

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

H. Health and safety of the children and staff;

I. Procedures for waivers of rules and for suspension and revocation of certification; and

J. The age, criminal record and personal history of the home day care provider, staff and members of the household.

Rules adopted pursuant paragraphs A to F are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A and rules adopted pursuant to paragraphs G to J are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

Sec. 11. 22 MRSA §8302-B is enacted to read:

§8302-B. Providers subject to standards

A person who provides day care in that person's home for one or 2 children whose care is paid for by state or federal funds is not required to be certified as a home day care provider pursuant to section 8301-A but is subject to the provisions of this section.

1. Investigation. The provider must pass a background investigation check by the State Bureau of Investigation, a check for involvement with child protective services and a motor vehicle record check.

2. Information provided by department. The department shall supply providers with information on the following topics:

A. Health and safety, including the control of communicable disease, and immunization requirements;

B. Physical premises safety; and

C. Training opportunities in health and safety, first aid and cardiopulmonary resuscitation and early care and education.

3. Authority to inspect. The department has the authority to inspect the premises of the person providing the care.

Sec. 12. 22 MRSA §8303-A, as enacted by PL 1993, c. 353, §2, is amended to read:

§8303-A. Fee for licenses

By January 1, ~~1994~~ 1998, the department shall adopt rules to establish reasonable fees for both initial licensure or certification and license or certification renewals for day care ~~facilities~~ centers, nursery schools and ~~registered home baby sitting services~~ certified home day care providers. Rules adopted pursuant to this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

Sec. 13. 22 MRSA §8304-A, sub-§1, as enacted by PL 1993, c. 158, §5, is amended to read:

1. Inspection required. As an ongoing condition of licensure or ~~registration~~ certification, the Office of the State Fire Marshal must provide ~~annually~~ at least biennially to the department a written statement that the day-care ~~facility~~ center, nursery school or certified home day care providers complies with applicable fire safety rules adopted pursuant to Title 25, section 2452. The Commissioner of Public Safety shall adopt rules in accordance with the Maine Administrative Procedure Act to implement this subsection. The rules must provide for at least the following.

A. The State Fire ~~Marshall~~ Marshal shall issue a fire safety technician certificate to any person who successfully completes a training course established by the Office of the State Fire Marshal. A person who receives a fire safety technician certificate pursuant to this paragraph may perform fire safety inspections under this section.

B. In addition to ongoing license or certification requirements, inspection and certification are required under this section whenever a day-care ~~facility~~ center, nursery school or certified home day care provider changes or augments a heating system or makes major structural alterations to the ~~facility~~ center or home.

Sec. 14. 22 MRSA §8305, as amended by PL 1993, c. 353, §§3 to 5, is repealed.

Sec. 15. Effective date. This Act takes effect July 1, 1998.

Effective July 1, 1998.

CHAPTER 495

H.P. 1329 - L.D. 1878

An Act to Provide Regulation of Payroll Processing Companies

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

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

CHAPTER 222

PAYROLL PROCESSORS

§1495. Definitions

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

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

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

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

§1495-A. Registration required

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

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

§1495-B. Disclosure to employers

1. Generally. Except as provided by subsection 2, a payroll processor shall provide a disclosure statement at the time of contracting and by September 1st of each even-numbered year to each employer for which it provides payroll processing services. The statement must be made on a form designed jointly by the State Tax Assessor; the Department of Labor, Bureau of Employment Security; and the Department of Professional and Financial Regulation, Office of Consumer Credit Regulation. The disclosure statement form must be provided by the assessor to payroll processors and must include at a minimum the following:

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

B. A statement as to whether any payroll processing services are contracted out to others and,

if so, which services are contracted out and to whom.

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

§1495-C. Penalties

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

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

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

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

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

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

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

1. General powers and duties. The State Tax Assessor shall administer and enforce the tax laws enacted under this Title and under Title 29-A, and may adopt rules and require such information to be reported as necessary. The assessor may investigate, enforce and prosecute activities defined as crimes in this Title and in Title 17-A, sections 358, 751 and 903. The assessor shall provide, at the time of issuance, to

one or more entities that publish a monthly state tax service all rules, bulletins, taxpayer notices or alerts, notices of rulemaking, any other taxpayer information issued by the assessor, and all substantive amendments or modifications of the same, for publication by that entity or entities. When a significant change has occurred in Bureau of Taxation policy or practice or in the interpretation by the bureau of any law, rule or instruction bulletin, the assessor shall, within 60 days of the change, provide to the same publishing entity or entities written notice, suitable for publication, of the change.

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

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

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

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

The State Tax Assessor may, by filing a complaint, apply for an injunction from doing business of any person required to deduct and withhold tax under this Part whenever any such person fails to deduct and withhold tax under this Part; or truthfully account for, or pay over, or make returns of the tax as required by section 5253. The assessor may also apply for an injunction from doing business of any payroll processor, as defined in Title 10, section 1495, whenever a payroll processor is responsible for truthfully accounting for, or paying over or making returns of the tax imposed by this Part and fails to do so. The existence of other civil or criminal remedies ~~shall be no~~ is not a defense to this proceeding.

See title page for effective date.

CHAPTER 496

H.P. 1336 - L.D. 1885

An Act to Amend the Insurance Premium Tax for Certain Large Domestic Insurers

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

Sec. 1. 36 MRSA §2513, as amended by PL 1989, c. 556, Pt. B, §5, is further amended by adding at the end a new paragraph to read:

Notwithstanding this section, for tax years commencing on or after January 1, 1997, the tax imposed by this section with respect to premiums on qualified group disability policies written by every insurer, except a large domestic insurer, must be at the rate of 1% and must be at the rate of 2.55% with respect to those premiums written by every large domestic insurer. For the purposes of this section, the term "qualified group disability policies" is limited to group health insurance policies properly reported as such in the insurer's annual statement and whose sole coverage is the full or partial replacement of an individual's income in the event of disability. Policies that contain coverages in addition to replacement of income coverage are considered to solely provide that coverage as long as the premium related to the additional coverages is not more than 10% of the total premium charged. The term "qualified group disability policies" does not include workers' compensation insurance policies, policies that include coverages that are collectively renewable, policies that provide for credit disability insurance or policies that pay benefits only upon the occurrence of hospitalization. For purposes of this section, a "large domestic insurer" is any insurer domiciled in this State with assets in excess of \$5,000,000,000 as reported on its annual statement.

See title page for effective date.

CHAPTER 497

H.P. 1340 - L.D. 1889

An Act to Provide Warranty Reimbursement Protection for Retailers

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

Sec. 1. 11 MRSA §2-316, sub-§5, as amended by PL 1975, c. 320, is further amended to read: