

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2004**

services to the department under this section. Disclosure may be ordered by a court for good cause shown or made in a court filing under seal unless or until otherwise ordered by a court. Nothing in this subsection limits the Attorney General's use of civil investigative demand authority under the Maine Unfair Trade Practices Act to investigate violations of this section.

**6. Violation.** A violation of this section is a violation of Title 5, section 207 and must be enforced by the Attorney General pursuant to Title 5, section 209.

**7. Funding restriction.** The department's costs for implementing this section must be met through the use of money that the Attorney General has acquired as a result of consumer protection litigation involving pharmaceutical pricing or practices. General Fund funding may not be used for the purposes of this section.

**Sec. 2. Contingent effective date; delayed reporting.** When the Attorney General acquires funds as a result of consumer protection litigation involving pharmaceutical pricing or practices and the Attorney General designates these funds as being available for the implementation of the Maine Revised Statutes, Title 22, section 2698-B, the Attorney General shall submit a letter to the Commissioner of Human Services that informs the commissioner of these facts. That section of this Act that enacts Title 22, section 2698-B takes effect 30 days after the commissioner receives this letter, except that section 2698-B may not take effect before January 1, 2005. Manufacturers of prescription drugs subject to the provisions of section 2698-B must begin the submission of quarterly reports as required by that section at the end of the first full calendar quarter after the effective date of section 2698-B.

See title page for effective date, unless otherwise indicated.

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## CHAPTER 668

H.P. 1369 - L.D. 1843

### An Act To Require Surety Bonding by Payroll Processing Companies

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

**Sec. 1. 10 MRSA §1495, sub-§1-A** is enacted to read:

**1-A. Administrator.** "Administrator" means, except in cases in which the payroll processor is a wholly owned subsidiary of a supervised financial

organization as defined by Title 9-A, section 1-301, subsection 38-A, the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation. In cases in which the payroll processor is a wholly owned subsidiary of a supervised financial organization as defined by Title 9-A, section 1-301, subsection 38-A, "administrator" means the Superintendent of Financial Institutions within the Department of Professional and Financial Regulation.

**Sec. 2. 10 MRSA §1495-A**, as enacted by PL 1999, c. 172, §1 and affected by §2, is repealed.

**Sec. 3. 10 MRSA §1495-B, sub-§§1 and 2**, as enacted by PL 1997, c. 495, §1, are repealed.

**Sec. 4. 10 MRSA §1495-B, sub-§§3 to 7** are enacted to read:

**3. Periodic reports to employers.** On a regular basis not less frequently than quarterly, a payroll processor shall provide to each employer an accounting of:

A. Funds received from that employer; and

B. The aggregate amounts disbursed for:

(1) Payroll;

(2) Each category of local, state and federal tax; and

(3) Unemployment compensation premiums.

**4. Disclosure of methods of verification.** On a regular basis not less frequently than quarterly, a payroll processor shall clearly and conspicuously and in easily understood language disclose to each employer for which it provides payroll processing services the specific method or methods whereby each employer can contact state and federal tax and unemployment insurance authorities, including but not limited to Internet address and toll-free telephone number information, to verify that payments have been made and properly credited on behalf of the employer.

**5. Disclosure of limitations of surety bond.** Whenever a payroll processor promotes, markets or advertises itself or its services and uses the phrase "bonded with the State" or "fully bonded" or other language that in the opinion of the administrator would lead an employer to believe that the bond coverage provides full compensation for potential losses should the payroll processor fail to make required payments or become insolvent, the payroll processor shall also include a clear and conspicuous disclaimer stating that use of the language referencing

bonding does not signify or ensure that the bond will cover all potential claims if the payroll processor fails to comply with its responsibilities under this chapter. A payroll processor also shall provide this disclaimer to an employer before contracting for payroll processing services to that employer.

**6. Notices of nonpayment to be sent to employers.** A payroll processor may not designate itself as the sole recipient of notices from state or federal authorities for nonpayment of taxes or unemployment insurance contributions. A payroll processor shall ensure that such notices are provided directly to the affected employers.

**7. Exception.** A payroll processor that does not have the authority to access, control, direct, transfer or disburse a client's funds is not subject to this section.

**Sec. 5. 10 MRSA §1495-C, sub-§1, ¶B,** as enacted by PL 1997, c. 495, §1, is amended to read:

B. A payroll processor that conducts business in this State and fails to register with obtain a license from the State Tax Assessor administrator as required by section 1495-A 1495-D commits a civil violation for which a penalty of not less than \$500 \$1,500 nor more than \$2,500 \$7,500 may be adjudged.

**Sec. 6. 10 MRSA §§1495-D to 1495-I** are enacted to read:

**§1495-D. Licensing; proof of insurance and bonding; fees**

**1. License required.** A person desiring to engage or continue in business in this State as a payroll processor shall apply to the administrator for a license under this chapter on or before January 31st of each year. The application must be in a form prescribed by the administrator. The administrator may refuse the application if it contains erroneous or incomplete information. A license may not be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant and, where applicable, its partners, officers or directors, warrant belief that the business will be operated honestly and fairly within the purposes of this chapter.

**2. Proof of fidelity insurance.** Each applicant shall provide to the administrator proof of one of the following, at the applicant's option, in an amount 2 times the highest weekly payroll processed by the applicant in the preceding year or in the amount of \$5,000,000, whichever is less:

A. Fidelity bond;

B. Employee dishonesty bond;

C. Third-party fidelity coverage; or

D. Liability insurance, including crime coverage.

**3. Proof of surety bond.** Except as provided in section 1495-E, subsection 4, an applicant under subsection 1 shall provide to the administrator proof of the surety bond required pursuant to section 1495-E.

**4. Fees.** The initial application and annual renewal application must include a fee of \$250 if the payroll processor has fewer than 25 employers as payroll processing clients; \$500 if the payroll processor has from 25 to 500 employers as payroll processing clients; and \$750 for those payroll processors that have more than 500 employers as payroll processing clients. The aggregate of license fees and other fees and assessments provided for by this chapter is appropriated for the use of the administrator. Any balance of these funds does not lapse but must be carried forward to be expended for the same purpose in the following fiscal year.

**§1495-E. Surety bonding**

**1. Bond required; minimum amount; duration.** Each application for a license under section 1495-D must be accompanied by evidence of a surety bond, in a form approved by the administrator, in an amount equal to the total of all local, state and federal tax payments and unemployment insurance premiums processed by the payroll processor on behalf of employers in this State in the 3-consecutive-month period of highest volume during the previous calendar year or \$100,000, whichever is greater, but not to exceed \$500,000. The bond must designate the administrator as payee. The bond paid to the administrator may be used for the purposes of the administrator and for the benefit of any employer who may have a cause of action against the payroll processor. The terms of the bond must run continuously until cancelled and the aggregate amount of the bond must be maintained at all times during the licensing period.

**2. Modification of bond terms.** If bonding is unavailable under the terms and conditions of subsection 1, the administrator, within the administrator's discretion, may modify those terms and conditions so as to ensure the maximum practicable protection for employers.

**3. Cancellation notification.** A surety company issuing a bond pursuant to this section shall immediately notify the administrator when that bond is cancelled or terminated or lapses. The notice must include the name and address of the payroll processor and the amount of the bond. The cancellation, termination or lapse is not effective until at least 30 days after the administrator receives notice.

**4. Exception.** A payroll processor that does not have the authority to access, control, direct, transfer or disburse a client's funds is not subject to this section.

#### **§1495-F. Powers of administrator**

**1. Examinations.** The administrator shall establish a program of regular examinations of payroll processors subject to the provisions of this chapter. The regular examinations must be conducted not less frequently than every 18 months. The administrator may, in the administrator's discretion, use an audit report of a payroll processor performed by the processor or another party to supplement or substitute for the administrator's own regular examination. In addition, the administrator may, at any time, conduct a special examination or investigation of any payroll processor the administrator believes has engaged in conduct that is a violation of any provision in this chapter. For purposes of both routine and special examinations and investigations, the payroll processor shall give the administrator free and reasonable access to the offices, places of business and records of the payroll processor, and the administrator may make and procure copies of those records, books, documents or other materials without employing the subpoena powers provided by subsection 2. For purposes of both routine and special examinations and investigations, and in addition to reviewing for compliance with other provisions of this chapter, the administrator may review the safety and soundness of the payroll processor, including but not limited to an examination of its assets and liabilities and its investments of employer funds to ensure that the payroll processor is utilizing prudent investment practices with respect to those funds.

**2. Subpoenas.** For the purposes of this section, the administrator may administer oaths or affirmations and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter that is relevant to an examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other material and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

**3. Inspection of records.** If the payroll processor's records are located outside this State, that payroll processor, at the administrator's option, shall either make the records available to the administrator at a convenient location within the State or allow the administrator or the administrator's representatives to inspect them at the place where the records are maintained. The administrator may designate representatives, including comparable officials of the state

in which the records are located, to inspect them on the administrator's behalf.

**4. Maintenance of records.** A payroll processor shall maintain records of its payroll processing service activity in conformity with generally accepted accounting principles and practices and in a manner that will enable the administrator to determine whether the payroll processor is complying with the provisions of this chapter. The records need not be kept in the place of business where the activity took place if the administrator is given free access to the records, wherever located. All records relating to payroll processing services must be maintained for at least 6 years from the end of the fiscal year in which the activity took place.

**5. Enforcement.** If an individual without lawful excuse fails to obey a subpoena or to give testimony when directed to do so by the administrator or obstructs the proceedings by any means, whether or not in the presence of the administrator, that individual is guilty of contempt. The administrator, through the Attorney General, may file a complaint in the Superior Court of the county in which an act on which the complaint is based was performed or in which the individual resides or transacts business setting forth the facts constituting the contempt and requesting an order returnable in not less than 2 days nor more than 5 days directing the individual to show cause before the court why the individual should not be punished for contempt. If the court determines that the individual has committed any alleged contempt, the court shall punish the offender for contempt.

**6. Expenses.** At the discretion of the administrator, the expenses of the administrator necessarily incurred in the examination or investigation of any payroll processor engaged in conduct governed by this chapter may be charged to that payroll processor. That payroll processor may be assessed for the actual expenses incurred by the administrator, including, but not limited to, travel expenses and the proportionate part of the salaries and expenses of examiners engaged in the examination or investigation. Notice of any assessment of those costs must be given to the payroll processor by the administrator as soon as feasible after the close of the examination or investigation and the payroll processor must have the time specified by the administrator to pay the assessment, which may not be less than 30 days.

**7. Rules.** The administrator may adopt reasonable rules governing payroll processors in accordance with this chapter. These rules are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**§1495-G. Contracts and cooperation with other agencies**

**1. Other agencies' staff.** The administrator may employ and engage experts, professionals or other personnel of other state or federal regulatory agencies as may be necessary to assist the administrator in carrying out the regulatory functions of this chapter. The administrator may contract agency staff to other state and federal agencies to assist those other state and federal agencies in carrying out their regulatory functions.

**2. Cooperative agreements.** The administrator may enter into cooperative agreements with other state, federal or foreign agencies to facilitate the regulatory functions of the administrator, including, but not limited to, the sharing between agencies of information that is otherwise confidential, coordination of examinations and joint examinations.

**3. Confidentiality.** Any information furnished pursuant to this section by or to the administrator that has been designated as confidential by the agency furnishing the information remains the property of the agency furnishing the information and must be kept confidential by the recipient of the information except as authorized by the furnishing agency.

**4. Provision of information by state agencies.** Notwithstanding any other provision of law, a state agency, including but not limited to the State Tax Assessor and the Department of Labor, shall provide such information to the administrator as is necessary for the administrator's enforcement of this chapter.

**§1495-H. Enforcement actions**

A payroll processor that fails to obtain a license under section 1495-D or that violates any provision of this chapter or any rule issued by the administrator, or through any unfair, unconscionable or deceptive practice causes or has the potential to cause damage to an employer or employee of that employer, is subject to one or more of the actions specified in this section:

**1. Cease and desist order.** A cease and desist order.

A. The administrator may issue and serve an order upon a payroll processor requiring that processor to cease and desist from the violation or practice if in the opinion of the administrator that payroll processor subject to the provisions of this chapter is engaging in or has engaged in or if the administrator has reasonable cause to believe that the processor is about to engage in any of the following violations or practices:

(1) Violation of a law, rule or regulation relating to the supervision of the payroll processor;

(2) Violation of any written agreement entered into with the administrator; or

(3) An anticompetitive or deceptive practice or one that is otherwise injurious to the public interest.

**B. Except as provided in paragraph C, prior to the issuance of any order to cease and desist in accordance with this subsection, the administrator shall provide notice to the payroll processor. This notice must contain a statement of the facts upon which the order is to be issued and the date upon which the order is to take effect. Upon petition of any interested party, a hearing in conformity with Title 5, chapter 375 must be provided prior to the effective date of any order issued pursuant to this subsection, except as provided in paragraph C.**

**C. Whenever, in the opinion of the administrator, a violation or practice requires immediate action for the protection of the public or when the violation or practice or the continuation thereof is likely to cause insolvency or substantial dissipation of the assets or earnings of the payroll processor, the administrator may issue an order pursuant to this subsection which becomes effective upon service of that order, without prior notice or hearing. If an order subsequently is issued by the administrator pursuant to paragraph A, the administrator shall afford an opportunity for a hearing to rescind the order and action taken promptly thereafter, upon application by an interested party;**

**2. Bond forfeiture.** After notice and hearing, forfeiture of that portion of the required bond as proportionately may make aggrieved parties whole;

**3. Civil action by administrator.** A civil action seeking civil penalties, remedial action and injunctive relief by the administrator through the Attorney General, after which a court may assess a civil penalty of not less than \$1,500 nor more than \$7,500 per violation or order remedial or injunctive relief. When the violation consists of failure to maintain the surety bond required by section 1495-E, each day in which coverage is not provided constitutes a separate violation;

**4. Private civil action.** A civil action by an aggrieved employer in which that employer has the right to recover actual damages from the payroll processor in an amount determined by the court, plus costs of the action together with reasonable attorney's fees;

**5. Regulatory oversight.** Increased regulatory oversight by the administrator, including requiring reports or other information to be submitted at those times and in such forms as the administrator considers appropriate for the proper supervision and regulation of the payroll processor; and

**6. Action on license.** Revocation, suspension or nonrenewal of the payroll processor's license.

#### **§1495-I. Insolvency and liquidation**

**1. Voluntary liquidation.** A payroll processor who voluntarily ceases to do business in the State is subject to the following provisions.

**A.** Prior to voluntarily ceasing business as a payroll processor, a payroll processor shall:

(1) Notify the administrator of the proposed termination at least 30 days prior to its effective date;

(2) Notify all employers in writing of the proposed termination at least 30 days prior to its effective date;

(3) Provide all employers with detailed final accountings of all accounts;

(4) Remit all money held by the payroll processor to each respective employer or the appropriate taxing authority; and

(5) Return its license to the administrator for cancellation.

**B.** When terminating a business, a payroll processor whose contract with an employer does not authorize the processor to assign the account to another processor may not transfer the account to another processor without first securing the written permission of the employer.

**2. Involuntary liquidation.** A payroll processor who is no longer eligible to do business in this State is subject to the following provisions.

**A.** If, upon examination of a payroll processor, the administrator is of the opinion that the payroll processor is insolvent or can no longer obtain a surety bond or when the license of a payroll processor has expired or terminated for any reason, the administrator may appoint a receiver who shall proceed to close the payroll processor. The person appointed by the administrator as a receiver may be the administrator, a deputy or such other person as the administrator may choose, and a certified copy of the order making such appointment is evidence of the appointment. A receiver has the power and authority provided in this chapter and such other powers and au-

thority as may be expressed in the order of the administrator. If the administrator or a deputy is appointed receiver, no additional compensation need be paid, but any reasonable and necessary expenses as a receiver must be paid by the processor. If another person is appointed, then the compensation of the receiver must be paid from the assets of that processor.

**B.** Upon taking possession of the property and business of a payroll processor under this section, the receiver:

(1) May collect money due to the administrator and perform all acts necessary to conserve the payroll processor's assets and business and shall proceed to liquidate the payroll processor's affairs;

(2) Shall collect all debts due and claims belonging to the payroll processor and may sell or compound all bad or doubtful debts;

(3) May sell, for cash or other consideration or as provided by law, all or any part of the real and personal property of the payroll processor;

(4) May take, in the name of the administrator, a mortgage on the real property from a bona fide purchaser to secure the whole or part of the purchase price; and

(5) May borrow money and issue evidence of indebtedness therefor. To secure the repayment of this money, the receiver may mortgage, pledge, transfer in trust or hypothecate any of the property of the payroll processor, whether real, personal or mixed, superior to any charge for expenses of liquidation.

**C.** The assets of the payroll processor in liquidation, exclusive of any bond proceeds, must be disbursed in the following order:

(1) First, the payment of the costs and expenses of liquidation;

(2) Second, payment of payroll, tax and unemployment insurance premium funds held by the payroll processor;

(3) Third, payment of all debts, claims and obligations owed by the payroll processor;

(4) Fourth, the payment of claims otherwise proper that were not filed within the prescribed time; and

(5) Fifth, the payment of any obligation expressly subordinated to claims entitled to

the priority established by subparagraphs (1) to (3).

**3. Judicial review.** A payroll processor closed by action of the administrator pursuant to this chapter may bring an action challenging the administrator's appointment of receiver in Superior Court of Kennebec County or of the county in which the processor transacts business within 10 days after the administrator appoints a receiver. The court shall uphold the administrator's finding that a payroll processor is insolvent or that its condition is such as to render its further proceedings hazardous to the public or to those having funds in its custody and shall uphold the appointment of a receiver unless the court finds that the administrator's action was arbitrary and capricious.

**Sec. 7. 36 MRSA §112, sub-§4,** as repealed and replaced by PL 1999, c. 127, Pt. A, §49, is amended to read:

**4. Examination of records and premises.** Whenever necessary to the administration of this Title, the 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 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 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 audit workpapers.

**Sec. 8. 36 MRSA §182, sub-§2,** as enacted by PL 2001, c. 583, §8, is repealed.

**Sec. 9. 36 MRSA §191, sub-§2, ¶¶AA and BB,** as enacted by PL 2003, c. 390, §4, are amended to read:

AA. The disclosure by employees of the bureau to designated representatives of the Finance Authority of Maine of information required to ensure that recipients of certain benefits under Title 20-A, chapter 417-E are eligible to receive such benefits; ~~and~~

BB. The disclosure to an authorized representative of the Department of Human Services, Office of Head Start and Child Care of taxpayer information directly relating to the certification of investments eligible for or the eligibility of a taxpayer for the quality child care investment credit provided by section 5219-Q-; ~~and~~

**Sec. 10. 36 MRSA §191, sub-§2, ¶CC** is enacted to read:

CC. The disclosure to an authorized representative of the Department of Professional and Financial Regulation of information necessary for the administration of Title 10, chapter 222.

**Sec. 11. Appropriations and allocations.** The following appropriations and allocations are made.

**PROFESSIONAL AND FINANCIAL REGULATION,  
DEPARTMENT OF**

**Office of Consumer Credit Regulation**

Initiative: Allocates funds for a Senior Consumer Credit Examiner position, a Clerk IV position and All Other administrative costs to administer the licensing program for payroll processors.

Other Special Revenue Funds	2003-04	2004-05
Positions - Legislative Count	(0,000)	(2,000)
Personal Services	\$0	\$109,813
All Other	\$0	\$9,500
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Other Special Revenue		
Funds Total	\$0	\$119,313

**Sec. 12. Effective date.** This Act takes effect January 31, 2005.

Effective January 31, 2005.

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**CHAPTER 669**

**H.P. 1457 - L.D. 1958**

**An Act To Implement the  
Recommendations of the Joint  
Standing Committee on Business,  
Research and Economic  
Development Regarding the Board of  
Dental Examiners Pursuant to  
Reviews Conducted under the State  
Government Evaluation Act**

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

**Sec. 1. 32 MRSA §1071, first ¶,** as amended by PL 2001, c. 260, Pt. B, §1, is further amended to read:

The Board of Dental Examiners, established by Title 5, section 12004-A, subsection 10, and in this chapter called the "board," consists of ~~8~~ 9 members, appointed by the Governor as follows: five members of the dental profession, ~~one~~ 2 dental ~~hygienist~~ hygienists, one dentist and one representative of the public.