

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND ELEVENTH LEGISLATURE

**FIRST REGULAR SESSION**  
December 1, 1982 to June 24, 1983  
Chapters 1-452

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J.S. McCarthy Co., Inc.  
Augusta, Maine  
1983

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
FIRST REGULAR SESSION

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

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## CHAPTER 350

S.P. 492 - L.D. 1491

### AN ACT Relating to Forged or Illegal Prescriptions.

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

17-A MRSA §1108, sub-§4, as enacted by PL 1979, c. 512, §33, is amended to read:

4. Acquiring drugs by deception is:

A. A Class C crime if the drug is a schedule W, X or Y drug; or

B. A Class D crime if the drug is a schedule X, Y or Z drug.

Effective September 23, 1983.

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## CHAPTER 351

S.P. 333 - L.D. 978

### AN ACT to Clarify the Administration of the Department of Labor.

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

Sec. 1. 2 MRSA §6, sub-§5, as repealed and replaced by PL 1981, c. 705, Pt. L, §§1-3, is amended to read:

5. Range 86. The salaries of the following state officials and employees shall be within the salary range 86:

Director of Labor Standards;

Deputy Chief of the State Police;

Director of State Lotteries;

State Archivist;

Director of Maine Geological Survey;

Executive Director, Maine Land Use Regulation Commission; and

Chairman, Maine Employment Security Unemployment Insurance Commission.

Sec. 2. 2 MRSA §6, sub-§6, as repealed and replaced by PL 1981, c. 705, Pt. L, §§1-3, is amended to read:

6. Range 85. The salaries of the following state officials and employees shall be within salary range 85:

Director of Veterans' Services;

Director of Civil Emergency Preparedness;

Executive Director, Historic Preservation Commission;

Members, Maine Employment Security Unemployment Insurance Commission; and

Deputy Adjutant General (Director of Military Bureau).

Sec. 3. 26 MRSA §1043, sub-§7, as amended by PL 1979, c. 651, §§5 and 47, is further amended to read:

7. Commission. "Commission" means the 3-member Employment Security Unemployment Insurance Commission.

Sec. 4. 26 MRSA §1045, sub-§1 is amended to read:

1. Civil actions. In any civil action to enforce this chapter, the commission bureau and the State may be represented by any qualified attorney who is employed by the commission bureau and designated by it for this purpose or at the commissioner's commissioner's request by the Attorney General.

Sec. 5. 26 MRSA §1051, sub-§6, ¶A, as enacted by PL 1977, c. 460, §3, is amended to read:

A. The amount due may be collected by civil action in the name of the commission commissioner.

Sec. 6. 26 MRSA §1081, sub-§1, as amended by PL 1981, c. 286, §1, is further amended to read:

1. Commission. The Maine Employment Security Unemployment Insurance Commission, as heretofore created, shall consist of 3 members, one of whom shall

be a representative of labor, one of whom shall be a representative of employers, and one of whom shall be a representative of the general public who shall be impartial and shall be the chairman of the commission. Except as provided in this subsection, the 3 members and their successors shall be appointed by the Governor, subject to review by the Joint Standing Committee on Labor ~~joint standing committee of the Legislature having jurisdiction over labor~~ and to confirmation by the Senate, to hold office for a term of 6 years or until a successor has been duly appointed and qualified, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term. During his term of membership on the commission, a member shall not engage in any other business, vocation or employment, nor serve as an officer or committee member of any political organization.

Sec. 7. 26 MRSA §1081, sub-§3, as amended by PL 1977, c. 675, §5, is further amended to read:

3. Quorum. Any 2 members of the commission shall constitute a quorum. Whenever the commission hears any case involving a disputed claim for benefits under this chapter, the chairman shall act alone in the absence or disqualification of any other member, provided that in the event of illness or extended absence on the part of the chairman or in the event of a vacancy in that position, the remaining members may act on appeals and conduct hearings and render a decision, provided both members agree. Except as otherwise provided, no vacancy shall impair the right of the remaining members to exercise all of the powers of the commission. Any action, decision, order, rule or recommendation which is required by law to be made by the Maine Employment Security Unemployment Insurance Commission shall not be made until the commission has held a meeting in the regular course of its business for which all members have been provided with reasonable notice of the meeting and its agenda.

Sec. 8. 26 MRSA §1082, sub-§1, as amended by PL 1981, c. 168, §11, is repealed and the following enacted in its place:

1. Powers and duties of the commissioner. Except as otherwise provided, it shall be the duty of the Commissioner of Labor to administer this chapter, through an organization to be known as the Bureau of Employment Security. The commissioner may employ such persons, make such expenditures, require such reports, make such investigations and take such other actions as he deems necessary or suitable

to that end. The commissioner shall be responsible and shall possess the necessary authority for the operation and management of the Bureau of Employment Security. The commissioner shall determine methods of operational procedures in accordance with the provisions of this chapter. The commissioner may adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to achieve this purpose, except rules pertaining to unemployment insurance as provided in subsection 2. The commissioner shall determine methods of operational procedures in accordance with the provisions of this chapter and by the Maine Administrative Procedure Act, Title 5, chapter 375. The commissioner shall make such recommendations for amendments to this chapter as he deems proper. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the Governor and the Legislature and make recommendations with respect thereto.

Sec. 9. 26 MRSA §1082, sub-§2, as amended by PL 1981, c. 168, §12, is repealed and the following enacted in its place:

2. Powers and duties. In addition to other powers and duties provided in this chapter, the commission, by majority vote and with the advice of the commissioner, may adopt or rescind rules with respect to unemployment insurance in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. The commission may require reports, make investigations and undertake other activities necessary to carry out the duties of the commission. Each member of the commission shall have access to any information, memoranda, reports or statistical data which is in the possession of or which has been prepared by any division of the Department of Labor and which relates to the administration of this chapter.

Sec. 10. 26 MRSA §1082, sub-§4, as amended by PL 1981, c. 168, §14, is further amended to read:

4. Personnel. Subject to other provisions of this chapter, the Commissioner of Labor is authorized to appoint and prescribe the duties and powers of, and fix the compensation of, such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of his duties, subject to the Personnel Law. The commissioner may delegate to any such person so appointed such power and authority as is reasonable and proper for the effective administration of this chapter, and may in his discretion bond any person handling moneys or signing checks hereunder under this chapter. On request of the commissioner, the Attorney General shall repre-

sent the department, the Maine Employment Security Commission and the State in any court action relating to this chapter or to its administration and enforcement. Special counsel may be retained by the commissioner in accordance with Title 5, section 196, whose service and expenses shall be paid from the funds provided for the administration of this chapter. The commissioner shall not employ or pay any person who is an officer or committee member of any political party organization.

Sec. 11. 26 MRSA §1082, sub-§7, as amended by PL 1979, c. 651, §§18 and 47, is further amended to read:

7. Records and reports. Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such These records shall be open to inspection and be subject to being copied by the commissioner or his authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commissioner deems necessary for the effective administration of this chapter. Information thus obtained or obtained from any individual pursuant to the administration of this chapter shall, except to the extent necessary for proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before an appeal tribunal or the commission shall be supplied with information from such the records to the extent necessary for the proper presentation of his claim. Records, with any necessary authentication thereof, required in the prosecution of any criminal action brought by another state for misrepresentation to obtain benefits under the law of this State shall be made available to the agency administering the employment security law of any such state for the purpose of such prosecution. Any person who violates any provision of this subsection shall be guilty of a Class E crime.

Sec. 12. 26 MRSA §1082, sub-§8, as amended by PL 1977, c. 694, §470, is further amended to read:

8. Oaths and witnesses. In the discharge of the duties imposed by this chapter, the commission, the chairman of an appeal tribunal and any duly authorized representative of either of them shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue sub-



poenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter. Oaths and affirmations required by reason of duties performed pursuant to this chapter may be administered by any of such persons as may be designated for the purpose by the commissioner. In the discharge of the duties imposed by this chapter, the commissioner, the chairman of an appeal tribunal or any duly authorized representative of either of them, when the interests of any interested party demand, may issue commissions to take depositions to any unemployment compensation or employment security official empowered to take such depositions under this chapter or the laws of any other state, for either of the following causes:

- A. When the deponent resides out of, or is absent from, the State;
- B. When the deponent is bound to sea or is about to go out of the State; or
- C. When the deponent is so aged, infirm or sick as to be unable to attend at the place of hearing.

Such depositions shall be taken by written interrogatories to be compiled by the commissioner or the appeal tribunal, and the adverse party shall be afforded an opportunity to refute such testimony before a determination is made. The deponent shall be sworn and the deposition shall be signed and sworn to by the deponent before admissible as testimony at a hearing before the appeal tribunal or the commissioner.

Subpoenas shall be issued pursuant to Title 5, section 9060.

Sec. 13. 26 MRSA §1082, sub-§12, as amended by PL 1979, c. 541, Pt. A, §181 is further amended to read:

12. Reciprocal benefit arrangements. The commissioner shall participate in any arrangements with the appropriate agencies of other states or the Federal Government for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter and his wages and employment covered under the unemployment compensation or employment security laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for applying

the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws, and avoiding the duplicate use of wages and employment by reason of such combining. The commissioner shall reimburse such state or federal agency for such benefits as may be paid by that agency upon the basis of wages received in employment subject to this chapter or shall receive from such state or federal agency such amounts as may be paid from the fund upon the basis of wages received in employment subject to the laws of such state or of the Federal Government.

The commissioner is authorized to enter into reciprocal agreements with the appropriate agencies of other states or the Federal Government adjusting the collection and payment of contributions by employers with respect to services of individuals not performed wholly within the jurisdiction of this State whereby such services may be agreed upon to be considered for all purposes, if the commissioner so desires, as wholly within, or wholly without, the jurisdiction of this State, notwithstanding any provisions of section 1043, subsection 11.

The commissioner is authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this chapter as he deems necessary or appropriate to facilitate the administration of any unemployment compensation, employment security or public employment service law, and in like manner to accept and utilize information, services and facilities made available to this State by any agency charged with the administration of any such other unemployment compensation, employment security or public employment service law. To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation or employment security laws of any foreign government may be utilized for the taking of claims and the payment of benefits under this chapter, or under a similar law of such government. On request of any agency which administers an employment security law of another state, and which has found in accordance with such law that a claimant is liable to repay benefits received under such law by reason of having knowingly made a false statement or misrepresentation of a material fact with respect to a claim taken in this State as an agent for such agency, the commissioner may collect from such claim-

ant the amount of such benefits to be refunded to such agency.

In any case in which under this subsection a claimant is liable to repay any amount to the agency of another state, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency.

~~The commission shall cooperate with the commissioner to the extent necessary to accomplish the purpose of this subsection.~~

Sec. 14. 26 MRSA §1082, sub-§13, as amended by PL 1971, c. 538, §§19 and 20, is further amended to read:

13. Filing payroll reports; penalty. The commission may prescribe regulations for the filing of payroll reports for the employing units in the State ~~commencing with the 4th calendar quarter of 1970,~~ and the failure on the part of any employing unit to file the payroll reports within the time stated by the regulation of the commission shall render the employing unit liable to a penalty of \$10, unless 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 the employing unit from ~~said~~ 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 ~~by the commission~~ for good cause upon written request made on or before the due date.

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

Sec. 15. 26 MRSA §1164, as amended by PL 1979, c. 651, §§21 and 47, is further amended to read:

§1164. Special Administrative Expense Fund

The Special Administrative Expense Fund, as heretofore created, shall be a special fund in the State Treasury. All interest, fines and penalties collected under this chapter, together with any voluntary contributions tendered as a contribution to this fund, shall be paid into this fund. ~~Said~~ The moneys shall not be expended or available for expenditure in any

manner which would permit their substitution for or a corresponding reduction in federal funds which would in the absence of said moneys be available to finance expenditures for the administration of the Employment Security Law. Nothing in this section shall prevent ~~said~~ the moneys from being used as a revolving fund to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of ~~such~~ those expenditures against ~~such~~ those funds when received. The moneys in this fund shall be used by the commissioner either for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds received for or in the Employment Security Administration Fund on or after January 1, 1943, or to finance the Maine Wage Assurance Fund established in section 632. ~~Such~~ The moneys shall be available either to satisfy the obligations incurred by the ~~Employment Security Commission~~ or the bureau directly or by requesting the Treasurer of State to transfer the required amount from the Special Administrative Expense Fund to the Employment Security Administration Fund or the Maine Wage Assurance Fund. The Treasurer of State shall upon receipt of a written request of the commissioner make any such transfer. ~~No expenditure of this fund or transfer shall be made unless and until the commission by resolution duly entered in its minutes finds that no other funds are available or can properly be used to finance such expenditures.~~ The commissioner shall give notice to the commission prior to any expenditures from this fund. The commissioner shall order the transfer of ~~such~~ the funds or the payment of any such obligation and ~~such~~ the funds shall be paid by the Treasurer of State on requisitions drawn by the commissioner directing the State Controller to issue his warrant therefor. Any such warrant shall be drawn by the State Controller based upon bills of particulars and vouchers certified by an officer or employee designated by the commissioner. ~~Such certification shall among other things include a duly certified copy of the resolution of the commission.~~ The moneys in this fund are specifically made available to replace, within a reasonable time, any moneys received by this State pursuant to section 302 of the Federal Social Security Act as amended, which because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the Employment Security Law. The moneys in this fund shall be continuously available to the commissioner for expenditure in accordance with this section and shall not lapse at any time or be transferred to any other fund except as provided. Any moneys in the Special Administrative Expense Fund may be used to make refunds of interest, penalties or fines erroneously

collected and deposited in the Special Administrative Expense Fund. On June 30th of each year all moneys in excess of \$100,000 in this fund shall be transferred to the Unemployment Compensation Fund.

Sec. 16. 26 MRSA §1192, sub-§3, as amended by PL 1979, c. 651, §§23 and 47, is further amended to read:

3. Is able and available for work. He is able to work and is available for full-time work at his usual or customary trade, occupation, profession or business or in such other trade, occupation, profession or business for which his prior training or experience shows him to be fitted or qualified; and in addition to having complied with subsection 2 is himself actively seeking work in accordance with the regulations of the commission; provided that an unemployed individual who is neither able nor available for work due to good cause as determined by the ~~commission~~ deputy shall be eligible to receive prorated benefits for that portion of the week during which he was able and available;

Sec. 17. 26 MRSA §1193, sub-§4, as amended by PL 1979, c. 651, §§46 and 47, is further amended to read:

4. Stoppage of work. For any week with respect to which the deputy ~~finds~~, after notification by the Director of Unemployment Compensation pursuant to section 1194, subsection 2, finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he is or was employed. This subsection shall not apply if it is shown to the satisfaction of the deputy that:

A. He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work;

B. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

C. He has obtained employment subsequent to the beginning of the stoppage of work and has earned at least 8 times his weekly benefit amount or has been in employment by an employer for 5 full weeks; or

D. He became unemployed because of a strike or lockout caused by an employer's willful failure

to observe the terms of the safety and health section of a union contract; an employer's willful failure to comply in a timely fashion with an official citation for a violation of federal and state laws involving occupational safety and health; or the quitting of labor by an employee or employees in good faith because of an abnormally dangerous condition for work at the place of employment of such that employee or employees; provided that such the strike or lock-out shall not extend past the time of the employer's compliance with the safety and health section of the union contract, the employer's compliance with the official citation, or the finding that an abnormally dangerous condition does not exist by a federal or state official empowered to issue official citations for violation of federal and state laws involving occupational safety and health.

If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises;

Sec. 18. 26 MRSA §1194, sub-§1 is amended to read:

1. Filing. Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such the regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of such those regulations. Such The printed statements shall be supplied by the ~~commission~~ commissioner to each employer without cost to him.

Sec. 19. 26 MRSA §1194, sub-§2, as amended by PL 1981, c. 177, is further amended to read:

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

The deputy shall promptly examine all subsequent claims filed and, on the basis of the facts found by him, shall determine whether or not such the claim is valid with respect to sections 1192 and 1193, other

than section 1192, subsection 5, or shall refer ~~such~~ that claim or any question involved therein to an appeal tribunal or to the commission, which shall make a determination with respect thereto in accordance with the procedure described in subsection 3, except that in any case in which the payment or denial of benefits will be subject to section 1193, subsection 4, the deputy shall promptly transmit a report with respect to that subsection to the ~~commission~~ Director of Unemployment Compensation upon the basis of which the ~~commission~~ director shall notify its appropriate deputies as to the applicability of that subsection.

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

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

If an employer's separation report for an employee is not received by the office specified thereon within 10 days after such report was requested, the claim shall be adjudicated on the basis of information at hand. If the employer's separation report containing possible disqualifying information is received after the 10-day period and the claimant is denied benefits by a revised deputy's decision, benefits paid prior to the date of the revised decision shall not constitute an overpayment of benefits. Any benefits paid after the date of the revised decision shall constitute an overpayment.

If an employer files an amended separation report or otherwise raises a new issue as to the employee's eligibility or changes the wages or weeks used in determining benefits which results in a denial of benefits or a reduction of the weekly benefit amount,

the benefits paid prior to the date the determination is mailed shall not constitute an overpayment. Any benefits received after such date to which the claimant is not entitled pursuant to a new determination based on such new employer information shall constitute an overpayment.

Sec. 20. 26 MRS §1194, sub-§4 is amended to read:

4. Appeal tribunals. To hear and decide disputed claims, the commissioner with the advice of the commission shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of 3 members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter 2 members shall serve at the pleasure of the commissioner ~~commissioner~~ and be paid a fee of not more than \$10 per day of, not to exceed the per diem salary rate received by Legislators, for active service on such that tribunal plus necessary expenses. No person shall may participate on behalf of the ~~commission~~ bureau in any case in which he is an interested party. ~~The commissioner~~ commissioner may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case ~~shall~~ may the hearings proceed unless the chairman of the appeal tribunal is present.

Sec. 21. 26 MRS §1194, sub-§8, as repealed and replaced by PL 1977, c. 694, §476, is amended to read:

8. Appeals to courts. Any decision of the commission shall become final 10 days after receipt of written notification and any person aggrieved thereby may appeal by commencing an action pursuant to Title 5, section 11001 et seq. The commissioner shall be made a party defendant in any such appeal.

Sec. 22. 26 MRS §1221, sub-§4, ¶F, as amended by PL 1981, c. 16, §§1-6, is further amended to read:

F. Notwithstanding any other inconsistent law, any employer, who has been notified of his rate of contribution as required by paragraph E, subparagraph (1), for any year commencing January 1st, may voluntarily make payment of additional contributions, and, upon such that payment, shall promptly receive a recomputation and renotification of his contribution rate for such



that year, including in the calculation the additional contributions so made. Any such additional contribution shall be made during the 30-day period following the date of the mailing to the employer of such the notice of his contribution rate in any year, unless, for good cause, the time of payment has been extended by the ~~commissioner~~ commissioner for not to exceed an additional 10 days.

Sec. 23. 26 MRSA §1221, sub-§11, ¶A, as amended by PL 1979, c. 651, §27, is further amended to read:

A. At the end of each period as determined by ~~the commission~~ regulation, the commissioner shall assess each employer or governmental entity who has elected to make payments in lieu of contributions an amount as provided in subsection 10.

Sec. 24. 26 MRSA §1221, sub-§12, as amended by PL 1979, c. 651, §§29 and 47, is further amended to read:

12. Provision of bond or other security. In the discretion of the ~~commissioner~~ commissioner, any employer who elects to become liable for payments in lieu of contributions shall be required within 60 days after the effective date of his election to execute and file with the bureau a surety bond or he may elect to deposit with the bureau money or securities as approved by the ~~commissioner~~ commissioner; upon the failure of an employer to comply with this subsection within the time limits imposed, the ~~commissioner~~ commissioner may terminate such that employer's election to make payments in lieu of contributions and such the termination shall be effective for the current and next calendar year. This subsection shall not apply to governmental entities as defined by section 1043, subsection 28, whether they act singularly or in group accounts as allowed by subsection 15.

Sec. 25. 26 MRSA §1222, sub-§2, ¶E, F and G, as enacted by PL 1979, c. 354, §2, are amended to read:

E. Except as otherwise provided in subsection 3, an employing unit which became an employer under section 1043, subsection 9, paragraph J, shall cease to be an employer subject to this chapter as of the first day of January of any calendar year, only if it files with the ~~commissioner~~ commissioner, prior to the 31st day of January of that year, a written application for termination of coverage and the ~~commissioner~~ commissioner finds that there were ~~no~~ not 20 different days, each day being in a different week within the pre-

ceding calendar year, within which that employing unit employed 10 or more individuals in agricultural labor subject to this chapter and did not pay wages of \$20,000 to individuals employed in agricultural labor in any calendar quarter. For the purpose of this subsection, the 2 or more employing units mentioned in section 1043, subsection 9, paragraph B, C or D, shall be treated as a single employing unit.

F. The ~~commissioner~~ commissioner may, ~~upon its own motion,~~ terminate coverage of any employer who became an employer under section 1043, subsection 9, paragraph J, when the ~~commissioner~~ commissioner finds that there were not 20 different days, each day being in a different week within the preceding calendar year, within which the employing unit employed 10 or more individuals in agricultural labor subject to this chapter and did not pay wages of \$20,000 to individuals employed in agricultural labor in any calendar quarter; and the ~~commissioner~~ commissioner may ~~upon its own motion~~ terminate coverage of any employer who became an employer under section 1043, subsection 9, paragraph K, when the ~~commissioner~~ commissioner finds that the employing unit did not pay wages of \$1,000 to individuals employed in domestic service in any calendar quarter of the preceding calendar year.

G. Except as otherwise provided in subsection 3, an employing unit which became an employer under section 1043, subsection 9, paragraph K, shall cease to be an employer subject to this chapter as of the first day of January of any calendar year, only if it files with the ~~commissioner~~ commissioner, prior to the 31st day of January of that year, a written application for termination of coverage and the ~~commissioner~~ commissioner finds that the employing unit did not pay wages of \$1,000 to individuals employed in domestic service in any calendar quarter of the preceding calendar year. For the purpose of this subsection, the 2 or more employing units mentioned in section 1043, subsection 9, paragraph B, C or D, shall be treated as a single employing unit.

Sec. 26. 26 MRS §1225, sub-§3, as amended by PL 1981, c. 552, is further amended to read:

3. Interest on past-due contributions. Contributions which are unpaid on the date on which they are due and payable, as prescribed by ~~the commissioner~~ regulation, shall bear interest at the rate determined by the State Tax Assessor as established by Title 36, section 186, from and after the due date, until payment is received by the bureau. 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 ~~its~~ his discretion, may abate part of the interest not to 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 be made.

Sec. 27. 26 MRSA §1225, sub-§4, as amended by PL 1979, c. 651, §§37 and 47, is further amended to read:

4. Penalty on past-due contributions. If quarterly contributions are not paid when due, the commissioner shall 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, but this penalty shall not be less than \$5 nor more than \$100. The commissioner may waive ~~such~~ that penalty if ~~it~~ he finds 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 extension of time up to 30 days beyond the due date for good cause upon written request made on or before the due date.

Sec. 28. 26 MRSA §1225, sub-§5, as amended by PL 1979, c. 651, §§38 and 47, is further amended to read:

5. Refunds. If not later than 4 years after the date on which any contributions or interest thereon became due, an employer who has paid ~~such~~ the contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because ~~such~~ that adjustment cannot be made, and if the commissioner, shall determine that ~~such~~ the contributions, or interest or any portion thereof was erroneously collected, the commissioner shall allow ~~such~~ the employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if ~~such~~ the adjustment cannot be made, the commissioner shall refund ~~said~~ that amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the commissioner's own initiative. Any such adjustment or refund, involving contributions with respect to wages upon the basis of which benefits have been paid for unemployment, shall be reduced by the amount of benefits so paid. If the commissioner determines that contributions or inter-

est were erroneously paid to this State on wages insured under the employment security law of some other state or of the Federal Government, refund or adjustment thereof may be made without interest, irrespective of the time limits provided in this subsection, on satisfactory proof that contributions or interest on such the wages have been paid to such other state or to the Federal Government. Nothing in this chapter, or any part thereof, ~~shall~~ may be construed to authorize any refund or credit of money due and payable under the law and regulation in effect at the time such the money was paid.

Sec. 29. 26 MRSA §1226, sub-§1, ¶A, as amended by PL 1979, c. 651, §39, is further amended to read:

A. An employer may appeal determinations by the commissioner or his designated representatives made under sections 1221, 1222 and 1225, or an assessment made under section 1225, to the commission by filing an appeal, in accordance with such regulations as the commission shall prescribe, within 15 days after notification ~~of the assessment~~ is mailed to the employer's last known address as it appears in the records of the bureau or, in the absence of such mailing, within 15 days after the notification is delivered. If the employer fails to perfect such appeal, the assessment or determination shall be final as to law and fact.

Sec. 30. 26 MRSA §1226, sub-§1, ¶B, as amended by PL 1981, c. 286, §§5 and 6, is further amended to read:

B. Upon appeal from ~~an~~ such assessment, or determination, the commission shall, after affording the appellant and the commissioner's designated representative a reasonable opportunity for a fair hearing, make finding of facts and render its decision, which may affirm, modify or reverse the action of the designated representative. The conduct of ~~such the~~ hearings shall be governed by regulations of the commission consistent with Title 5, section 9051, et seq. The commission shall promptly notify the parties to the proceeding of its finding of facts and its decision. ~~Such~~ The decision shall be subject to appeal pursuant to Title 5, section 11001, et seq. The commissioner shall have the right to appeal a final decision of the Maine Employment Security Unemployment Insurance Commission to the Superior Court.

Sec. 31. 26 MRSA §1227, sub-§1, as enacted by PL 1975, c. 462, §9, is amended to read:

1. Form and effect. Upon the failure of an employer to pay the amount assessed pursuant to section 1225, the ~~commissioner~~ commissioner may file in the registry of deeds of any county or with any town or city clerk a certificate under ~~its~~ his official seal, stating the name of the employer; his address; the amount of the contributions and interest or penalties assessed and in default; and that the time in which an appeal is permitted pursuant to section 1226 has expired without ~~such~~ the appeal having been taken or that delay will jeopardize collection. When ~~such~~ the certificate is duly filed and recorded, the amount of the assessment shall be a lien upon the entire interest of the employer, legal or equitable, in any real or tangible personal property situated within the jurisdiction of the office in which ~~such~~ that certificate was filed. A lien obtained in this manner is a lien for taxes and the priority of the lien shall be governed by the laws of this State. ~~Said~~ The liens shall be subordinate to any real estate mortgage previously recorded as required by law. No lien for contributions or interest shall be valid against one who purchases personal property from the employer in the usual course of his business, in good faith and without actual notice of ~~such~~ the lien. ~~Such~~ The lien may be enforced against any real or personal property by a civil action in the name of the ~~commissioner~~ commissioner. The ~~commissioner~~ commissioner shall discharge any such lien upon receiving, from any such employer against whose property a lien certificate has been filed, a good and sufficient bond with sureties conditioned upon the payment of the amount of contributions and interest as finally determined, together with any additional amount which may have become due or may have accrued under this chapter and costs of court, if any.

The foregoing remedies shall be in addition to all other remedies.

Sec. 32. 26 MRSA §1227, sub-§2, as amended by PL 1981, c. 557, §1, is further amended to read:

2. Filing lien. Certificates of liens for contributions or interest, or certificates discharging ~~such~~ the liens prepared in accordance with this section, shall be received, recorded and indexed by registrars of deeds or town or city clerks in the same manner as similar instruments are recorded and indexed. The fee to be paid by the ~~commissioner~~ commissioner for recording each such certificate is \$5, which need not be prepaid.

Sec. 33. 26 MRSA §1227, sub-§3, as enacted by PL 1975, c. 462, §9, is amended to read:

3. Enforcement of lien. After any assessment has become final and rights of appeal exhausted or lost by virtue of failure to exercise ~~such~~ those rights, any property, real or personal, upon which a lien has been claimed under this chapter may be sold, after due notice, in conformity with the law applicable to sales of real or personal property on executions issued in personal actions, in connection with which sales the ~~commissioner~~ commissioner shall have the same rights, privileges, duties and responsibilities as one in whose favor an execution is issued.

Sec. 34. 26 MRSA §1229, as enacted by PL 1975, c. 462, §9, is amended to read:

§1229. Collection by civil action

If any employer fails to make any payment of contributions, interest or penalties after notice of an assessment under section 1225, subsection 1, and after the assessment has become final as to law and fact, in addition to or alternatively to any other method of collection prescribed in this chapter, the amount due may be collected by civil action in the name of the ~~commissioner~~ commissioner and the employer shall pay the costs of ~~such~~ those actions. Civil actions brought under this section to collect contributions and interest, or penalties due 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 chapter and cases arising under the Workmen's Workers' Compensation Law Act of this State. The foregoing remedies shall be in addition to all other existing remedies against the employer or his successor.

Sec. 35. 26 MRSA §1230, sub-§1, as amended by PL 1979, c. 651, §§41 and 47, is further amended to read:

1. Request for warrant. If any contribution required to be paid and any interest or penalty or both payable to the commissioner under this chapter is not paid when due and has become final as to law and fact under section 1226, the commissioner may, within 3 years thereafter, notify the employer who is liable according to the records of the bureau, specifying the amount due and demanding payment within 12 days after the date the notice is mailed. The notice shall inform the employer that if he does not make the payment as demanded, the commissioner will certify ~~to the Attorney General~~ the amount due for collection by warrant as provided in this section. If the employer does not make payment as demanded within the 12-day period or within an extended period which

the commissioner may allow, the commissioner shall may certify to the Attorney General the amount due for collection. The Attorney General may or file in the office of the clerk of the Superior Court of Kennebec County, or any county, a certificate addressed to the clerk specifying the contribution required to be paid, interest and penalties due, the name and address of the liable employer as it appears on the records of the bureau, the facts whereby the amount has become final as to law and fact and the notice given, and requesting that a warrant be issued against the employer for the contribution required to be paid, together with interest and penalties, as set forth in the certificate, and with costs. If the commissioner has reasonable grounds to believe that the employer may abscond within the 12-day period, the commissioner may, without further notice to the employer, certify to the Attorney General the amount due for collection without notice to the employer or file in the office of the clerk of the Superior Court a certificate addressed to the clerk, requesting the immediate issuance of a warrant.

Sec. 36. 26 MRSA §1230, sub-§4, as amended by PL 1979, c. 651, §§42, 43 and 47, is further amended to read:

4. Form and effect of warrant.

A. The warrant shall have the force and effect of an execution issued upon a judgment in a civil action for the collection of taxes and benefit overpayments and may be in substantially the following form:

"..... (Name of County) SS. -- To the sheriffs of our respective counties or their deputies or any agent of the Commissioner of Labor

Whereas, the Bureau of Employment Security and or the Attorney General have certified that, pursuant to the terms of Title 26, section 1230, subsection 1, or section 1051, subsection 6, of the Revised Statutes, the amount of certain unemployment compensation tax, or benefit overpayment, assessed against ..... of ..... with interest and penalties, has become final as to law and fact, to wit:

		<u>Benefit</u>			
Per-	Contri-	<u>Over</u>	Inter-	Penal-	<u>Weeks</u>
iod	butions	<u>payment</u>	est	ties	<u>Involved</u>

Interest will accrue at \$ .00 per day for each day after .....Total \$ ..... and \$ ..... costs of this proceeding, .....

We command you, therefore, that of the money, goods and chattels of said debtor, in your precinct, or the value thereof in money, you cause to be paid and satisfied unto the Bureau of Employment Security, to satisfy the sums aforesaid and ..... cents more for this warrant, together with your own fees.

Hereof fail not, and make due return of this warrant, with your doings thereon, unto my office within one year from the date hereof.

.....  
Clerk of Courts, County of  
....."  
Date ....."

B. Warrants shall be returnable within one year. New warrants may be issued on any such certificate within 2 years from the return day of the last preceding warrant for sums remaining unsatisfied. Warrants shall be served by the sheriff of any county, or by any of his deputies, or by any agent of the Commissioner of Labor, in the county where the employer or claimant may be found.

C. The remedy provided by this section is in addition to or an alternative to all other remedies given to the ~~commissioner~~ the commissioner in this chapter.

Sec. 37. 26 MRSA §1401, as amended by PL 1981, c. 168, §§19, 20 and 26, is further amended to read:

§1401. Department; commissioner

There is created and established the Department of Labor to achieve the most effective utilization of the ~~manpower~~ employment and training resources in the State by developing and maintaining an accountable state ~~manpower~~ employment and training policy, by insuring safe working conditions and protection against loss of income and by enhancing the opportunities of the individual to improve his economic status, to consist of a Commissioner of Labor appointed by the Governor, subject to review by the joint standing committee ~~on~~ of the Legislature having jurisdiction over Labor and to confirmation by the Legislature, to serve at the pleasure of the Governor, and the following as ~~heretofore~~ created and established: The Employment Security Unemployment Insurance Commission, the Bureau of Employment Security, the Bureau of Labor Standards, the Maine Manpower Advisory Committee, the Cooperative Area Man-



power Planning System and the Manpower Development Training Program; the office of Maine CETA, the State Employment and Training Council, the State Job Training Coordinating Council staff, the Private Industry Council staff, the Employment and Training staff and such other advisory, planning and coordinating council staff, and such other advisory, planning and coordinating committees as the commissioner deems necessary to carry out the purposes of the statute.

The Commissioner of Labor shall receive a fixed weekly salary in accordance with Title 2, section 6, and shall be paid from the administrative funds of the Maine Employment Security Commission Bureau of Employment Security, the Bureau of Labor Standards and from other program administrative funds which he is authorized by statute or Executive Order to administer.

The commissioner shall have the following duties:

1. Budget. Prepare a budget for the department;
2. Personnel. Appoint to serve at his pleasure, provided these appointments are consistent with the law, persons to serve as directors or executive executive directors of the following organizations: Manpower Adjudication, Manpower Affairs, Manpower Affairs Administrative Services, Manpower Research and Manpower Training and Labor he may administer; transfer personnel within the department to insure the efficient utilization of department personnel subject to the Personnel Law;
3. Purchase. Coordinate the purchase and use of all the department equipment; and
4. Review. Review the function and operation of the department to insure that overlapping functions and operations are brought to the attention of the Governor and Legislature.

Sec. 40. Transitional provisions. All existing rules and regulations of the commission currently in effect and operation on the effective date of this Act shall continue in effect until rescinded, amended or changed according to law.

Sec. 41. Revision clause. Wherever in the Revised Statutes the words "Employment Security Commission" appear they shall be amended to read and mean "Unemployment Insurance Commission."

The term "regulation" shall include, but not be limited to, any regulation, rule, order, administra-

tive procedure, policy determination, directive, authorization, privilege, form requirement, designation or agreement.

All appointments and deputizations made by the commission shall continue in force and effect on the effective date of this Act, unless revoked by the Bureau of Employment Security.

All funds, equipment, property and records of the commission shall remain in the custody and control of the Bureau of Employment Security as required by the Revised Statutes, Title 26, chapter 13.

Effective September 23, 1983.

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## CHAPTER 352

H.P. 1192 - L.D. 1578

### AN ACT Relating to Victims' Bill of Rights.

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

Sec. 1. 17-A MRSA §454, as repealed and replaced by PL 1977, c. 510, §54, is amended to read:

§454. Tampering with a witness, informant or victim

1. A person is guilty of tampering with a witness ~~or~~, informant or victim if, believing that an official proceeding, as defined in section 451, subsection 5, paragraph A, or an official criminal investigation is pending or will be instituted:

A. He induces or otherwise causes, or attempts to induce or cause, a witness ~~or~~, informant or victim:

- (1) To testify or inform falsely; or
- (2) To withhold any testimony, information or evidence, ~~which he knows the witness or informant is not privileged to withhold~~;

B. He uses force, violence or intimidation, or he promises, offers or gives any pecuniary benefit with the intent to induce a witness ~~or~~, informant or victim:

- (1) To ~~withheld~~ withhold any testimony,