

MAINE STATE LEGISLATURE

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N I N E T Y - S E C O N D L E G I S L A T U R E

Legislative Document

No. 957

H. P. 1306

House of Representatives, February 21, 1945.

Transmitted by revisor of statutes pursuant to joint order

Referred to the Committee on Federal Relations, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Poulin of Rumford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-FIVE

AN ACT Amending the Unemployment Compensation Law as to Collection of Contributions.

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

R. S., c. 24, § 14, sub-§ (b), repealed and replaced. Subsection (b) of section 14 of chapter 24 of the revised statutes is hereby repealed and replaced with the following subsection (b) which shall read:

‘(b) Collections.

(1) **Civil action.** If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen’s compensation law of this state.

(2) **Distrain and sale.** At the discretion of the commission, if any person liable to pay any contributions neglects or refuses to pay the same

within 10 days after notice and demand, it shall be lawful for the commission to collect said contributions, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided by this subchapter of the goods, chattels, or effects, including stocks, securities, bank accounts, evidences of debt, and wages, of the person delinquent as aforesaid; or the commission may levy upon all property and rights to property, including real estate, belonging to such person, for the payment of the sum due; with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such actions.

(a) When distraint is made, as provided herein.

(1) Account and notice to owner. The commission shall make or cause to be made an account of the goods, effects, or property distrained, a copy of which shall be given in hand to the owner or possessor of such goods, effects, or property, or mailed to his last known address, with a note of the sum demanded and the time and place of sale; and

(2) Public notice. Forthwith, the commission shall cause a notification to be published in some newspaper within the county wherein said distraint is made, or to be publicly posted in at least 2 public places, specifying the articles distrained, and the time and place for the sale thereof.

(3) Time and place of sale. The time of sale shall not be less than 10 nor more than 20 days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as provided in subsection (2) above, and the place proposed for the sale shall not be more than 5 miles distant from the place of making such distraint, or the sale may be held at the offices of the commission in Augusta, Maine.

(4) Adjournment of sale. Said sale may be adjourned from time to time by said commission, if it deems it advisable, but not for a time to exceed in all 30 days.

(5) Purchasers. If no person offers for said property, real or personal, an amount more than the minimum price established therefor by the commission, to include all monies due the commission plus any interest or penalties, plus all expenses of sale, and any other additional amounts required by law, the commission shall declare the same to be purchased by it for the account of the state of Maine, otherwise the same shall be declared to be sold to the highest bidder.

(b) Property seized upon distraint and sold. When property or real estate of an employer subject to payment of contributions under the provisions of this chapter, but who has not paid the contributions, is seized upon distraint and sold, the amount of such contributions shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the contributions. And if no assessment of such contributions has been made, the field advisor of the commissioner shall make a report thereof in the form required by law, and the commission shall determine the contribution due.

(c) Restoration of property. In any case of distraint for the payment of contributions, the real or personal property so distrained shall be restored to the owner or possessor, if, prior to the sale, payment of the amount due is made to the commission, together with the fees and other charges; but in case of nonpayment, the commission shall proceed to sell the said real or personal property at public auction.

(d) Sale. In all cases of sale, as aforesaid, the certificate of such sale—

(1) As evidence. Shall be prima facie evidence of the right of the commission to make such sale, and conclusive evidence of the regularity of the proceedings in making the sale; and

(2) As conveyances. Shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and

(3) As authority for transfer of corporate stocks. Where such property consists of stocks, shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the transfer on their books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether cancelled or not; and

(4) As receipts. Where the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

(e) Real estate. In case real estate shall be purchased, a deed of sale shall be given to the purchaser, pursuant to this section, which

(1) As evidence. Shall be prima facie evidence of the facts therein stated; and

(2) As conveyance of title. Shall be considered and operate as a conveyance of all the right, title and interest the delinquent employer had in and to the real estate.

(f) Proceeds. Any property, real or personal, which has been declared by the commission to have been purchased by it for the account of the state of Maine, may be sold by the commissioner under such regulations as may be prescribed by the commission. The commission shall keep a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Unemployment Compensation Fund the proceeds.

(g) Refund to employer. When any property liable to distraint for contributions is not divisible so as to enable the commission by sale of a part thereof to raise the whole amount of the contribution due, with all costs and charges, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after making allowance for the amount of the contribution, interest, penalties, and additions thereto, and for the costs and charges of the distraint and sale, shall be refunded to the employer.

(h) When distraint is not sufficient. Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the state of Maine for which distraint or seizure is made, the commission may, thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner, any other property liable to seizure of the employer against whom such claim exists, until the amount due from him, together with all expenses is fully paid.

(i) Exhibit of evidence relative to distraint. All persons, and officers of companies or corporations, are required, on demand of the commission about to distraint or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the contributions due.

(j) Surrender of property. Any person in possession of property, real or personal, or rights to property, liable to distraint, upon which a levy has been made, shall, upon demand by the commission making such levy, surrender such property or rights to such commission, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.

(1) Any person who fails or refuses to so surrender any of such property or right shall be liable in his own person and estate to the commission for the account of the state of Maine in a sum equal to the

value of the property or rights not so surrendered, but not exceeding the amount of contributions (including penalties and interest, plus costs) for the collection of which such levy has been made.

(k) **Person.** The term "person" as used in this section includes any officer or employee of a company or corporation, or a member or employee of a partnership, who as such officer, employee, or member, is under a duty to perform the act in respect of which the violation occurs.

(l) **Fees.** The commission shall by regulation determine the fees and charges to be allowed in all cases of distraint and seizures; and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary.

(m) **Liens.** If any person liable to pay any contribution neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such contribution, plus any costs that may accrue in addition thereto) shall be a lien in favor of the Unemployment Compensation Commission, an agency of the state of Maine upon all property and rights to property, whether real or personal, belonging to such person. The commission shall have the right to prescribe by regulations, the form of warrant, notice, lien, levy, demand and discharge necessary to administer the provisions of this section.

(1) Unless another date is specifically fixed by law, the lien shall arise at the time the status report was received by the commission and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. This subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose.

(2) Such lien shall not be valid as against any mortgagee, pledgee, purchaser, judgment creditor until notice thereof has been filed by the commission; (1) in the case of personal property, with the city clerk in the city or town in which the debtor resides, and (2) in the case of real estate, with the registry of deeds in the county in which the debtor resides.

(3) Subject to such regulations as the commission may prescribe, the commission may issue a certificate of release of the lien if it finds that the liability for the amount assessed, together with all interest, penalty, and costs, has been satisfied or has become unenforceable by reason of lapse of time. Such certificate of release issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished.'