

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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H.P. 1329

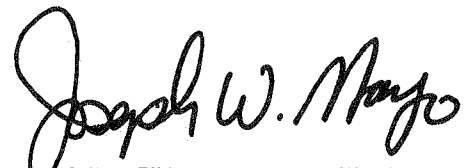
House of Representatives, May 14, 1997

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**An Act to Provide Regulation of Payroll Processing Companies.**

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Reported by Representative VIGUE for the Joint Standing Committee on Business and Economic Development pursuant to Joint Order H.P. 1316.

  
JOSEPH W. MAYO, Clerk

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

4 Sec. 1. 10 MRSA c. 222 is enacted to read:

6 CHAPTER 222

8 PAYROLL PROCESSORS

10 §1495. Definitions

12 As used in this chapter, unless the context otherwise  
indicates, the following terms have the following meanings.

14 1. Employer. "Employer" means a person that maintains an  
office or otherwise transacts business in this State and makes  
payment of wages taxable under Title 36, Part 8 to a resident or  
nonresident individual.

18 2. Payroll processing services. "Payroll processing  
services" means preparing and issuing payroll checks; preparing  
and filing tax returns, including quarterly state income  
withholding tax reports or unemployment insurance contribution  
reports; and collecting, holding and turning over to the State  
Tax Assessor income withholding taxes pursuant to Title 36,  
chapter 827 or unemployment insurance contributions pursuant to  
Title 26, chapter 13, subchapter 7.

28 3. Payroll processor. "Payroll processor" means a person  
that provides payroll processing service for one or more  
employers.

32 §1495-A. Registration required

34 1. Generally. A payroll processor that conducts business  
in this State must register annually with the State Tax Assessor  
by January 30th on a form designed and furnished by the assessor.

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

44 §1495-B. Disclosure to employers

46 1. Generally. Except as provided by subsection 2, a  
payroll processor shall provide a disclosure statement at the  
time of contracting and by September 1st of each even-numbered

2 year to each employer for which it provides payroll processing  
3 services. The statement must be made on a form designed jointly  
4 by the State Tax Assessor; the Department of Labor, Bureau of  
5 Employment Security; and the Department of Professional and  
6 Financial Regulation, Office of Consumer Credit Regulation. The  
7 disclosure statement form must be provided by the assessor to  
8 payroll processors and must include at a minimum the following:

9  
10 A. The length of time in which the payroll processor has  
11 been in the business of providing payroll processing  
12 services; and

13  
14 B. A statement as to whether any payroll processing  
15 services are contracted out to others and, if so, which  
16 services are contracted out and to whom.

17  
18 2. **Exception.** A payroll processor that does not handle a  
19 client's funds is not subject to the disclosure requirement of  
20 subsection 1.

### 21 §1495-C. Penalties

22  
23 1. **Civil violations.** A payroll processor is subject to a  
24 civil penalty or a civil forfeiture in accordance with the  
25 following.

26  
27 A. A payroll processor that fails to provide the disclosure  
28 statement required by section 1495-B to an employer for  
29 which it provides payroll processing services commits a  
30 civil violation for which a forfeiture of not less than \$50  
31 nor more than \$250 may be adjudged. Each failure to notify  
32 a particular client constitutes a separate violation for the  
33 purposes of this section. An action for a civil violation  
34 under this subsection must be brought within 2 years after  
35 the date on which disclosure should have been made. An  
36 owner or operator of a payroll processor may not be held  
37 liable for a civil violation under this subsection if that  
38 person shows by a preponderance of the evidence that the  
39 violation was unintentional.

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

46  
47 2. **Criminal violations.** A payroll processor is a fiduciary  
48 for purposes of Title 17-A, section 903.

49  
50 **Sec. 2. 17-A MRSA §362, sub-§6 is enacted to read:**

2       6. Theft by misapplication of property under section 358,  
3 when committed by a payroll processor, as defined by Title 10,  
4 section 1495, is classified one step higher than it would  
5 otherwise be classified under this section based upon the value  
6 of property or services involved, except that the offense may not  
7 be classified as a Class A crime.

8       **Sec. 3. 36 MRSA §112, sub-§1,** as amended by PL 1995, c. 281,  
9 §1, is further amended to read:

10       **1. General powers and duties.** The State Tax Assessor shall  
11 administer and enforce the tax laws enacted under this Title and  
12 under Title 29-A, and may adopt rules and require such  
13 information to be reported as necessary. The assessor may  
14 investigate, enforce and prosecute activities defined as crimes  
15 in this Title and in Title 17-A, sections 358, 751 and 903. The  
16 assessor shall provide, at the time of issuance, to one or more  
17 entities that publish a monthly state tax service all rules,  
18 bulletins, taxpayer notices or alerts, notices of rulemaking, any  
19 other taxpayer information issued by the assessor, and all  
20 substantive amendments or modifications of the same, for  
21 publication by that entity or entities. When a significant  
22 change has occurred in Bureau of Taxation policy or practice or  
23 in the interpretation by the bureau of any law, rule or  
24 instruction bulletin, the assessor shall, within 60 days of the  
25 change, provide to the same publishing entity or entities written  
26 notice, suitable for publication, of the change.

27       **Sec. 4. 36 MRSA §112, sub-§4,** as amended by PL 1991, c. 873,  
28 §2, is further amended to read:

29       **4. Examination of records and premises.** Whenever necessary  
30 to the administration of this Title, the State Tax Assessor may  
31 make, or cause to be made by an employee, an examination or  
32 investigation of the place of business, books and other documents  
33 and any other relevant personal property of any person who the  
34 ~~State-Tax-Assessor~~ assessor has reason to believe is liable for  
35 any tax imposed by this Title. The assessor may also examine the  
36 books and records of a payroll processor, as defined in Title 10,  
37 section 1495, and client books and records in the possession of a  
38 payroll processor.

39       At the conclusion of an audit, the ~~State-Tax-Assessor~~ assessor or  
40 an agent shall conduct an audit conference with the taxpayer and  
41 shall give the taxpayer a written summary of the audit findings,  
42 including the legal basis for the audit findings and adjustments,  
43 along with copies of relevant Bureau of Taxation audit workpapers.

44       **Sec. 5. 36 MRSA §5255-A, first ¶,** as amended by PL 1985, c.  
45 535, §27, is further amended to read:

2           The State Tax Assessor may, by filing a complaint, apply for  
4 an injunction from doing business of any person required to  
6 deduct and withhold tax under this Part whenever any such person  
8 fails to deduct and withhold tax under this Part; or truthfully  
10 account for, or pay over, or make returns of the tax as required  
12 by section 5253. The assessor may also apply for an injunction  
14 from doing business of any payroll processor, as defined in Title  
16 10, section 1495, whenever a payroll processor is responsible for  
18 truthfully accounting for, or paying over or making returns of  
20 the tax imposed by this Part and fails to do so. The existence  
22 of other civil or criminal remedies shall-be-ne is not a defense  
24 to this proceeding.

14  
16

### FISCAL NOTE

18           This bill may increase prosecutions for Class D crimes and  
20 increase the penalties for certain Class C, D and E crimes by one  
22 class under certain circumstances. The additional costs that may  
24 be incurred by state correctional institutions both from costs  
26 shifted from the counties, either in the form of the housing of  
additional prisoners at state correctional institutions or new  
eligibility for state reimbursement, and from longer sentences  
can not be estimated at this time.

26

28           The net effect on county jails can also not be estimated.  
The counties may realize savings from a shift of costs to the  
State or from additional reimbursement from the State. These  
amounts may be offset by the additional costs incurred as a  
result of the potential for longer sentences or new sentences  
under Class D crimes, which are not reimbursed by the State.

32

34           The Judicial Department may require additional General Fund  
appropriations to cover increased indigent defense costs related  
to these cases when the class of crime is increased. The  
additional workload and administrative costs associated with the  
minimal number of new criminal and civil cases and civil suits  
filed in the court system can be absorbed within the budgeted  
resources of the Judicial Department. The collection of  
additional filing fees and fines may also increase General Fund  
revenue by minor amounts.

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44           The Department of Labor will incur some minor additional  
costs to develop a required disclosure form. These costs can be  
absorbed within the department's existing budgeted resources.

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48           The Office of Consumer Credit within the Department of  
Professional and Financial Regulation will incur some minor  
additional costs to develop a required disclosure form. These

50

2 costs can be absorbed within the office's existing budgeted  
resources.

4 The additional costs associated with administration and  
6 enforcement of the provisions of the bill can be absorbed by the  
Bureau of Taxation utilizing existing budgeted resources.

8

### SUMMARY

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12 This bill requires that all payroll processing companies  
14 that conduct business in the State register on an annual basis  
with the State Tax Assessor by January 30th. This bill also  
16 requires payroll processing companies that handle client funds to  
make certain disclosures to each employer for which it provides  
18 payroll processing services. The disclosures are to be made at  
the time of contracting and then by September 1st of each  
even-numbered year. Penalties are established for failure to  
20 register and failure to provide disclosure. Failure to register  
with the State Tax Assessor is a civil violation for which a  
penalty of not less than \$500 nor more than \$2,500 may be  
22 assessed. Failure to provide disclosures to employers is a civil  
violation for which a forfeiture of not less than \$50 nor more  
24 than \$250 may be assessed. Criminal penalties for misuse of  
entrusted property by payroll processing companies are increased.

26

28 This bill authorizes the State Tax Assessor to perform  
audits of payroll processing companies and their clients. The  
assessor is also given authority to apply for an injunction from  
30 doing business for any payroll processing company that fails to  
account for, pay over or make returns of tax required by the  
32 Maine Revised Statutes, Title 36, chapter 827.