CHAPTER 222

PAYROLL PROCESSORS

§1495. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1997, c. 495, §1 (NEW).]

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.
[PL 1997, c. 495, §1 (NEW).]

1-A. Administrator. "Administrator" means, except in cases in which the payroll processor is a supervised financial organization or a wholly owned subsidiary of a supervised financial organization, the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation. In cases in which the payroll processor is a supervised financial organization or a wholly owned subsidiary of a supervised financial organization, "administrator" means the Superintendent of Financial Institutions within the Department of Professional and Financial Regulation. For the purposes of this subsection, "supervised financial organization" has the same meaning as in Title 9-A, section 1-301, subsection 38-A.
[PL 2005, c. 500, §2 (AMD); PL 2007, c. 273, Pt. B, §6 (REV); PL 2007, c. 695, Pt. A, §47 (AFF).]

1-B. Full-service payroll processor license. "Full-service payroll processor license" means a license permitting a payroll processor to prepare and issue payroll checks, prepare and file state or federal income withholding tax reports and unemployment insurance compensation reports and collect, hold and turn over to the State Tax Assessor or to federal tax authorities income withholding taxes or unemployment insurance contributions.
[PL 2011, c. 308, §1 (NEW).]

1-C. Issue payroll checks. To "issue payroll checks" means to provide redeemable payroll payment instruments and includes functions performed by a payroll processor that holds a signature stamp, electronic signature or presigned check stock from the employer, but does not include functions performed by a payroll processor that provides unsigned checks to the employer for distribution by the employer.
[PL 2011, c. 308, §1 (NEW).]

1-D. Limited payroll processor license. "Limited payroll processor license" means a license that permits a payroll processor to prepare and issue payroll checks and prepare and file state or federal income withholding tax reports and unemployment insurance compensation reports, but does not permit the licensee to collect, hold or turn over to the State Tax Assessor or to federal tax authorities income withholding taxes or unemployment insurance contributions.
[PL 2011, c. 308, §1 (NEW).]

2. Payroll processing services. "Payroll processing services" means preparing and issuing payroll checks; preparing and filing state or federal income withholding tax reports or unemployment insurance contribution reports; or collecting, holding and turning over to the State Tax Assessor or to federal tax authorities income withholding taxes pursuant to Title 36, chapter 827 or federal law or unemployment insurance contributions pursuant to Title 26, chapter 13, subchapter 7 or federal law.
[PL 2011, c. 308, §2 (AMD).]

3. Payroll processor. "Payroll processor" means a person that provides payroll processing service for one or more employers.
[PL 1997, c. 495, §1 (NEW).]

4. Restricted payroll processor license. "Restricted payroll processor license" means a license that permits a payroll processor to prepare and file state or federal income withholding tax reports and unemployment insurance compensation reports, but does not permit the licensee to collect, hold or turn over to the State Tax Assessor or to federal tax authorities income withholding taxes or unemployment insurance contributions or to issue payroll checks.
[PL 2011, c. 308, §3 (NEW).]

SECTION HISTORY

PL 1997, c. 495, §1 (NEW). PL 1997, c. 668, §2 (AMD). PL 2003, c. 668, §1 (AMD). PL 2003, c. 668, §12 (AFF). PL 2005, c. 500, §2 (AMD). PL 2007, c. 273, Pt. B, §6 (REV). PL 2007, c. 273, Pt. B, §7 (AFF). PL 2007, c. 695, Pt. A, §47 (AFF). PL 2011, c. 308, §§1-3 (AMD).

§1495-A. Registration required

(REPEALED)

SECTION HISTORY

PL 1997, c. 495, §1 (NEW). PL 1999, c. 172, §1 (AMD). PL 1999, c. 172, §2 (AFF). PL 2003, c. 668, §2 (RP). PL 2003, c. 668, §12 (AFF).

§1495-B. Disclosure to employers

1. Generally.

[PL 2003, c. 668, §3 (RP); PL 2003, c. 668, §12 (AFF).]

2. Exception.

[PL 2003, c. 668, §3 (RP); PL 2003, c. 668, §12 (AFF).]

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 [PL 2003, c. 668, §4 (NEW); PL 2003, c. 668, §12 (AFF).]

B. The aggregate amounts disbursed for:

(1) Payroll;

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

(3) Unemployment compensation premiums. [PL 2003, c. 668, §4 (NEW); PL 2003, c. 668, §12 (AFF).]

[PL 2003, c. 668, §4 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §4 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §4 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §4 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §4 (NEW); PL 2003, c. 668, §12 (AFF).]

SECTION HISTORY

PL 1997, c. 495, §1 (NEW). PL 2003, c. 668, §§3,4 (AMD). PL 2003, c. 668, §12 (AFF).

§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. [PL 1997, c. 495, §1 (NEW).]

B. A payroll processor that conducts business in this State and fails to obtain a license from the administrator as required by section 1495-D commits a civil violation for which a penalty of not less than $1,500 nor more than $7,500 may be adjudged. [PL 2003, c. 668, §5 (AMD); PL 2003, c. 668, §12 (AFF).]
[PL 1997, c. 495, §1 (NEW); PL 2003, c. 668, §5 (AMD); PL 2003, c. 668, §12 (AFF).]

2. Criminal violations. A payroll processor is a fiduciary for purposes of Title 17-A, section 903.
[PL 1997, c. 495, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 495, §1 (NEW). PL 2003, c. 668, §5 (AMD). PL 2003, c. 668, §12 (AFF).

§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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

1-A. License requirements; fees. The administrator may require licensing under this section through the nationwide mortgage licensing system and registry as defined in Title 9-A, section 13-102, subsection 8. The administrator is authorized to participate in the nationwide mortgage licensing system and registry.

In all cases, whether licensing is through the nationwide mortgage licensing system and registry or otherwise, the administrator may establish, by rule, requirements for licensing, including but not limited to:

A. Background checks for:

(1) Criminal history through fingerprint or other databases;

(2) Civil or administrative records;

(3) Credit history; or

(4) Any other information determined necessary by the nationwide mortgage licensing system and registry; [PL 2021, c. 245, Pt. D, §9 (NEW).]

B. The payment of fees to apply for or renew licenses, except that the fee for an initial application may not exceed $1,200 and for a renewal may not exceed $1,200. If licensing is through the nationwide mortgage licensing system and registry, an applicant must also pay a nationwide mortgage licensing system and registry processing fee in an amount to be determined by the administrators of the nationwide mortgage licensing system and registry. Renewal applications received after the due date are subject to an additional fee of $100; [PL 2021, c. 245, Pt. D, §9 (NEW).]

C. The setting or resetting as necessary of renewal or reporting dates; and [PL 2021, c. 245, Pt. D, §9 (NEW).]

D. Other requirements for application for, amendment of or revocation of a license or any other such activities as the administrator considers necessary. [PL 2021, c. 245, Pt. D, §9 (NEW).]

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.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2021, c. 245, Pt. D, §9 (NEW).]

2. Proof of fidelity insurance. Each applicant for a limited payroll processor license, and each applicant for a full-service payroll processor license that issues payroll checks, 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; [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

B. Employee dishonesty bond; [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

C. Third-party fidelity coverage; or [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

D. Liability insurance, including crime coverage. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]
[PL 2011, c. 308, §4 (AMD).]

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

[PL 2005, c. 278, §1 (AMD).]

3-A. Conditional, probationary or provisional licenses. The administrator, within the administrator's discretion, may issue a conditional, probationary or provisional license to an applicant. A conditional, probationary or provisional license may run for any time period the administrator considers appropriate and must be consistent with ensuring the maximum practicable protection for employers.
[PL 2005, c. 278, §2 (NEW).]

4. Fees.

[PL 2021, c. 245, Pt. D, §10 (RP).]

SECTION HISTORY

PL 2003, c. 668, §6 (NEW). PL 2003, c. 668, §12 (AFF). PL 2005, c. 278, §§1-3 (AMD). PL 2011, c. 308, §§4, 5 (AMD). PL 2021, c. 245, Pt. D, §§9, 10 (AMD).

§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 $50,000, 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.
[PL 2005, c. 278, §4 (AMD).]

2. Modification of bond requirement. The administrator, within the administrator's discretion, may modify terms and conditions specified in subsection 1 or may permit submission of an irrevocable letter of credit or other alternative form of security so as to ensure the maximum practicable or appropriate protection for employers.
[PL 2005, c. 500, §3 (AMD).]

2-A. Alternative security; Payroll Processor Recovery Fund. The Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation, referred to in this subsection as "the fund administrator," shall administer the Payroll Processor Recovery Fund, established in section 980-D and referred to in this section as "the fund." Participation in the fund must be made available to any payroll processor that is not a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A or a wholly owned subsidiary of such a supervised financial organization. The fund administrator may increase the fund, replenish the fund and seek reimbursement for the fund administrator's initial deposit into the fund through annual or special assessments against payroll processors using the fund. Before being eligible to participate in the fund, a payroll processor must provide a $10,000 surety bond or irrevocable letter of credit in a form acceptable to the fund administrator. Assessments into the fund must be in amounts equal to 1% of the balance of bond coverage required pursuant to this section. An initial deposit into the fund must be made by the fund administrator in an amount not less than 1/2 of the maximum amount of a surety bond or other security required pursuant to subsection 1. All amounts assessed by the fund administrator must be paid into the fund until the fund reaches the maximum amount of a surety bond or other security required pursuant to subsection 1, after which time assessments must be equally divided between payments into the fund and payments to the fund administrator until the fund administrator is reimbursed for the fund administrator's initial deposit into the fund. If an employer's loss due to a participating payroll

processor's failure to pay taxes or unemployment insurance premiums is demonstrated to the satisfaction of the fund administrator, the fund administrator shall require release of funds to the fund administrator for the benefit of the employer. If employer losses exceed the maximum amount recoverable pursuant to this subsection, funds are distributed to employers on a pro rata basis, based on the magnitude of the demonstrated loss. In the event an initial claim is made against the fund, any other claims arising within 45 days of the initial claim must be treated as having arisen on the same day as the initial claim for purposes of allocating recoveries to affected employers. Total funds released as a result of the failure of any one payroll processor to pay taxes or unemployment insurance premiums may not exceed 50% of the current fund balance. Fund proceeds must be used only for recovery of unpaid taxes and unemployment insurance premiums and may not be used for any other purpose.
[PL 2005, c. 500, §4 (NEW); PL 2007, c. 273, Pt. B, §6 (REV); PL 2007, c. 695, Pt. A, §47 (AFF).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

4. Exceptions. 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. A payroll processor that arranges for the transfer of funds from an employer's account directly to taxing authorities for payment of the employer's taxes is not subject to this section, as long as the payroll processor is not authorized to arrange for the transfer of funds for any other uses or to any other accounts. The administrator may construe this subsection through issuance of an advisory ruling or through rules adopted pursuant to section 1495-F.
[PL 2005, c. 278, §4 (AMD).]

SECTION HISTORY

PL 2003, c. 668, §6 (NEW). PL 2003, c. 668, §12 (AFF). PL 2005, c. 278, §4 (AMD). PL 2005, c. 500, §§3,4 (AMD). PL 2007, c. 273, Pt. B, §6 (REV). PL 2007, c. 273, Pt. B, §7 (AFF). PL 2007, c. 695, Pt. A, §47 (AFF).

§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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

3-A. Accounting standards and escrow requirement. To facilitate the administrator's compliance examination responsibilities, a payroll processor shall maintain a trust account for client funds in accordance with generally accepted accounting principles, international accounting standards or other recognized accounting standards. A payroll processor may not commingle funds held on behalf of its clients with the payroll processor's operating funds.
[PL 2011, c. 308, §6 (NEW).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

SECTION HISTORY

PL 2003, c. 668, §6 (NEW). PL 2003, c. 668, §12 (AFF). PL 2011, c. 308, §6 (AMD).

§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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

SECTION HISTORY

PL 2003, c. 668, §6 (NEW). PL 2003, c. 668, §12 (AFF).

§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: [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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; [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

2. Bond or security forfeiture. After notice and hearing, forfeiture of that portion of the required bond or other security instrument as proportionately may make aggrieved parties whole;
[PL 2005, c. 278, §5 (AMD).]

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;
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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;
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

6. Action on license. After notice and the opportunity for hearing before the administrator, revocation, suspension or nonrenewal of the payroll processor's license.

A respondent aggrieved by an order of the administrator may obtain judicial review of the order in the Superior Court. The proceeding for review is initiated and conducted in accordance with Title 5, chapter 375, subchapter 7.
[PL 2021, c. 245, Pt. A, §7 (RPR).]

SECTION HISTORY

PL 2003, c. 668, §6 (NEW). PL 2003, c. 668, §12 (AFF). PL 2005, c. 278, §5 (AMD). PL 2021, c. 245, Pt. A, §7 (AMD).

§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. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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 authority 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. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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). [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

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.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

SECTION HISTORY

PL 2003, c. 668, §6 (NEW). PL 2003, c. 668, §12 (AFF).

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