

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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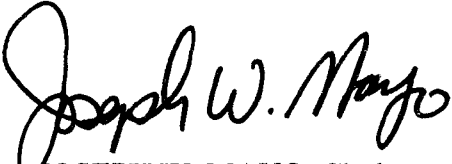
House of Representatives, March 23, 1999

### **An Act to Address the Solvency of the Unemployment Compensation Fund.**

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Reported by Representative HATCH for the Department of Labor pursuant to Public Law 1997, chapter 745, section 4.

Reference to the Joint Standing Committee on Labor suggested and printing ordered under Joint Rule 218.

  
JOSEPH W. MAYO, Clerk

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

2  
3       **Sec. 1. 26 MRSA §1043, sub-§19, ¶A**, as amended by PL 1983, c.  
4 13, §2, is further amended to read:

6       A. For purposes of section 1221, the term "wages" shall  
7 ~~does not include that part of remuneration which after~~  
8 remuneration equal ~~to \$3,000 through December 31, 1971,~~  
9 ~~\$4,200 through December 31, 1977, \$6,000 through December~~  
10 ~~31, 1982, and on and after January 1, 1983, that part of~~  
11 ~~remuneration equal to that exceeds the first \$7,000 has been~~  
12 ~~through December 31, 1999, and on and after January 1, 2000,~~  
13 ~~the first \$12,000 that is paid in a calendar year to an~~  
14 individual by an employer or his the employer's predecessor  
15 ~~with respect to~~ for employment during any calendar year, is  
16 ~~paid to the individual by the employer during that calendar~~  
17 ~~year, unless that part of the remuneration is subject to a~~  
18 tax under a federal law imposing a tax against which credit  
19 may be taken for contributions required to be paid into a  
20 state unemployment fund. The wages of an individual for  
21 employment with an employer shall ~~be~~ are subject to this  
22 exception whether earned in this State or any other state  
23 when the employer-employee relationship is between the same  
24 legal entities;

26       **Sec. 2. 26 MRSA §1043, sub-§23**, as enacted by PL 1965, c. 381,  
27 §5, is amended to read:

28       **23. Misconduct.** "Misconduct" means ~~conduct evincing such~~  
29 ~~willful or wanton disregard of an employer's interests as is~~  
30 ~~found in deliberate violations or disregard of standards of~~  
31 ~~behavior which the employer has a right to expect of his~~  
32 ~~employee, or in carelessness or negligence of such degree or~~  
33 ~~recurrence as to manifest equal culpability, wrongful intent or~~  
34 ~~evil design, or to show an intentional and substantial disregard~~  
35 ~~of the employer's interests or of the employees' duties and~~  
36 ~~obligations to his employer~~ any act or omission by an employee  
37 that constitutes a material breach of the employee's duties or  
38 obligations to the employer and that adversely affects a material  
39 or substantial interest of the employer. "Misconduct" includes,  
40 but is not limited to:

42       A. Refusal, knowing failure or recurring neglect to perform  
43 reasonable and proper duties assigned by the employer;

46       B. Violation of any rule of conduct, safety rule or other  
47 rule in any way related to the employment that is reasonably  
48 imposed and communicated by the employer or that can be  
reasonably implied from the type of employment or through

common knowledge;

2  
4 C. Repeated failure to exercise due care for punctuality or attendance when warnings have been received from the employer;

6  
8 D. Falsification of employment applications or other written documents relating to obtaining or retaining employment;

10  
12 E. Intoxication or the use of illegal drugs on the employer's premises or when reporting to work;

14  
16 F. Frequent absences, sleeping on the employer's premises or the inability to perform the employment due to intoxication or the aftereffects of intoxication or illegal drug use;

18  
20 G. Insubordination, disobedience or the refusal without good cause to follow reasonable and proper instructions given by the employer;

22  
24 H. Abusive language, assault on another employee or fighting;

26  
28 I. Intentional or negligent destruction of the employer's property;

30  
32 J. Dishonesty, falsification of time records or work records or theft of the employer's property;

34  
36 K. Untruthfulness related to the job that could substantially injure or jeopardize the employer's interests;

38  
40 L. Conduct substantially endangering the safety of the employee, coworkers, customers or bystanders; and

42  
44 M. Conviction of a crime in connection with the employment or absence from work for more than 2 workdays due to incarceration for conviction of a crime.

46  
48 "Misconduct" does not include: failure to perform employment duties satisfactorily if the employee made a good faith effort to perform the duties; absenteeism caused by the illness of the employee or an immediate family member if the employee notified the employer of the reason for the absence and complied with the employer's notification rules and policies; or actions taken by the employee that were necessary to protect the employee or an immediate family member from domestic violence if the employee made all reasonable efforts to preserve the employment.

2           **Sec. 3. 26 MRSA §1051, sub-§7**, as enacted by PL 1981, c. 284,  
is amended to read:

4  
6           **7. Limitation on recovery.** Deduction from benefits that may  
be or may become payable to an individual as provided for in  
subsection 5 shall-be is limited to not more than 10% 50% of any  
8 weekly benefit payment otherwise due the claimant.

10           **Sec. 4. 26 MRSA §1051, sub-§§9 and 10** are enacted to read:

12           **9. Interest on overpayments.** Benefit payments owed to the  
commissioner bear interest at the rate of 1.0% per month or per  
14 fraction of a month. Except as provided in this subsection,  
interest accrues on any balance that remains unpaid one year  
16 after the first of the month following the date the determination  
establishing the benefit overpayment becomes final until payment  
18 plus accrued interest is received by the bureau. If the benefit  
overpayment was established in a determination rendered under  
20 section 1193, subsection 6, interest accrues from the first of  
the month following the date the determination establishing the  
22 benefit overpayment becomes final until payment plus accrued  
interest is received by the bureau.

24           **10. Application of benefit repayments.** Amounts received  
26 through any means to repay benefit payments owed to the  
commissioner must be applied first to any outstanding penalties,  
28 2nd to any outstanding interest and 3rd to any benefit payments  
owed to the commissioner.

30           **Sec. 5. 26 MRSA §1164**, as amended by PL 1991, c. 9, Pt. KK,  
32 is further amended to read:

34           **§1164. Special Administrative Expense Fund**

36           The Special Administrative Expense Fund, ~~as heretofore is~~  
created, ~~is~~ as a special fund in the State Treasury. All  
38 interest, fines and penalties collected under this chapter,  
~~together with any~~ and all voluntary contributions tendered as a  
40 contribution to this fund, must be paid into this fund. The  
money may not be expended or available for expenditure in any  
42 manner ~~which~~ that would permit its substitution for, or a  
corresponding reduction in, federal funds ~~which~~ that would in the  
44 absence of that money be available to finance expenditures for  
the administration of the Employment Security Law. Nothing in  
46 this section ~~may prevent~~ prevents the money from being used as a  
revolving fund to cover expenditures, necessary and proper under  
48 the law, for which federal funds have been duly requested but not  
yet received, subject to the charging of those expenditures  
50 against those funds when received. The money in this fund must

2 be used by the commissioner either for the payment of costs of  
administration which that are found not to have been properly and  
4 validly chargeable against federal grants or other funds received  
for or in the Employment Security Administration Fund on or after  
6 January 1, 1943, to finance the Maine Wage Assurance Fund  
established in section 632; ~~or~~ for the payment of costs of  
8 administering chapter 26, for which federal funds are not  
available, ~~except that on or before June 30, 1991, the~~  
10 ~~Commissioner of Labor is authorized to transfer \$100,000 of this~~  
~~fund to General Fund undedicated revenues; or to fund activities~~  
12 that will improve the solvency of the Unemployment Compensation  
Fund. The money must be available either to satisfy the  
14 obligations incurred by the bureau directly or by requesting the  
Treasurer of State to transfer the required amount from the  
16 Special Administrative Expense Fund to the Employment Security  
Administration Fund or the Maine Wage Assurance Fund. The  
18 Treasurer of State shall upon receipt of a written request of the  
commissioner make any such transfer. The commissioner shall give  
20 notice to the commission prior to any expenditures from this  
fund. The commissioner shall order the transfer of the funds or  
22 the payment of any such obligation and the funds must be paid by  
the Treasurer of State on requisitions drawn by the commissioner  
24 directing the State Controller to issue the State Controller's  
warrant ~~therefor~~ for them. ~~Any such~~ The warrant must be drawn by  
26 the State Controller based upon bills of particulars and vouchers  
certified by an officer or employee designated by the  
28 commissioner. The money in this fund is specifically made  
available to replace, within a reasonable time, any money  
30 received by this State pursuant to section 302 of the Federal  
Social Security Act as amended that, which because of any action  
32 or contingency, has been lost or has been expended for purposes  
other than, or in amounts in excess of, those necessary for the  
34 proper administration of the Employment Security Law. The money  
in this fund must be continuously available to the commissioner  
36 for expenditure in accordance with this section and may not lapse  
at any time or be transferred to any other fund except as  
38 provided. Any money in the Special Administrative Expense Fund  
may be used to make refunds of interest, penalties or fines  
40 erroneously collected and deposited in the Special Administrative  
Expense Fund. On June 30th of each year all money in excess of  
42 \$100,000 in this fund must be transferred to the Unemployment  
Compensation Fund, ~~except that on June 30, 1986, all money in~~  
44 ~~excess of \$100,000 in this fund must be placed in a Dislocated~~  
~~Workers Fund to be used in fiscal year 1986-87 to provide~~  
training ~~and supportive services for persons displaced from~~  
46 employment ~~by imports in accordance with chapter 26. Eligibility~~  
~~for assistance is not related to an individual's income or~~  
48 ~~resources.~~

2           **Sec. 6. 26 MRSA §1191, sub-§2**, as amended by PL 1997, c. 745,  
§1, is further amended to read:

4           **2. Weekly benefit amount for total unemployment.** Each  
eligible individual establishing a benefit year on or after  
6           October 1, 1983 and before January 1, 2000 who is totally  
unemployed in any week must be paid with respect to that week  
8           benefits equal to 1/22 of the wages, rounded to the nearest lower  
full dollar amount, paid to that individual in the high quarter  
10           of the base period, but not less than \$12. Each eligible  
individual establishing a benefit year on or after January 1,  
12           2000 who is totally unemployed in any week must be paid with  
respect to that week benefits equal to 1/22 of the average of the  
14           wages, rounded to the nearest lower full dollar amount, paid to  
that individual in the 2 highest quarters of the base period.  
16           The maximum weekly benefit amount for claimants requesting  
insured status determination beginning October 1, 1983 and  
18           thereafter from June 1st of a calendar year to May 31st of the  
next calendar year may not exceed 52% of the annual average  
20           weekly wage, rounded to the nearest lower full dollar amount,  
paid in the calendar year preceding June 1st of that calendar  
22           year. ~~No increase in the maximum weekly benefit amount may occur  
for the period from June 1, 1992 to October 28, 1995. For the  
24           periods from October 29, 1995 to May 31, 1997 and period from  
September 28, 1997 to December 31, 1999, the maximum weekly  
26           benefit amount is limited to 94% of the amount calculated  
previously in this subsection, rounded to the nearest lower full  
28           dollar amount. ~~For claimants requesting insured status  
determination on or after April 1, 1993 and before January 1,  
30           1995, the weekly benefit amount must be the amount determined by  
this subsection minus \$6.~~ For claimants requesting insured  
32           status determination on or after April 1, 1995 and before January  
1, 2000, the weekly benefit amount must be the amount determined  
34           by this subsection minus \$3.~~

36           **Sec. 7. 26 MRSA §1193, sub-§6**, as amended by PL 1973, c. 555,  
§14, is further amended to read:

38           **6. Has falsified.** For any week for which the deputy finds  
40           that the claimant made a false statement or representation  
knowing it to be false or knowingly ~~fails~~ failed to disclose a  
42           material fact in ~~his~~ the claimant's application to obtain  
benefits, ~~and in,~~ In addition, the claimant ~~shall be~~ is  
44           ineligible to receive any benefits for a period of not less than  
6 months nor more than one year from the mailing date of the  
46           determination, and the commissioner shall assess a penalty of 50%  
of the benefits falsely obtained for the first occurrence, 75%  
48           for the 2nd occurrence and 100% for the 3rd and any subsequent  
occurrences; or

50

2           **Sec. 8. 26 MRSA §1194, sub-§2**, as amended by PL 1987, c. 641,  
§7, is further amended to read:

4           **2. Determination.** A representative designated by the  
commissioner, and in this chapter referred to as a deputy, shall  
6 promptly examine the first claim filed by a claimant in each  
benefit year and shall determine the weekly benefit amount and  
8 maximum benefit amount potentially payable to the claimant during  
that benefit year in accordance with section 1192, subsection 5.

10           The deputy shall promptly examine all subsequent claims filed  
12 and, on the basis of facts, shall determine whether or not that  
claim is valid with respect to sections 1192 and 1193, other than  
14 section 1192, subsection 5, or shall refer that claim or any  
question ~~involved therein~~ related to the claim to the Division of  
16 Administrative Hearings or to the commission, which shall make a  
determination ~~with respect thereto~~ in accordance with the  
18 procedure described in subsection 3, except that in any case in  
which the payment or denial of benefits will be subject to  
20 section 1193, subsection 4, the deputy shall promptly transmit a  
report with respect to that subsection to the Director of  
22 Unemployment Compensation upon the basis of which the director  
shall notify appropriate deputies as to the applicability of that  
24 subsection.

26           The deputy shall determine in accordance with section 1221,  
subsection 3, paragraph A, the proper employer's experience  
28 rating record, if any, against which benefits of an eligible  
individual ~~shall~~ are to be charged, if and when paid.

30           The deputy shall promptly notify the claimant and any other  
32 interested party of the determinations and reasons ~~therefor~~ for  
those determinations. Subject to subsection 11, unless the  
34 claimant or any such interested party, within 15 calendar days  
after that notification was mailed to ~~his~~ that person's last  
36 known address, files an appeal from that determination, that  
determination ~~shall-be~~ is final, ~~provided~~ except that the period  
38 within which an appeal may be filed may be extended, for a period  
not to exceed an additional 15 calendar days, for good cause  
40 shown. If new evidence or pertinent facts that would alter that  
determination become known to the deputy prior to the date that  
42 determination becomes final, a redetermination is authorized, but  
that redetermination must be mailed before the original  
44 determination becomes final.

46           If an employer's separation report for an employee is not  
received by the office specified ~~thereon~~ on the report within 10  
48 days after that report was requested, the claim ~~shall~~ must be  
adjudicated on the basis of information at hand. If the  
50 employer's separation report containing possible disqualifying



2 information is received after the 10-day period and the claimant  
3 is denied benefits by a revised deputy's decision, benefits paid  
4 prior to the date of the revised decision shall do not constitute  
5 an overpayment of benefits. Any benefits paid after the date of  
6 the revised decision shall constitute an overpayment.

7 If an employer files an amended separation report or otherwise  
8 raises a new issue as to the employee's eligibility or changes  
9 the wages or weeks used in determining benefits, which results in  
10 a denial of benefits or a reduction of the weekly benefit amount,  
11 the benefits paid prior to the date the determination is mailed  
12 shall do not constitute an overpayment. Any benefits received  
13 after that date to which the claimant is not entitled pursuant to  
14 a new determination based on that new employer information shall  
15 constitute an overpayment.

16 If, during the period a claimant is receiving benefits, new  
17 information or a new issue arises concerning the claimant's  
18 eligibility for benefits or ~~which~~ that affects the claimant's  
19 weekly benefit amount, ~~no~~ benefits may not be withheld for more  
20 than 14 days until a determination is made on the issue. Before  
21 a determination is made, written notice shall must be mailed to  
22 the claimant and other interested parties, which shall must  
23 include the issue to be decided, the law upon which it is based,  
24 any factual allegations known to the bureau, the right to a  
25 fact-finding interview, the date and location of the scheduled  
26 interview and the conduct of the interview and appeal. The  
27 fact-finding interview shall must be scheduled not less than 5  
28 days nor more than 14 days after the notice is mailed. The  
29 bureau shall include in the notice a statement notifying the  
30 claimant that any benefits paid prior to the determination may be  
31 an overpayment under applicable law and recoverable by the bureau  
32 if it is later determined that the claimant was not entitled to  
33 the benefits. If the claimant does not appear for the scheduled  
34 interview, the deputy shall make a determination on the basis of  
35 available evidence. The deputy shall make a prompt determination  
36 of the issue based solely on any written statements of interested  
37 parties filed with the bureau before the interview, together with  
38 the evidence presented by interested parties who personally  
39 appeared at the interview. Upon request and notice to all  
40 parties at the interview, the deputy may accept corroborative  
41 documentary evidence after the interview. In no other case may  
42 the deputy base a decision on evidence received after the  
43 interview has been held.

44  
45 A. This subsection does not apply when the claimant reports  
46 that, in the week claimed:

47  
48 (1) The claimant worked and reports a specific amount  
49 of earnings for that work;  
50

- 2 (2) The claimant worked and had earnings from that  
4 work, but does not furnish the amount of earnings;
- 6 (3) The claimant was not able or available for work  
8 for a specific portion of the week and there is  
10 sufficient information for the deputy to determine that  
12 the inability or unavailability for work was for good  
14 cause; or
- 16 (4) The claimant received a specific amount of other  
18 remuneration as described in section 1193, subsection 5.

14 ~~B. The commissioner shall notify all claimants when a  
16 weekly claim is filed that they must provide an estimate of  
18 their earnings if they do not know the actual amount and, if  
20 no estimate is provided, benefits will be withheld pending  
receipt of that information. Benefits shall be paid on the  
basis of the estimate provided until actual information is  
available.~~

22 **Sec. 9. 26 MRSA §1221, sub-§4-A is enacted to read:**

24 **4-A. Employer's experience classifications after January 1,  
26 2000. For rate years commencing on or after January 1, 2000, the  
28 commissioner shall compute annually contribution rates for each  
employer based on the employer's own experience rating record and  
shall designate a schedule and planned yield.**

30 **A. The standard rate of contributions is 5.4%. A  
32 contributing employer's rate may not be varied from the  
34 standard rate unless the employer's experience rating record  
has been chargeable with benefits throughout the period of  
24 consecutive calendar months ending on the computation  
36 date applicable to such a year. A contributing employer  
newly subject to this chapter shall pay contributions at a  
38 rate equal to the predetermined yield until the employer's  
experience rating record has been chargeable with benefits  
40 throughout the period of 24 consecutive calendar months  
ending on the computation date applicable to such a year.  
42 For rate years thereafter, the employer's contribution rate  
is determined in accordance with this subsection and  
44 subsection 3.**

46 **B. Subject to paragraph A, an employer's contribution rate  
48 for the 12-month period commencing January 1st of each year  
is based upon the employer's experience rating record and  
50 determined from the employer's reserve ratio. The  
employer's reserve ratio is the percent obtained by dividing  
the amount, if any, by which the employer's contributions,**

2 credited from the time the employer first or most recently  
3 became an employer, whichever date is later, up to and  
4 including June 30th of the preceding year, including any  
5 part of the employer's contributions due for that year paid  
6 on or before July 31st of that year, exceed the employer's  
7 benefits charged during the same period, by the employer's  
8 average annual payroll for the period of 36 consecutive  
9 months ending June 30th of the preceding year. The  
10 employer's contribution rate is determined under  
11 subparagraphs (1) to (7).

12 (1) The commissioner shall prepare a schedule listing  
13 all employers for whom a reserve ratio has been  
14 computed pursuant to this paragraph, in the order of  
15 their reserve ratios, beginning with the highest  
16 ratio. For each employer, the schedule must show:

17 (a) The amount of the employer's reserve ratio;

18 (b) The amount of the employer's annual taxable  
19 payroll; and

20 (c) A cumulative total consisting of the amount  
21 of the employer's annual taxable payroll plus the  
22 amount of the annual taxable payrolls of all other  
23 employers preceding the employer on the list.

24 (2) The commissioner shall segregate employers into  
25 contribution categories in accordance with the  
26 cumulative totals under subparagraph (1), division  
27 (c). The contribution category is determined by the  
28 cumulative payroll percentage limits in column B. Each  
29 contribution category is identified by the contribution  
30 category number in column A that is opposite the  
31 figures in column B, which represent the percentage  
32 limits of each contribution category. If an employer's  
33 taxable payroll falls in more than one contribution  
34 category, the employer must be assigned to the  
35 lower-numbered contribution category, except that an  
36 employer may not be assigned to a higher contribution  
37 category than is assigned any other employer with the  
38 same reserve ratio.

44	A	B	C	D	E
45	<u>Contribution</u>	<u>% of Taxable</u>	<u>Experience</u>	<u>Phase-in</u>	<u>Phase-in</u>
46	<u>Category</u>	<u>Payrolls</u>	<u>Factors</u>	<u>Experience</u>	<u>Experience</u>
47		<u>From</u>	<u>To</u>	<u>Factors</u>	<u>Factors</u>
48				<u>2002 and</u>	<u>2000 and</u>
49				<u>2003</u>	<u>2001</u>
50					

1	00.00	05.00	.30	.38750	.4750
2	05.01	10.00	.35	.43125	.5125
3	10.01	15.00	.40	.47500	.5500
4	15.01	20.00	.45	.51875	.5875
5	20.01	25.00	.50	.56250	.6250
6	25.01	30.00	.55	.60625	.6625
7	30.01	35.00	.60	.65000	.7000
8	35.01	40.00	.65	.69375	.7375
9	40.01	45.00	.70	.73750	.7750
10	45.01	50.00	.75	.78125	.8125
11	50.01	55.00	.80	.82500	.8500
12	55.01	60.00	.90	.91250	.9250
13	60.01	65.00	1.00	1.00000	1.0000
14	65.01	70.00	1.10	1.08750	1.0750
15	70.01	75.00	1.25	1.21875	1.1875
16	75.01	80.00	1.40	1.35000	1.3000
17	80.01	85.00	1.60	1.52500	1.4500
18	85.01	90.00	1.90	1.78750	1.6750
19	90.01	95.00	2.20	2.05000	1.9000
20	95.01	100.00	2.60	2.40000	2.2000

(3) The commissioner shall compute a reserve multiple to determine the schedule and planned yield in effect for a rate year. The reserve multiple is determined by dividing the fund reserve ratio by the average benefit cost rate. The determination date is October 31st of each calendar year. The schedule and planned yield that apply for the 12-month period commencing every January 1st are shown on the line of the following table that corresponds with the applicable reserve multiple in column A, except that a planned yield of 1.21% must be in effect for the 12-month periods commencing January 1, 2000, January 1, 2001, January 1, 2002, January 1, 2003 and January 1, 2004.

<u>A</u>	<u>B</u>	<u>C</u>
<u>Reserve Multiple</u>	<u>Schedule</u>	<u>Planned Yield</u>
<u>1.50 and Over</u>	<u>A</u>	<u>0.8%</u>
<u>1.25 - 1.49</u>	<u>B</u>	<u>1.0%</u>
<u>1.00 - 1.24</u>	<u>C</u>	<u>1.2%</u>
<u>.75 - .99</u>	<u>D</u>	<u>1.4%</u>
<u>.50 - .74</u>	<u>E</u>	<u>1.6%</u>
<u>Under .50</u>	<u>F</u>	<u>1.8%</u>

(4) The commissioner shall compute the predetermined yield by multiplying the ratio of total wages to taxable wages for the preceding calendar year by the planned yield.

2           (5) The commissioner shall determine the contribution  
4           rates effective for a rate year by multiplying the  
6           predetermined yield by the experience factors for each  
8           contribution category. Contribution category 20 in the  
10           table in subparagraph (2) must be assigned a  
12           contribution rate of at least 5.4%. The employer's  
14           experience factor is the percentage shown in column C  
          in the table in subparagraph (2) that corresponds with  
          the employer's contribution category in column A,  
          except that the experience factors in column E must be  
          used to determine the contribution rates for rate years  
          2000 and 2001 and those in column D must be used for  
          rate years 2002 and 2003.

16           (6) If, subsequent to the assignment of contribution  
18           rates for a rate year, the reserve ratio of an employer  
20           is recomputed and changed, the employer must be placed  
22           in the position on the schedule prepared pursuant to  
24           subparagraph (1) that the employer would have occupied  
          had the corrected reserve ratio been shown on the  
          schedule. The altered position on the schedule does  
          not affect the position of any other employer.

26           (7) In computing the contribution rates, only the  
28           wages reported by employers liable for payment of  
30           contributions into the fund and net benefits paid that  
32           are charged to an employer's experience rating record  
          or to the fund are considered in the computation of the  
          average benefit cost rate and the ratio of total wages  
          to taxable wages.

34           C. The commissioner shall:

36           (1) Promptly notify each employer of the employer's  
38           rate of contributions as determined for the 12-month  
40           period commencing January 1st of each year. The  
42           determination is conclusive and binding upon the  
44           employer unless within 30 days after notice of the  
46           determination is mailed to the employer's last known  
48           address or, in the absence of mailing, within 30 days  
50           after the delivery of the notice, the employer files an  
          application for review and redetermination, setting  
          forth the employer's reasons. If the commission grants  
          the review, the employer must be promptly notified and  
          must be granted an opportunity for a hearing. An  
          employer does not have standing in any proceedings  
          involving the employer's rate of contributions or  
          contribution liability to contest the chargeability to  
          the employer's experience rating record of any benefits

2 paid in accordance with a determination,  
3 redetermination or decision pursuant to section 1194,  
4 except upon the ground that the services for which  
5 benefits were found to be chargeable did not constitute  
6 services performed in employment for the employer and  
7 only when the employer was not a party to the  
8 determination, redetermination or decision or to any  
9 other proceedings under this chapter in which the  
10 character of the services was determined. The employer  
11 must be promptly notified of the commission's denial of  
12 the employer's application or the commission's  
13 redetermination, both of which are subject to appeal  
14 pursuant to Title 5, chapter 375, subchapter VII; and

15 (2) Provide each employer at least monthly with a  
16 notification of benefits paid and chargeable to the  
17 employer's experience rating record. In the absence of  
18 an application for redetermination filed in the manner  
19 and within the period prescribed by the commission, a  
20 notification is conclusive and binding upon the  
21 employer for all purposes. A redetermination made  
22 after notice and opportunity for hearing and the  
23 commission's findings of fact may be introduced in  
24 subsequent administrative or judicial proceedings  
25 involving the determination of the rate of  
26 contributions of an employer for the 12-month period  
27 commencing January 1st of any year and has the same  
28 finality as provided in this section with respect to  
29 the findings of fact made by the commission in  
30 proceedings to redetermine the contribution rates of an  
31 employer.

32 **Sec. 10. 26 MRSA §1221, sub-§6, as amended by PL 1985, c. 348,**  
33 **§11, is further amended to read:**

34 **6. Definitions.** The following ~~words~~ terms, as used in this  
35 section, shall have the following meanings, unless the context  
36 already ~~requires~~ otherwise indicates.

37 A. "Computation date" shall ~~be~~ means June 30th of each  
38 calendar year, and the reserve ratio of each employer  
39 entitled ~~to this section~~ shall ~~be~~ is determined by the  
40 commissioner as of that date.

41 B. "Effective date" shall ~~be~~ means the date on which the  
42 new rates shall become effective and shall ~~be~~ is January 1st  
43 of each calendar year.

44 C. "Fund reserve ratio" means the percentage obtained by  
45 dividing the net balance available for benefits payments as  
46

2 of September 30th of each calendar year by the total wages  
for the preceding calendar year.

4 D. "Cost rate" means the percentage obtained by dividing  
6 net benefits paid for a calendar year by the total wages for  
the same period.

8 E. "Net balance available for benefit payments" means the  
10 sum of the balance in the trust fund, the benefit fund, and  
12 the clearing account after adjustment for outstanding  
checks, and adjustment for funds in transit between either  
of said the funds or said the account.

14 F. "Rate year" ~~shall--be~~ means the 12-month period  
commencing January 1st of each year.

16 G. "Reserve multiple" is means a measure of the fund  
18 reserve ~~which that~~ expresses the current fund reserve ratio  
as a multiple of the composite cost rate. The reserve  
20 multiple ~~shall must~~ be rounded to 2 decimal places. For  
22 rate years that begin on and after January 1, 2000, the  
"reserve multiple" is a measure of the fund reserve that  
24 expresses the current fund reserve ratio as a multiple of  
the average benefit cost rate.

26 H. "Total wages" means the aggregate total wages paid in  
28 Maine for a calendar year in covered employment by  
contributing employers, as reported on employer contribution  
reports.

30 I. "Composite ~~Cost--Rate~~ cost rate" means the arithmetic  
32 average of the annual cost rates for the last 15 completed  
calendar years multiplied by a factor of 1.95, ~~--either,~~  
34 Either the resulting composite rate ~~shall--apply~~ applies for  
the reserve multiple calculation or the rate of 2.20,  
36 whichever is greater, but in no case will may a composite  
cost rate higher than 2.83 apply.

38 J. "Average benefit cost rate" means the percentage  
40 obtained by averaging the 3 highest cost rates for the last  
20 completed calendar years preceding the computation date.  
42 The rate is rounded down to the nearest 0.1%.

44 K. "Planned yield" means the percentage of total wages  
46 determined by the reserve multiple for the rate year in  
accordance with the table in subsection 4-A, paragraph B,  
48 subparagraph (3).

50 L. "Ratio of total wages to taxable wages" means the factor  
obtained by dividing total wages for the preceding calendar

2 year by taxable wages for the same period, except that a  
4 ratio of total wages to taxable wages equal to 2.4 must be  
6 used to determine the contribution rates effective for rate  
8 year 2000 and a ratio equal to 2.5 must be used to determine  
10 the contribution rates effective for rate year 2001.

12 M. "Predetermined yield" means the amount determined by  
14 multiplying the ratio of total wages to taxable wages by the  
16 planned yield. The predetermined yield is rounded up to the  
18 nearest 0.01% and is the calculated average contribution  
20 rate for the rate year.

22 N. "Experience factors" means the weights in subsection  
24 4-A, paragraph B, subparagraph (2) assigned to the  
26 contribution categories and used to calculate the  
28 contribution rates.

30 O. "Contributions credited" means the contributions  
32 credited to the experience rating record of an employer as  
34 provided in subsection 3, including all contributions due  
36 and paid on or before July 31st following the computation  
38 date.

40 P. "Benefits charged" means the benefits paid and charged  
42 against the experience rating record of an employer as  
44 provided in subsection 3, including all benefits paid and  
46 charged on or before the computation date.

48 **Sec. 11. 26 MRSA §1225, sub-§§1-A and 1-B are enacted to read:**

1-A. Liability of employer and certain individuals. The  
liability for contributions or fees and the interest or penalties  
due on contributions are enforceable by assessment and  
collection, in the manner prescribed in this section, against the  
employer and against any officer, director or member of that  
employer who, in that capacity, is responsible for the control or  
management of the funds or finances of that employer or is  
responsible for the payment of that employer's contribution.

1-B. Responsible individual. Each employer liable for  
contributions shall inform the commissioner or the commissioner's  
duly authorized representative, at the time an audit of that  
employer's account is performed, of the name and position of the  
individual who generally is responsible for the control or  
management of that employer's funds or finances and, if  
different, the individual who is specifically responsible for the  
collection and paying over of those contributions.

**Sec. 12. 26 MRSA §1233 is enacted to read:**



2       **§1233. Collection by levy on 3rd parties**

4           **1. Notice of levy.** If an employer fails to pay any part of  
6 the contribution, interest or penalties due under this chapter,  
8 the Director of Unemployment Compensation may notify by mail a  
10 3rd party who has possession or control of property in which the  
12 delinquent employer may have an interest or who may owe a debt to  
14 the delinquent employer, other than earnings.

16           **A.** A notice under this section may be given any time after  
18 the amount due under this Title becomes delinquent. The  
20 notice must state the aggregate amount of contributions,  
22 penalties, interest or other amounts due and any additional  
24 amount that will accrue by operation of law in a period not  
26 to exceed the computation ending date of the month in which  
28 the notice is given and, in the case of a credit, bank, or  
30 savings account or deposit, is effective only up to that  
32 amount.

34           **2. Notification and freezing assets.** Upon receipt of a  
36 notice provided under this section, the person receiving the  
38 notice:

40           **A.** Shall advise the Director of Unemployment Compensation  
42 no later than 20 calendar days after the date the notice was  
44 sent of any property belonging to the delinquent employer  
46 that is possessed or controlled by the person receiving the  
48 notice and of any debt owed by the person receiving the  
50 notice to the delinquent employer, except earnings; and

52           **B.** May not transfer or dispose of the property or debt  
54 possessed, controlled or owed by the person receiving the  
56 notice during the period of 60 calendar days after the date  
58 the notice was sent.

60           A notice sent under this section that attempts to prohibit the  
62 transfer or disposition of any property possessed or controlled  
64 by a bank is effective if it is mailed to the principal or any  
66 branch office of the bank, including any office of the bank at  
68 which the deposit is carried or the credit or property is held.

70           A person who has received a notice under this section and who  
72 transfers or disposes of any property or debt in a manner that  
74 violates this section is liable to the Director of Unemployment  
76 Compensation for the amount of the indebtedness of the delinquent  
78 person with respect to whose obligation the notice was given to  
80 the extent of the value of that property or debt.

2 3. Levy on property. At any time during the period of 60  
3 calendar days described in this section, the Director of  
4 Unemployment Compensation may levy on the property or debt by  
5 delivery of a notice of levy. Upon receipt of the levy notice,  
6 the person possessing the property or debt shall transfer the  
7 property to the director or pay to the director the amount owed  
8 to the delinquent employer.

10 4. Effect of levy. A notice is effective:

11 A. At the time of delivery against all property, rights to  
12 property, credits and debts involving the delinquent  
13 employer that are not, as of the date of the notice, subject  
14 to a preexisting lien, attachment, garnishment or execution  
15 issued through a judicial process; and

16 B. Against all property, rights to property, credits and  
17 debts involving the delinquent employer that come into the  
18 possession or control of the person served with the notice  
19 within the period of 60 calendar days described in this  
20 section.

21 A person acting in accordance with the terms of the notice of  
22 freeze or levy issued by the Director of Unemployment  
23 Compensation is discharged from any obligation or liability to  
24 the delinquent employer with respect to the affected property,  
25 rights to property, credits and debts of the person affected by  
26 compliance with the notice of freeze or levy.

27 5. Property subject to levy. The delinquent employer  
28 property subject to levy includes:

29 A. A credit, bank or savings account or deposit that is  
30 subject to execution pursuant to Title 14, section 4751; or

31 B. Any other interest or personal property that is not  
32 exempt from attachment or execution pursuant to Title 14,  
33 sections 4421 to 4426.

## 40 SUMMARY

41 This bill is submitted pursuant to a law that directed the  
42 Department of Labor to submit legislation recommending a plan to  
43 provide for long-term solvency of the Unemployment Compensation  
44 Fund.

45 The bill does the following:

46  
47 1. Raises the taxable wage base from \$7,000 to \$12,000  
48 effective January 1, 2000;  
49

- 2           2. Establishes an array system for determining employer  
contributions to the Unemployment Compensation Fund;
- 4
- 6           3. Provides additional authority for the Director of  
Unemployment Compensation to collect money owed to the  
Unemployment Compensation Fund by employers. The bill allows the  
8 director to levy against property possessed or debts owed by 3rd  
parties to an employer who is delinquent in paying contributions,  
10 interest or penalties due the fund. It also provides for  
liability to be enforceable against officers, directors or  
12 members who manage the employer's funds or are responsible for  
making payments to the fund;
- 14
- 16           4. Bases the benefit for persons who begin receiving  
benefits after January 1, 2000 on the average of the wages from  
the 2 highest quarters of the base period rather than the highest  
18 quarter of the base period;
- 20           5. Changes the types of misconduct for which a person  
becomes ineligible to receive unemployment compensation;
- 22
- 24           6. Changes the provisions related to overpayment of  
benefits to allow a greater deduction from future benefits when  
the claimant refuses to repay the amounts due, provides for  
26 interest on overpayments and provides the method of applying  
amounts paid to amounts due;
- 28
- 30           7. Provides for a penalty against benefits obtained through  
false statements or failure to disclose information when the  
statement or failure to disclose is knowingly made;
- 32
- 34           8. Allows the withholding of benefits for up to 14 days  
after new information or new issues arise with respect to the  
claimant's eligibility or benefit amount;
- 36
- 38           9. Allows the department to use the Special Administrative  
Expense Fund to fund activities that improve the solvency of the  
Unemployment Compensation Fund; and
- 40
10. Repeals outdated language.