

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

No. 802

S.P. 264

In Senate, March 4, 1993

**An Act to Improve the Unemployment Collection Process for Employer Contributions.**

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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 that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BEGLEY of Lincoln.  
Cosponsored by Senator: HANDY of Androscoggin.

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

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

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

20       Provided that in the case of executive, administrative and  
22       professional employees, and outside salesmen sales  
24       representatives, as defined in Part 541 of the Rules and  
26       Regulations promulgated under the Fair Labor Standards Act of  
28       1938, as amended as of June 30, 1971, the commissioner, upon the  
      request of an employer of those individuals, may approve an  
      alternative method for obtaining from that employer necessary  
      wage information relative to those employees.

30       **Sec. 2. 26 MRSA §1221, sub-§4, ¶F**, as amended by PL 1983, c.  
32       351, §22, is further amended to read:

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

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

2                   **§1225. Assessment of contributions, interest, penalties and**  
                    **filing fees**

4                   **1. Assessment procedure.** If any employer files reports for  
6 the purpose of determining the amount of contribution due, but  
8 fails to pay any part of the contribution, interest or penalties  
10 due thereon as prescribed by the commissioner, or fails to file  
12 such the reports when due, or files an incorrect or insufficient  
14 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.

16                   **2. Jeopardy assessment.** If the Director of Unemployment  
18 Compensation determines that the collection of any contribution,  
20 interest or penalty under this subchapter, as amended, will be  
22 jeopardized by delay, he the director may immediately assess such  
24 the contributions, interest or penalties, whether or not the time  
26 prescribed by law or any regulations rules issued pursuant to  
section 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 these 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 that are unpaid on the date on which they are due and payable, as  
32 prescribed by regulation rule, shall bear interest at the rate  
34 determined by the State Tax Assessor as established by Title 36,  
section 186, from and after the due date, until payment is  
36 received by the bureau. The interest rate determined by the  
State Tax Assessor, for the purposes of this section, shall ~~be~~ is  
38 in effect for the full calendar year following the year in which  
it is determined. If it is shown to the satisfaction of the  
40 commissioner that the delinquency arose from reasonable questions  
of liability under this subchapter, the commissioner, in his the  
42 commissioner's discretion, may abate part of the interest not to  
44 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.

46                   **4. Penalty on past-due contributions.** If quarterly  
48 contributions are not paid when due, the commissioner shall  
50 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

2 commissioner may waive that penalty if he finds it is determined  
3 that the delay was occasioned by the illness or death of the  
4 person in charge of the records of the employing unit or by some  
5 other unavoidable occurrence. The commissioner may allow an  
6 extension of time up to 30 days beyond the due date for good  
7 cause upon written request made on or before the due date.

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

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

2           A. Notification of assessments must be mailed to the  
4           employer not later than 4 years after a report was due or  
6           filed, whichever is later. Before the expiration of the  
8           time prescribed in this subsection, the commissioner and the  
          employer may consent in writing to an assessment after that  
          time, and the notification of assessment must be mailed  
          within the agreed-upon limitation.

10           B. Exceptions to paragraph A are as follows.

12           (1) If, with intent to evade the liability imposed by  
14           this chapter, a report is not filed or a false report  
          is filed, a notification of an assessment may be mailed  
          to the employer at any time.

16           (2) The running of the period of limitations for  
18           assessment or collection of unemployment compensation  
20           contributions against a responsible officer, director,  
22           member, agent or employee of a person who has collected  
24           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  
          subject to bankruptcy proceedings under 11 United  
          States Code.

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

34           Sec. 4. 26 MRSA §1227, sub-§2, as amended by PL 1987, c. 14,  
36           §2, is further amended to read:

38           2. Filing lien. Certificates of liens for contributions or  
40           interest, or certificates discharging the liens prepared in  
42           accordance with this section, shall must be received, recorded  
44           and indexed by registrars of deeds in the same manner as similar  
46           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.

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

2 4. Personal liability. Any officer or director of, or any  
3 employee having at least 20% ownership in a corporation that is  
4 an employer as defined in section 1043, subsection 9 who has  
5 control of or supervision over the filing of and responsibility  
6 for filing contribution reports or of making payment of  
7 contributions or reimbursements, and who willfully fails to file  
8 the reports or to make payments as required, is personally liable  
9 for contributions or reimbursements, including interest and  
10 penalties, when the corporation does not pay the Bureau of  
11 Employment Security those amounts for which the employer is  
12 liable.

13 Any personal representative of the estate of a decedent or  
14 fiduciary who voluntarily distributes the assets filed in the  
15 estate without reserving a sufficient amount to pay the  
16 contributions or reimbursements, including interest and  
17 penalties, that are due pursuant to this chapter is personally  
18 liable for the deficiency.

19 The personal liability of any person as provided in this  
20 subsection survives dissolution, reorganization, bankruptcy,  
21 receivership or assignment for the benefit of creditors. For the  
22 purposes of this subsection, all wages paid by the corporation  
23 are considered earned from the person determined to be personally  
24 liable.

25 An official designated by the commissioner shall make an initial  
26 determination of the personal liability under this section. The  
27 determination is final unless the person found to be personally  
28 liable files a written appeal within 15 days after mailing of  
29 notice of determination to the person's last known address.  
30 Proceedings on the appeal must be conducted in the same manner as  
31 an appeal from a determination of employer liability under  
32 section 1221.

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

34 §1232. Licenses

35 1. Denial, suspension or revocation of license. If any  
36 contributions, interest or penalties assessed and determined  
37 final under this Title remain unpaid in an amount exceeding  
38 \$1,000 for a period greater than 60 days after the employer has  
39 received notice of finality and the employer refuses to cooperate  
40 with the bureau in establishing and remaining in compliance with  
41 reasonable plan for liquidating that liability, the commissioner  
42 shall certify the liability and lack of cooperation:

43 A. If the employer is a liquor licensee, to the State  
44 Liquor Commission, which shall construe that liability and  
45 penalties, when the corporation does not pay the Bureau of  
46 Employment Security those amounts for which the employer is  
47 liable.

2 lack of cooperation to be grounds for denying, suspending or  
3 revoking the employer's liquor license in accordance with  
4 Title 28-A, section 707 and Title 28-A, chapter 33; or

5 B. If the employer is a licensed motor vehicle dealer, to  
6 the Secretary of State, who shall construe that liability  
7 and lack of cooperation to be grounds for denying,  
8 suspending or revoking the employer's motor vehicle dealer  
9 license in accordance with Title 29, section 350-A.

10 2. Applicants for license or renewal of license. This  
11 subsection governs information that must be provided to the  
12 commissioner and determinations that may be made based upon that  
13 information.

14 A. Every department, board, commission, division,  
15 authority, district or other agency of the State issuing or  
16 renewing a license or other authority to conduct a  
17 profession, trade or business shall furnish annually to the  
18 commissioner, beginning on or before April 1, 1994, in such  
19 form as the commissioner prescribes, a list of all licenses  
20 or certificates of authority issued or renewed by that  
21 agency during the preceding calendar year. The list  
22 provided to the commissioner must contain the name, address  
23 and social security or federal identification number of the  
24 licensees and such other identifying information as the  
25 commissioner may by rule require. Notwithstanding any other  
26 provision of law, any person seeking a license or  
27 certificate of authority or a renewal beginning on or after  
28 January 1, 1994 shall provide, and the responsible agency  
29 shall collect, the information required by the commissioner  
30 under this section. Failure to provide that information to  
31 a licensing or certifying agency results in an automatic  
32 denial of a request for a license or certificate of  
33 authority or a renewal.

34 B. If the commissioner determines from the information  
35 formulated under paragraph A or otherwise that any person  
36 who holds a license or certificate of authority issued by an  
37 issuing agency has neglected or refused to file any reports  
38 required under this Title, the commissioner shall notify the  
39 person in writing that refusal to file the required report  
40 may result in loss of license or certificate of authority.  
41 If the person continues to fail to file or show reason why  
42 filing is not required, the commissioner shall notify the  
43 person in writing of the determination to prevent renewal or  
44 reissuance of the license or certificate of authority by the  
45 issuing agency. A review of this determination is available  
46 by requesting a petition for reconsideration under section  
47 1226, subject to appeal to the Superior Court in accordance  
48 with section 1226.



2 with the Maine Administrative Procedure Act. Either by  
4 failure to proceed to the next step of appeal or by  
6 exhaustion of the steps of appeal, the determination of the  
8 commissioner's right to prevent renewal or reissuance  
10 becomes final unless otherwise determined by appeal.

12 C. Any issuing agency that is notified by the commissioner  
14 of a finalized determination to prevent renewal or  
16 reissuance of license or certificate of authority under  
18 paragraph B shall refuse to reissue, renew or otherwise  
20 extend the license or certificate of authority until the  
22 agency receives a certificate issued by the commissioner  
24 that the person is in good standing with respect to any and  
26 all contributions due as of the date of issuance of the  
28 certificate.

### 18 STATEMENT OF FACT

20 The Maine Unemployment Compensation Fund was established to  
22 pay benefits to eligible claimants who are involuntarily  
24 separated from employment. This bill addresses the need to  
26 expand the powers of the Bureau of Employment Security to collect  
28 delinquent taxes from employers and pass along the costs of  
collection efforts to delinquent taxpayers rather than raising  
employer taxes or borrowing federal funds to replenish the  
State's fund.

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

40 The bill also authorizes the bureau to effect a denial,  
42 suspension or revocation of specific licenses to conduct a  
44 profession, trade or business for failure to file reports or pay  
contributions, interest, penalties and filing fees. The bill  
authorizes the bureau to pursue collection of a corporation's  
delinquent contributions, penalties and interest from an officer,  
director or shareholder of the corporation in specific instances.