~and the notification of assessment must be mailed within the~~
42 ~~limitation agreed upon. Limitations on assessments are governed~~
43 ~~by this subsection.~~

44 A. Notification of assessments must be mailed to the
45 employer not later than 4 years after a report was due or
46 filed, whichever is later. Before the expiration of the
47 time prescribed in this subsection, the commissioner and the
48 employer may consent in writing to an assessment after that
49 time, and the notification of assessment must be mailed
50 within the agreed upon limitation.
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B. Exceptions to paragraph A are as follows.

(1) If, with intent to evade the liability imposed by this chapter, no report is filed or a false report is filed, a notification of an assessment may be mailed to the employer at any time.

(2) The running of the period of limitations for assessment or collection of unemployment compensation contributions against a responsible officer, director, member, agent or employee of a person who has collected those contributions must be stayed for the period of time, plus 365 days, during which an assessment against that person is subject to administrative or judicial review or remains outstanding because that person is the subject of bankruptcy proceedings under the United States Code, Title 11.

7. Filing fees. Any employer who fails to make and submit reports or pay any contributions or reimbursements, including interest and penalties, when due is liable to the commissioner for any filing fees, including recording lien fees, discharge lien fees and sheriff fees, incurred in collecting the amounts due or obtaining the reports.

Sec. 4. 26 MRSA §1227, sub-§2, as amended by PL 1987, c. 14, §2, is further amended to read:

2. Filing lien. Certificates of liens for contributions or interest, or certificates discharging the liens prepared in accordance with this section, shall-be are received, recorded and indexed by registrars of deeds in the same manner as similar instruments are recorded and indexed. The fee to be paid by the commissioner for recording each such certificate is \$5, which need not be prepaid. This recording fee, along with all other filing fees pursuant to section 1225, subsection 7, is the liability of the employer and must be assessed as part of the lien pursuant to subsection 1.

Sec. 5. 26 MRSA §1227, sub-§4 is enacted to read:

4. Personal liability. Any officer or director of, or any employee having at least 20% ownership in, a corporation that is an employer as defined in section 1043, subsections 9 and 11 who has control of or supervision over the filing of and responsibility for filing contribution reports or of making payment of contributions or reimbursements, and who willfully fails to file the reports or to make payments as required, is personally liable for contributions or reimbursements, including interest and penalties, in the event the corporation does not pay

2 the Bureau of Employment Security those amounts for which the
3 employer is liable.

4 Any personal representative of the estate of a decedent or
5 fiduciary who voluntarily distributes the assets filed in the
6 estate without reserving a sufficient amount to pay the
7 contributions or reimbursements, including interest and
8 penalties, that are due pursuant to this chapter is personally
9 liable for the deficiency.

10 The personal liability of any person as provided in this
11 subsection survives dissolution, reorganization, bankruptcy,
12 receivership or assignment for the benefit of creditors. For the
13 purposes of this subsection, all wages paid by the corporation
14 are considered earned from the person determined to be personally
15 liable.

16 An official designated by the commissioner shall make an initial
17 determination of the personal liability under this section. The
18 determination is final unless the person found to be personally
19 liable, within 15 days after mailing of notice of determination
20 to the person's last known address, files a written appeal.
21 Proceedings on the appeal must be conducted in the same manner as
22 an appeal from a determination of employer liability under
23 section 1221.

24 **Sec. 6. 26 MRSA §1232 is enacted to read:**

25 **§1232. Licenses**

26 **1. Denial, suspension or revocation of license.** If any
27 contributions, interest or penalties assessed and determined
28 final under this Title remain unpaid in an amount exceeding
29 \$1,000 for a period greater than 60 days after the employer has
30 received notice of finality and the employer refuses to cooperate
31 with the bureau in establishing and remaining in compliance with
32 reasonable plan for liquidating that liability, the commissioner
33 shall certify the liability and lack of cooperation:

34 **A. If the employer is a liquor licensee, to the State**
35 Liquor Commission, which shall construe that liability and
36 lack of cooperation to be a ground for denying, suspending
37 or revoking the employer's liquor license in accordance with
38 Title 28-A, section 707 and Title 28-A, chapter 33; or

39 **B. If the employer is a licensed motor vehicle dealer, to**
40 the Secretary of State, who shall construe that liability
41 and lack of cooperation to be a ground for denying,
42 suspending or revoking the employer's motor vehicle dealer
43 license in accordance with Title 29, section 350-A.

2 2. Applicants for license or renewal of license. This
3 subsection governs information that must be provided to the
4 commissioner and determinations that may be made based upon that
5 information.

6 A. Every department, board, commission, division,
7 authority, district or other agency of the State issuing or
8 renewing a license or other authority to conduct a
9 profession, trade or business shall annually, beginning on
10 or before April 1, 1992, furnish to the commissioner, in
11 such form as the commissioner prescribes, a list of all
12 licenses or certificates of authority issued or renewed by
13 that agency during the preceding calendar year. The list
14 provided to the commissioner must contain the name, address,
15 social security or federal identification number of the
16 licensees and such other identifying information as the
17 commissioner may by rule require. Notwithstanding any other
18 provision of law, any person seeking a license or
19 certificate of authority or a renewal beginning on or after
20 January 1, 1992, shall provide, and the responsible agency
21 shall collect, the information required by the commissioner
22 under this section. Failure to provide a licensing or
23 certifying agency that information results in an automatic
24 denial of a request for a license or certificate of
25 authority or a renewal.

26
27 B. If the commissioner determines, from the information
28 formulated under paragraph A or otherwise, that any person
29 who holds a license or certificate of authority issued by
30 that agency has neglected or refused to file any reports
31 required under this Title that has become final, the
32 commissioner shall notify the person in writing that refusal
33 to file the required report may result in loss of license or
34 certificate of authority. If the person continues to fail
35 to file or show reason why filing is not required, the
36 commissioner shall notify the person in writing of the
37 determination to prevent renewal or reissuance of the
38 license or certificate of authority by the issuing agency.
39 A review of this determination is available by requesting a
40 petition for reconsideration under section 1226, subject to
41 appeal to the Superior Court in accordance with the Maine
42 Administrative Procedure Act. Either by failure to proceed
43 to the next step of appeal or by exhaustion of the steps of
44 appeal, the determination of the commissioner's right to
45 prevent renewal or reissuance becomes final unless otherwise
46 determined by appeal.

47 C. Any issuing agency that is notified by the commissioner
48 of the finalized determination to prevent renewal or
49 reissuance of license or certificate of authority under
50 paragraph B shall refuse to reissue, renew or otherwise
51 extend the license or certificate of authority until the
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2 agency receives a certificate issued by the commissioner
3 that the person is in good standing with respect to any and
4 all contributions due as of the date of issuance of the
5 certificate.

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8 **STATEMENT OF FACT**

9
10 The Maine Unemployment Compensation Fund was established to
11 pay benefits to eligible claimants who are involuntarily
12 separated from employment. This bill addresses the need to
13 expand the powers of the Bureau of Employment Security to collect
14 delinquent taxes from employers and pass along the costs of
15 collection efforts to delinquent taxpayers rather than raising
16 employer taxes or borrowing federal funds to replenish the
17 State's fund.

18 This bill also removes a 6-year statute of limitations to
19 allow for assessment of tax contributions, interest, penalties
20 and filing fees in cases of willful evasion of the requirements
21 of the law by filing no return or filing a false report. Removal
22 of the statute of limitations also allows for compliance with
23 provisions of federal bankruptcy law that prohibit the bureau
24 from any collection activity while preserving the ability to
25 assess contributions, interest, penalties and filing fees once an
26 employer's case in bankruptcy has been resolved.

27 The bill also authorizes the bureau to effect a denial,
28 suspension or revocation of specific licenses to conduct a
29 profession, trade or business for failure to file reports or pay
30 contributions, interest, penalties and filing fees. It further
31 authorizes the bureau to pursue collection of a corporation's
32 delinquent contributions, penalties and interest from an officer,
33 director or shareholder of the corporation in specific instances.
34