

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

Eighty-seventh and Eighty-eighth
Legislatures

OF THE

STATE OF MAINE

From April 7, 1935 to April 24, 1937

AND MISCELLANEOUS STATE PAPERS

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PUBLIC LAWS

OF THE

STATE OF MAINE

As Passed by the Eighty-Eighth Legislature

1937

Chapter 242

AN ACT to Provide for Old Age Assistance, to Guarantee a Minimum Educational Program and to Provide Revenues Therefor.

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

TITLE I

Sec. 1. To provide for old age assistance and to guarantee a minimum educational program, taxes are imposed as hereinafter set forth. The revenues derived from such taxes shall be paid into the general fund of the state treasury and expended in the following manner:

a. Such sum as may be necessary to pay the expenses of the administration, collection and enforcement.

b. A sum not exceeding \$1,500,000 for the fiscal year ending June 30, 1938, and a sum not exceeding \$2,000,000 for the fiscal year ending June 30, 1939, for old age assistance in accordance with the provisions of Title II of this act and to pay the expenses of the administration thereof.

c. A sum not in excess of \$500,000 for each of the fiscal years ending June 30, 1938 and June 30, 1939 to guarantee a minimum educational program in accordance with the provisions of Title III of this act.

d. If the taxes collected under this act for any fiscal year, after deducting such sums as may be necessary to pay the expenses of the administration, collection and enforcement of this act, shall not be sufficient to pay the maximum sums hereby appropriated for Old Age Assistance and a Minimum Educational Program, said appropriations shall be pro rated in accordance with the maximum amounts appropriated for Old Age Assistance and for a Minimum Educational Program.

e. If at any time the grant available to the state of Maine under the provisions of the Social Security Act of the United States relating to Old Age Assistance shall cease to be available to match funds provided under this act and to be distributed under the provisions of Title II hereof, the governor shall forthwith publicly so proclaim, and upon the date of such proclamation the provisions of this act providing revenue and appropriating the same shall be suspended.

TITLE II

Sec. 1. Department of health and welfare to administer old age assistance. The department of health and welfare shall administer the carrying out and enforcement of the provisions of law relating to old age assistance. It is hereby empowered to employ such assistants as may be necessary to carry out the provisions of this act, subject to the approval of the governor

and council, and to coordinate their work with that of the other social welfare work of the department.

Sec. 2. Definition. The word "department" wherever hereinafter used shall be construed to mean the department of health and welfare.

Sec. 3. Old age assistance provided for. Subject to the qualifications and restrictions contained in this act, every person residing in this state shall be entitled to assistance in old age. The amount of assistance which any person shall receive shall be determined on a budgetary basis with due regard to the conditions existing in each case and in accordance with the rules and regulations made by the department. This assistance shall be sufficient, when added to all other income and support of the recipient, to provide such person with a reasonable subsistence compatible with decency and health, but not exceeding \$30 per month. No person receiving assistance under this act shall be deemed a pauper.

Sec. 4. Requisites for assistance. Old age assistance shall be granted only to an applicant who

- (a) Is 65 years of age or more;
- (b) Has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health;
- (c) Has resided in the state for 5 or more years within the 9 years immediately preceding application for assistance and has resided therein continuously for 1 year immediately preceding the application;
- (d) Is not an inmate of and is not being maintained by any municipal, state, or national institution; but an inmate of such an institution may file application for assistance under this act, and any allowance made thereon shall take effect and be paid upon his ceasing to be an inmate of such institution;
- (e) Has no spouse able to support him;
- (f) Has no child or children able to support him.

Sec. 5. Change of status of person assisted. If the recipient of old age assistance or his spouse becomes possessed of any property or any income in addition to the amount stated in his application, it shall be his duty immediately to notify the department of such fact.

Sec. 6. Penalty for felony by person assisted. Any recipient of old age assistance who is convicted of a felony shall be disqualified from receiving old age assistance.

Sec. 7. Funeral expenses of person assisted. On the death of a recipient, reasonable funeral expenses not exceeding \$100 shall be paid by the state if the estate of the deceased is insufficient to pay the same.

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Sec. 8. Assistance may be paid to a guardian or conservator. If the recipient of assistance is, on the testimony of reputable citizens, found by the department to be incapable of taking care of himself or his money, the department after due investigation, may pay the same to a legally appointed guardian or conservator for his benefit.

Sec. 9. Inalienability of assistance. All rights to assistance shall be absolutely inalienable by any assignment, sale, execution, pledge or otherwise, and shall not pass, in case of insolvency or bankruptcy, to any trustee, assignee or creditor.

Sec. 10. Disqualification of applicant. Any applicant for old age assistance who divests himself directly or indirectly of any property for the purpose of qualifying for such assistance shall forfeit all right to receive old age assistance under this act.

Sec. 11. Claims against estate of person assisted. Upon the death of a beneficiary, the state shall have a claim against his estate, enforceable in the probate court, for all amounts paid to him under the provisions of this act. Such claim shall have priority over all unsecured claims against such estate, except (1) administrative expenses, including probate fees and taxes, and (2) expenses of the last sickness and burial expenses. The attorney general shall collect any claim which the state may have hereunder against such estate. Provided, that no such claim shall be enforced against any real estate while it is occupied as a home by the surviving spouse of the beneficiary if such spouse is eligible for old age assistance under the provisions of this act or will reach the age of eligibility within five years of the time of death of the beneficiary and does not marry again. If the state participates in federal funds for the purposes of this act, one-half of the net amount collected from the estate of the beneficiary, with respect to old age assistance furnished him, shall be promptly paid by the treasurer of state to the United States as required by the laws of the United States.

Sec. 12. Penalty for fraud. Any person who by means of a wilfully false statement or representation or by impersonation or other fraudulent devices obtains or attempts to obtain, or aids or abets any person to obtain

(a) Assistance to which he is not entitled;

(b) A larger assistance than that to which he is entitled;

(c) Payment of any forfeited instalment of assistance; and any person who knowingly buys or aids or abets in buying or in any way disposing of the property of a recipient in such a way as to constitute a fraud upon the department shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both such fine and imprisonment.

Sec. 13. General penalty. Any person who violates any of the provisions of this act for which no penalty is specifically provided shall be punished by a fine of not more than \$500, or by imprisonment for not more than 11 months, or by both such fine and imprisonment. If a recipient of assistance is convicted of an offense under this section, the department may cancel the assistance.

Sec. 14. Right of appeal. Any person who is denied assistance or who is not satisfied with the amount of assistance allotted to him, or is aggrieved by a decision of the department made under any provision of this act, shall have the right of appeal to the commissioner of health and welfare who shall provide the appellant with an opportunity for a fair hearing. Said commissioner or a member of the department designated and authorized by him shall hear all evidence pertinent to the matter at issue and render a decision thereon within a reasonable period from the date of the hearing; provided, that when the evidence in the case is heard by a person other than the commissioner, the decision shall be rendered in the name of the commissioner.

Sec. 15. Administration. All monies made available under this act shall be expended under the direction of the department, and the department is empowered to direct the expenditure therefrom of such sums as may be necessary for the purposes of administration. All assistance granted under this act shall be paid monthly by the state.

Sec. 16. Acceptance of provisions of federal law. The department is hereby authorized subject to the approval of the governor and council to

(a) Apply for federal assistance under the provisions of Title I of the Federal Social Security Act (Public No. 271, 74th Congress) and acts additional thereto or amendatory thereof; and to comply with such conditions, not inconsistent with the provisions of this act, as may be required for such assistance.

(b) Make such reports in such form and containing such information as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports.

Sec. 17. Federal grants. The treasurer of state shall be the appropriate fiscal officer of the state to receive federal grants on account of old age assistance and administration thereof, as contemplated by Title I of the Federal Social Security Act, and the state controller shall authorize expenditures therefrom as approved by the department.

Sec. 18. Appropriation. For the purpose of carrying out the provisions of this Act, there is hereby appropriated from the funds of the

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State the sum of \$1,500,000 for the fiscal year ending June 30, 1938 and the sum of \$2,000,000 for the fiscal year ending June 30, 1939.

Sec. 19. Saving clause. The unconstitutionality of any section or provision of this title shall not invalidate the remainder of the title.

Sec. 20. P. L., 1933, c. 267, repealed. Chapter 267 of the public laws of 1933 is hereby repealed.

TITLE III

Sec. 1. R. S., c. 19, § 22, amended. Section 22 of chapter 19 of the revised statutes is hereby amended to read as follows:

'Sec. 22. Purposes for which school fund shall be used; parent or guardian may provide text-books; second-hand books not to be purchased; penalty. Towns shall expend the entire amount of the school fund received from the state together with the amount arising from the ~~eighty cents per capita~~ funds raised as provided in section 16 of this chapter, and the funds arising from the various sources enumerated in ~~the first four lines of~~ said section, and the funds arising from the provisions of section 17 of this chapter, for the payment of teachers' wages and board, fuel, janitors' services, conveyance of scholars, and tuition and board of scholars as provided in section 2 and section 78 of this chapter and shall provide schoolbooks, apparatus, and appliances for the use of pupils in the public schools, including all free high schools, insurance on the buildings, if any, maintenance of schoolyards and playgrounds, and incidental repairs to buildings at the expense of said town; and shall also pay for the necessary major repairs of school buildings and the ~~insurance on the same, if any,~~ improvement and ~~maintenance~~ equipment of schoolyards and playgrounds out of a sum or sums of money raised and appropriated for that purpose, which shall be assessed like other money and shall be in addition to and independent of the amount which towns are required by law to raise, assess, and expend for the support of common schools; provided, however, that any parent or guardian of any pupil in the public schools may at his own expense procure for the separate and exclusive use of such pupil the text-books required to be used in such schools, ~~and~~. No second-hand books shall be purchased for the use of any school; whoever violates this provision shall forfeit not exceeding \$500, to be recovered in an action of debt by any school officer or person aggrieved.'

Sec. 2. R. S., c. 19, § 202, amended. Section 202 of chapter 19 of the revised statutes, as amended, is hereby further amended to read as follows:

'Sec. 202. State school fund, for maintenance and support of elementary and secondary schools, how created. A tax of 3 1/3 mills on a dollar shall annually be assessed upon all the property in the state according to

the value thereof and said tax shall be assessed and collected in the same manner as other state taxes and be paid into the state treasury. To the fund resulting from said tax the treasurer of state annually shall add the income from the permanent school fund, as provided by law, and a sum equal to $\frac{1}{2}$ the amount received by the state from the tax on the franchises of savings banks and on the deposits of trust and banking companies ~~as provided by law~~ together with an appropriation of \$500,000 from the general fund of the state to be paid to towns as provided by section 210 of this chapter.

The sum total of the amount so assessed, ~~and~~ collected and credited from the general fund of the state shall be designated the state school fund and after the deduction therefrom of all funds and appropriations which the treasurer of state is authorized by law to deduct, the balance shall be distributed among the several cities, towns, and plantations of the state in the manner provided for by sections 202 to 216, to be expended by said cities, towns, and plantations for the maintenance and support of elementary and secondary schools established and controlled by them.'

Sec. 3. R. S., c. 19, § 203, amended. Section 203 of chapter 19 of the revised statutes is hereby amended to read as follows:

'Sec. 203. Terms defined. For the purposes of sections 202 to 216 the following terms are defined:

The term "elementary school" shall be understood to include that part of the school organization of a town in which is offered a program of studies preceding that offered by a class A high school as defined by section 83.

The term "secondary school" shall be understood to include that part of the school organization of a town offering a program of studies as included in class A high schools or any part thereof as defined by section 83 and as arranged for by the establishment and maintenance of a free high school, a union high school, or by contract with the superintending school committee of an adjoining town or with the trustees of an academy within the town or in an adjoining town as provided for by section 92.

The term "teaching ~~positions~~ unit" shall be understood to mean a ~~positions~~ in elementary and secondary schools filled by a classroom teachers, ~~assistant classroom teachers~~, school principals, school nurses, supervisors, ~~assistants to~~ assistant supervisors, clerical assistant, and a teachers of special subjects, except when any such ~~position~~ unit is used as a basis for payment of state aid under the provisions of the laws encouraging industrial, vocational, and physical education, or when any such position is filled by a person devoting less than half of the school day to the duties of such positions together with the expenses incident to the work of such unit. Provided, however, that the number of teaching ~~positions~~ units in

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a secondary school shall be reckoned in ~~such~~ ratio to the actual number of such ~~positions~~ units as the aggregate attendance of pupils residents of the town is to the aggregate attendance of all pupils regularly enrolled in the school and provided, further, that a teaching ~~position~~ unit in an elementary or a secondary school maintained for any part of the school year shall be reckoned in ~~such~~ ratio to a complete ~~position~~ unit as the number of weeks which the ~~position~~ unit was maintained is to the number of weeks schools of the town were maintained.

The term "school census" shall be understood to mean the number of persons between the ages of 5 and 21 years as provided for by section 56.

The term "aggregate attendance" shall be understood to include the total number of days of attendance for any one school year of each regularly enrolled pupil resident of the town in elementary and secondary schools; provided that the attendance of each pupil present on the day preceding shall be counted for each school holiday within any school term, for each day of the school year when there is no session of school because of absence of the teacher in attendance on teachers' meetings, as provided by law, and for not more than 1 day in each term when there is no session of school because of the absence of the teacher in visiting other schools when so authorized by the superintending school committee.'

Sec. 4. R. S., c. 19, § 204, amended. Section 204 of chapter 19 of the revised statutes is hereby amended to read as follows:

'Sec. 204. State controller to report to commissioner of education July 1st; commissioner to make apportionment and report to governor and council amounts to be paid towns in December. On the 1st day of July, annually, the state ~~auditor~~ controller shall report to the state commissioner of education the amount of the state school fund and all deductions therefrom provided for by law, and the state commissioner of education shall apportion said state school fund to the several cities, towns, and plantations in the manner provided for by law and shall transmit a report of said apportionment to the governor and council. Upon approval of said report by the governor and council there shall be paid to the treasurer of said towns in December, annually, the amounts so apportioned.'

Sec. 5. R. S., c. 19, § 205, amended. Section 205 of chapter 19 of the revised statutes, as amended, is hereby further amended to read as follows:

'Sec. 205. Deductions from state school fund. In addition to the other funds and appropriations provided for by law to be deducted from the state school fund, there shall annually be deducted the sum of \$125,000, the same to be denominated the school equalization fund and to be apportioned and distributed in the manner and for the purposes provided for by section 210. From the state school fund there shall also be apportioned such sums as

may be required for payment to towns for reimbursement of tuition in secondary schools as provided for by section 206, such amount as may be required for physical education as provided in sections 181 to 183; an amount not to exceed \$150,000 to cover the obligation of the state for industrial education under sections 163 to 168, inclusive; such amounts as may be required to cover the obligations of the state for teachers' pensions under sections 219 to 226, inclusive; such amounts as may be required to cover the obligations of the state under the teachers' retirement act under ~~paragraph 3 of section 234~~ 238; and such sums as may be required for payment to towns on account of teaching positions maintained as provided for by section 207, and such sums as may be required for apportionment to towns on the basis of the school census as provided for by section 208, ~~and the balance of said state school fund shall be apportioned and distributed to towns on the basis of aggregate attendance as provided for by section 209.~~

Sec. 6. R. S., c. 19, § 206, amended. Section 206 of chapter 19 of the revised statutes is hereby amended to read as follows:

'Sec. 206. Reimbursement to towns for tuition for pupils attending secondary schools. When any town shall have been required to pay and has paid tuition for pupils attending secondary schools, as provided by section 93, the superintendent of schools of such town shall make a return under oath to the ~~state~~ commissioner of education before the 1st day of September, annually, for the preceding school year, stating the name of each pupil for whom tuition has been paid, the amount paid by the town for each, and the name and location of the school which each has attended. Upon the approval of said return the ~~state~~ commissioner of education shall apportion to such town a sum equal to $\frac{2}{3}$ the amount thus paid by such town. Provided, further, that tuition for such pupils may be paid by towns to an amount not exceeding the average cost per pupil for the year preceding that for which the tuition is paid in the school attended by such pupil, but such payment by any town shall not exceed \$100 for any pupil for any 1 year, and reimbursement to any town for any 1 year shall not exceed \$700. Provided, further, that any town not maintaining a high school may pay tuition for any student who with parents or guardian, resides in said town and who attends an approved school of secondary grade in a town adjacent to the state of Maine in another state, when distance and transportation facilities make attendance in a Maine high school or academy inexpedient.

Provided, however, that when pupils are sent from one city, town, or plantation to another, any accounts for tuition of such pupils shall become due and payable on the 30th day of June, at the end of that school year; if such accounts be not paid on or before the 1st day of September of that

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year, the commissioner of education shall pay such accounts, or so much thereof as he shall find to be rightly due, to the receiving city, town, or plantation, at the next regular annual apportionment, together with interest on such accounts at the rate of 6% annually, computed from said 1st day of September; and the commissioner of education shall charge any such payment against the apportioned fund of the sending city, town, or plantation.'

Sec. 7. R. S., c. 19, § 207, amended. Section 207 of chapter 19 of the revised statutes is hereby amended to read as follows:

'Sec. 207. Apportionment to towns for teaching units. On the basis of information furnished to the ~~state~~ commissioner of education by the return of educational statistics for the year ending July 1st, annually, as provided for by section 58, said ~~state~~ commissioner shall apportion to each town the sum of \$100 for each teaching ~~position~~ unit, or a corresponding fractional part of \$100 for each fractional part of a teaching ~~position~~ unit maintained in the elementary and secondary schools of such town.'

Sec. 8. R. S., c. 19, § 209, repealed. Section 209 of chapter 19 of the revised statutes is hereby repealed.

Sec. 9. R. S., c. 19, § 210, amended. Section 210 of chapter 19 of the revised statutes, as amended, is hereby further amended by repealing paragraphs I, II and V; also by repealing chapter 33 of the public laws of 1935 (allocated as paragraph VI, and herein made a part of section 206); and also by changing Roman numeral III to Roman numeral I, by changing Roman numeral IV to Roman numeral II, and amending said paragraph; and by adding a new paragraph to be numbered III, so that said section, as amended, shall read as follows:

'Sec. 210. School equalization fund, how apportioned. The school equalization fund shall be apportioned by the commissioner of education to the towns qualified to receive aid from said fund as follows:

I. Whenever any school is closed or suspended as provided for by section 2 of this chapter and pupils attending such school have been conveyed to another school under such conditions of conveyance as may be approved by the commissioner of education, there may be apportioned to the town in which such school was maintained such amount as, added to the amount apportioned under the provisions of section 207 on account of teaching positions, will give to said town, on account of said school, the same amount as though this position had been maintained for the entire year. Provided, further, that so long as said school remains closed and satisfactory conveyance is maintained there may be apportioned the same amount as for the maintenance of a teaching position, provided, however, that the amount so apportioned shall not exceed $\frac{1}{2}$ the cost of such conveyance.

II. Whenever any town through its superintendent or superintending school committee shall submit to the commissioner of education a definite plan for consolidation of schools, conveyance of pupils, housing of teachers, standardization of schools, or other projects especially worthy of encouragement, said commissioner shall investigate such plan and upon approval of the same may recommend to the governor and council the payment to such town of an amount, not exceeding \$500 in any one year, as an encouragement to such plan or project, provided, however, that the total amount available for aid under this paragraph shall not exceed ~~10%~~ of the equalization fund. \$10,000 in any one year.

III. Any town in which a sum equal to a tax of 12 mills upon the valuation of the town as determined by the bureau of taxation for the current year fails to produce a sufficient revenue to provide \$783 per elementary unit, \$1,305 per secondary unit and a sufficient amount to provide for necessary conveyance and to provide for secondary tuition, shall be considered eligible for equalization aid. Annually in December the commissioner of education shall issue to the governor and council a recommendation relative thereto. The governor and council shall draw a warrant in favor of the treasurer of said town for the payment from the equalization fund of an amount, the sum of which combined with other state aids as provided by law, shall equal the difference between the amount raised and expended as required by law and the proceeds of a tax of 12 mills upon the assessed valuation of the town as determined by the bureau of taxation, and which shall be expended under the direction of the superintending school committee of said town in accordance with the recommendation as made by the said commissioner, provided further:

1. The amount of equalization aid paid by the state for board or conveyance of pupils in said town shall not exceed $\frac{1}{2}$ the approved cost of said board or conveyance.

2. No town entitled to equalization aid under this act shall receive an annual amount in excess of \$6000 save that in any town where a tax of 12 mills upon the assessed valuation is in excess of this amount the state may pay an additional amount not exceeding the difference between the sum of \$6000 and the proceeds of a tax of 12 mills upon the assessed valuation;

Provided further, that the number of teaching units in the elementary and secondary schools to be used as a basis for equalization aid in any town shall be the number of teaching units actually effective under similar conditions in non-equalization towns during the preceding year as determined by the commissioner of education from reports of practice throughout the state.

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If in any year the approved claims of the several towns entitled to equalization aid shall be in excess of the appropriation a sufficient reduction in the amount of the allotments shall be made to bring the total amount of the grants within the limit of the appropriation. The reduction in the allotment to each town shall bear the same ratio to the approved grant to that town that the total reduction bears to the total of approved grants to all towns.

The commissioner of education with the approval of the governor and council shall have authority to administer the provisions of this title until such time as the towns affected shall have an opportunity to comply with the provisions of the law.'

TITLE IV

Sales Tax Imposed

Sec. 1. Definitions. For the purposes of this act:

"Sale at retail" means the sale to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property, and the sale of gas, electricity and water to retail consumers or users; and the sale of a ticket or admission to a place of amusement or an athletic contest or exhibition, excepting, however, the sale of tickets or admissions to amusements, or to athletic contests or exhibitions, managed by and for the benefit of elementary and secondary schools. Transactions whereby the possession of the property is transferred, but the seller retains the title as security for the payment of the selling price shall be deemed to be sales.

"Tangible personal property" means all chattels, movables, including boats and vessels, merchandise and stock in trade, furniture and personal effects, live stock, vehicles, farming implements, movable machinery and equipment; (but not including any structure, improvement, machinery equipment or fixtures attached to and forming a part of real property) and gas, electricity, and water, including such gas, electricity and water when furnished by any municipal corporation in its proprietary capacity to the public.

"Gross receipts" or "receipts" means the total selling price or amount of sales of tangible personal property or services sold in this state, valued in money, whether received in money, credits, or property of any kind or nature; also any amount for which credit is allowed by the seller to the purchaser, without any deductions therefrom on account of the cost of the property sold, the cost of material used, labor or service costs, or any other expense whatsoever.

"Vendor" means any individual, partnership, association or corporation which sells tangible personal property or services to a consumer.

"Commissioner" means the state tax assessor.

“Services” means admission to theaters, recreation parks and other places of recreation and amusement, excepting, however, admissions to amusements, or to athletic contests or exhibitions managed by and for the benefit of elementary and secondary schools.

The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as engaging in the business of selling such tangible personal property at retail does not constitute engaging in such business.

Sec. 2. Imposition of tax. For the privilege of selling tangible personal property at retail, and services, as herein defined, in this state, every vendor shall pay a tax of 1% upon the gross receipts therefrom, except as herein provided. The tax herein imposed shall be in addition to all other taxes imposed by the state of Maine or by any political subdivision thereof. The burden of proof that the sale of tangible personal property is not a sale at retail shall be upon the vendor, unless such vendor shall have taken from the vendee a certificate signed by and bearing the name and address of the vendee, to the effect that the property was purchased for resale. The maximum tax that shall be imposed upon the gross receipts from the sale of any single article of merchandise under this act shall be \$100.

Sec. 3. Exemptions. There are hereby specifically exempted from the provisions of this act and from the computation of the amount of tax imposed by it, the following:

(a) The gross receipts from the sales of motor fuels, upon which a tax is imposed pursuant to sections 79 to 89 inclusive of chapter 12 of the revised statutes, as amended;

(b) The gross receipts from sales of commercial fertilizer, grains, and stock foods;

(c) The gross receipts from materials, fuel, and power when used wholly in the manufacture or processing of tangible personal property;

(d) The gross receipts from the sales of tangible personal property to the federal government or to any of its agencies, or to the state of Maine or any of its subdivisions, including sales of such property to agencies of federal, state, or local governments for distribution in public welfare and relief work;

(e) The gross receipts from all other retail sales of goods to the extent to which the same may be subject to a tax upon the gross receipts therefrom under any other law of this state.

Sec. 4. Addition of tax to price. It is the purpose and intent of this act and it is expressly provided that the average equivalent of the tax levied hereunder shall be added to the sales price of **tangible personal property** as defined in section 1 of title IV of this act and services, and thereby be

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passed on to the consumer instead of being absorbed by the vendor. When so added, the tax shall constitute a part of such price, shall be a debt from vendee to vendor until paid, and shall be recoverable at law in the same manner as other debts. Any such vendor who shall, by any character of public advertisement, offer to absorb the tax levied by this act upon the gross receipts from the retail sale of tangible personal property as defined in section 1 of title IV of this act, or services, or in any manner, directly or indirectly, advertise that the tax herein imposed is not considered as an element in the price to the consumer, shall be guilty of a misdemeanor.

Sec. 5. Licenses. Every vendor who shall engage or continue in the selling of tangible personal property at retail, or services, after the effective date of this act shall apply for and obtain from the commissioner a license so to do, giving the name and address of the vendor, and the address of the place or places where such sales are to be made. For such license there shall be paid the sum of \$1, which shall be credited against the tax to be due under this act. The commissioner shall have power to suspend the license of any vendor who shall wilfully violate or fail to comply with any provision of this act or any rule or regulation promulgated by him pursuant to this act, and shall also have power to restore licenses after such suspension. A license shall be suspended in case a return or corrected return is not filed as provided in this act, or in case any tax under any assessment made by the commissioner, or penalty imposed under the provisions of sections 10 and 11 of this title thereon, shall not be paid within 10 days from the giving of notice of such assessment, or the imposition of such penalty, unless proceedings instituted to contest the tax are pending, or the commissioner shall have granted an extension of time for the filing of the return or the payment of the tax. Upon the filing of delinquent returns and/or the payment of delinquent taxes and penalties, the commissioner shall restore the license. Any vendor who shall sell tangible personal property at retail, or services, in this state after his license shall have been suspended, or without procuring a license as provided in this section, and any officer or employee of any corporation who shall so sell, shall be guilty of a misdemeanor.

Sec. 6. Records. Every vendor engaged in the business of selling tangible personal property at retail, or services, in this state shall keep adequate records of all such sales, together with invoices, bills of lading, copies of bills of sale and other pertinent papers and documents. Such records, papers, and documents shall, at all times during business hours of the day, be subject to inspection by the commissioner or his duly authorized agents and employees. Such records, papers, and documents shall be preserved for a period of at least 2 years, unless the commissioner in writing authorizes their destruction or disposal at an earlier date.

Sec. 7. Returns. Every vendor selling tangible personal property at retail, or services, in this state shall file with the commissioner a return of his receipts for each quarter year period after the effective date of this act; provided, however, that the commissioner, if he deems it necessary or desirable, may require returns of receipts to be made for other than quarter year periods. Returns shall be filed within 30 days after the period covered thereby, except that the commissioner, if he deems it necessary to insure the payment of the tax, may require that they be filed at an earlier date. The form of such returns shall be prescribed by the commissioner, and shall call for such information as he may deem necessary for the proper administration of this act. In making such return the vendor shall determine the value of any consideration other than money received by him in connection with the sale of any tangible personal property or services in the course of his business, and he shall include such value in his return. Such determination shall be subject to review and revision by the commissioner in the manner herein provided for the correction of returns.

Any vendor whose total retail sales in any calendar year amount to less than \$400 shall not be required to file a return or pay a tax under this act.

Sec. 8. Installment sales. The commissioner may provide by regulation that receipts from installment sales under conditional contracts of sale may be reported as of the dates when the payments are received, in which event such receipts shall become subject to the tax at such time and not at the time when the contract of sale was entered into.

Sec. 9. Cancelled sales. Amounts representing sales in which the contract of sale has been cancelled, or the goods returned, or the purchase price or any part thereof has proven uncollectible, or refunds have been made, shall be excluded from total receipts reported. In case the vendor has included the sale of such tangible personal property in a return made by him and has paid the tax imposed by this act, he shall be given credit for the amount of the tax so paid against future tax liability.

Sec. 10. Failure to make return. In case any vendor engaged in the business of selling tangible personal property at retail, or services, fails to make a return when and as herein required, the commissioner, after notice to such vendor and a hearing thereon, shall determine the amount of such tax according to his best judgment and information, which amount so fixed by the commissioner shall be prima facie correct. Such vendor shall pay said tax, together with a penalty of 10% of the amount of the tax, within 10 days after notice by registered mail of the amount so computed by the commissioner.

Sec. 11. Incorrect return. If the commissioner has reason to believe, and does believe, that any return is incorrect, after notice to the vendor

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making the return and a hearing, he shall correct such return according to his best judgment and information, which return so corrected shall be prima facie correct. If the tax computed by the commissioner on the corrected return is greater than the amount of tax due on the return as filed, the vendor making such return shall pay the additional tax as computed by the commissioner within 10 days after notice by registered mail of the amount of such additional tax is mailed to such vendor. If payment is not made within such 10 days, a penalty of 10% shall be added to the amount of such additional tax. If it shall appear that an amount of tax and/or penalty has been paid which was not due under the provisions of this act, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due or to become due, under this act, from the vendor who made the erroneous payment, or such amount shall be refunded to such vendor by the commissioner.

Sec. 12. Payment of tax. At the time of filing a return of receipts, the vendor shall pay to the commissioner the amount of tax herein imposed for the period covered by such return. All taxes for the period for which a return is required to be filed shall be due and payable on the date established for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed shows the correct amount of tax due. If any vendor shall make sales of tangible personal property at retail, or services, while his license is suspended, the tax prescribed by this act shall nevertheless be imposed and payable with respect to such sales, but the payment of such tax shall not afford relief from any of the penalties prescribed by this act for selling while a license is suspended. In case a vendor makes a return but fails to pay the tax due under this act, the same penalty shall be imposed on such vendor as is provided in section 11 of this act.

In case of failure to pay the tax or any portion thereof or any penalty provided for in this act, when due, the commissioner may recover the amount of such tax or penalty in an action of debt. The collection of such tax or penalty shall not be a bar to any prosecution under this act.

Sec. 13. Procedure in investigation. For the purpose of ascertaining the correctness of any return, or for the purpose of determining the amount of tax due from any vendor of tangible personal property at retail, or services, the commissioner or his authorized agent may hold investigations and hearings concerning any matters covered by this act, and may examine any books, records, papers and memoranda bearing upon the sales of tangible personal property or services of any such vendor, and may require the attendance of any such vendor or any officer or employee of such vendor, or of any person having knowledge of such sales, and may take testimony and require proof for his information. The commissioner or his

authorized agent shall have power to administer oaths to such persons. If any person summoned as a witness shall fail to obey such summons to appear before the commissioner or his authorized agent, or shall refuse to testify or answer any material question, or to produce any book, record, paper, or memorandum when required to do so, such failure or refusal shall constitute a misdemeanor, and on complaint of the commissioner or his authorized agent the person so neglecting or refusing to furnish such evidence may be punished for a misdemeanor by any judge of a municipal court, or by any trial justice within the jurisdiction of the county wherein the offender lives. Officers who serve summonses or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the superior courts. The commissioner or his authorized agent, or any party in an investigation or hearing before the commissioner, may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state, and to that end compel the attendance of witnesses and the production of books, papers, records and memoranda.

Sec. 14. All information confidential. All information received by the commissioner from returns filed under this act, or from any investigations conducted under the provisions of this act, shall be confidential, except for official purposes, and any officer or employee of such commissioner who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$1000.

Sec. 15. Penalty for violation. Any vendor of tangible personal property at retail, or services, who fails to make a return, or to keep adequate records as required herein, or who wilfully violates any of the provisions of section 13 herein, or any rule or regulation of the commissioner for the administration and enforcement of this act, is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$1000 for each offense.

Sec. 16. Commissioner to make rules. The commissioner is authorized to make, promulgate and enforce such reasonable rules and regulations relating to the administration and enforcement of the provisions of this act as may be deemed expedient.

Sec. 17. Appeal. If a vendor, making a return, believes he has been aggrieved by any decision of the commissioner at any hearing as provided in section 13 of this act, he may, if he so elects, appeal from said decision to the superior court of the county wherein he lives, if said appeal is made within a period of 30 days from the date of such decision. Such appeal shall be entered at the term first occurring after said appeal is made.

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Sec. 18. Title of act. This act shall be known and cited as the "Act Relating to a Tax on the Privilege of Selling at Retail."

Sec. 19. Saving clause. If any part or parts of this act shall be held to be unconstitutional, such decision shall not affect the validity of the remaining parts thereof.

Sec. 20. Time limitation. All the provisions of Title IV of this act shall cease to be effective June 30, 1939.

TITLE V

Appropriation. Notwithstanding the limitation contained in paragraph d. of Title I hereof, there is hereby appropriated for the fiscal year ending June 30, 1939, the sum of \$300,000, or so much thereof as is necessary, to provide for old age assistance and a minimum educational program the full sums intended to be available in accordance with the provisions of Title I.

TITLE VI

Referendum. This act shall be submitted for approval or rejection to the duly qualified voters of the state of Maine at an election to be held on the 3rd Monday of August, 1937. The municipal officers of the cities, towns and plantations in this state are hereby empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet in manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of senators and representatives to give in their votes upon this act, and the question shall be: "Shall the act to provide for old age assistance, to guarantee a minimum educational program and to provide revenues therefor, as submitted by the 88th legislature to the people, be accepted?" and the inhabitants of said cities, towns and plantations shall vote by ballot on said question, those in favor of the act expressing it by making a cross within the square opposite the word "Yes" upon the ballots and those opposed to the act by making a cross within the square opposite the word "No" upon their ballots, and the ballots shall be received, sorted, counted, and declared in open ward, town and plantation meetings, and returns made to the office of the secretary of state in the same manner as votes for governor and members of the legislature, and the governor and council shall count the same, and if it shall appear that a majority of the inhabitants voting on the question are in favor of the act, the governor shall forthwith make known the fact by his proclamation and thereupon this act shall become law. The secretary of state shall prepare and furnish to the several cities, towns and plantations ballots and blank returns in conformity with the foregoing act, accompanied by a copy thereof.

Approved April 24, 1937.