

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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

J.S. McCarthy Company
Augusta, Maine
1997

**DEPARTMENT OF
HUMAN SERVICES
TOTAL**

(\$15,764)

Sec. 3. Effective date. This Act takes effect September 1, 1998.

Effective September 1, 1998.

CHAPTER 732

S.P. 622 - L.D. 1825

An Act to Authorize a Tuition Savings Plan to Encourage Attendance at Institutions of Higher Education

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

Sec. 1. 5 MRSA §12004-I, sub-§18-B is enacted to read:

18-B.	<u>Advisory</u>	<u>Not</u>	<u>20-A</u>
<u>Education:</u>	<u>Committee</u>	<u>Autho-</u>	<u>MRSA</u>
<u>Financial Aid</u>	<u>on College</u>	<u>rized</u>	<u>§11484</u>
	<u>Savings</u>		

Sec. 2. 10 MRSA §1013, sub-§§14 and 15, as enacted by PL 1997, c. 97, §4, are amended to read:

14. University of Maine System Scholarship Fund. The University of Maine Scholarship Fund, as established in Title 20-A, chapter 419-B; ~~and~~

15. Scholarships for Maine Fund. The Scholarships for Maine Fund, as established in Title 20-A, chapter 419-C; ~~and~~

Sec. 3. 10 MRSA §1013, sub-§16 is enacted to read:

16. Maine College Savings Program. The Maine College Savings Program, as established in Title 20-A, chapter 417-E.

Sec. 4. 20-A MRSA c. 417-E is enacted to read:

CHAPTER 417-E

MAINE COLLEGE SAVINGS PROGRAM

§11471. Definitions

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

1. Advisory committee. "Advisory committee" means the Advisory Committee on College Savings established in this chapter.

2. Authority. "Authority" means the Finance Authority of Maine, which serves as administrator of the Maine College Savings Program.

3. Beneficiary. "Beneficiary" means any person designated by a participation agreement to benefit from payments for higher education expenses at an institution of higher education.

4. Benefits. "Benefits" means the payment of higher education expenses on behalf of a beneficiary by the Maine College Savings Program during the beneficiary's attendance at an institution of higher education.

5. Board. "Board" means the board of directors of the Finance Authority of Maine.

6. Contributions. "Contributions" means amounts deposited by a participant to an account within the program fund.

7. Higher education expenses. "Higher education expenses" means the certified expenses for attendance at an institution of higher education as those expenses are defined by rule of the authority consistent with applicable provisions of the Internal Revenue Code and its regulations addressing qualified state tuition programs.

8. Institution of higher education. "Institution of higher education" means an institution of higher education that meets the requirements established by rule of the authority consistent with applicable provisions of the Internal Revenue Code and its regulations addressing qualified state tuition programs.

9. Participant. "Participant" means any person who has entered into a participation agreement pursuant to this chapter.

10. Participation agreement. "Participation agreement" means an agreement between a participant and the authority providing for the establishment by the participant of one or more accounts within the program fund and for the administration of those accounts for the benefit of the participant and of one or more beneficiaries.

11. Program earnings. "Program earnings" means all interest, dividends, premiums, fees, profits upon disposition of assets and other revenue actually received by or on behalf of the program with respect to any assets held within the program fund to which that asset may be credited, less all administrative costs

of the program and the program fund, as periodically determined by the authority.

12. Tuition. "Tuition" means the charges imposed to attend an institution of higher education and required as a condition of enrollment.

§11472. Maine College Savings Program

The Maine College Savings Program, referred to in this chapter as the "program," is established to encourage the investment of funds to be used for higher education expenses at institutions of higher education. The authority shall administer the program and act as administrator of the program fund.

§11473. Maine College Savings Program Fund

1. Creation. The Maine College Savings Program Fund, referred to in this chapter as the "program fund," is established as a nonlapsing fund to be directed and administered by the authority and held by the Treasurer of State. The Treasurer of State shall keep the program fund segregated from all other funds held by the Treasurer of State and shall invest and reinvest the program fund for the benefit of the program under the direction of and with the advice of the advisory committee. The program fund so administered is a fund held on behalf of participants and beneficiaries who are deemed specifically named persons for the purposes of Title 5, section 135-A.

2. Sources of money. The following sources of money must be paid into the program fund:

- A. All money appropriated for inclusion in the program fund;
- B. All interest, dividends or other pecuniary gains from investment of money in the program fund;
- C. All money received pursuant to participation agreements;
- D. Any grants, gifts and other money from the State and from any unit of federal, state or local government or from any person, firm, partnership or corporation for deposit to the program fund. Contributions may be limited in application to specified classes of beneficiaries; and
- E. Any other money available to the authority and directed by the authority to be paid into the program fund.

3. Application of program fund. Money in the program fund may be applied to carry out any power of the authority under or in connection with this chapter. All money in the program fund must be continuously applied by the authority to carry out this chapter and for no other purpose. Assets of the

program fund must at all times be preserved, invested and expended only for the purposes of the program and must be held for the benefit of the participants and beneficiaries. Assets may not be transferred or used by the State or the authority for any purposes other than the purposes of the program. All amounts in the program fund, except for contributions and program earnings that have been credited to an account, may be used by the authority to pay the administrative costs of the program and program fund, as determined by the authority.

4. Accounts within program fund. The authority may divide the program fund into separate accounts for any purpose it determines necessary or convenient for carrying out the purposes of this chapter, including, without limitation, the establishment of appropriate reserve funds for investment and operating expenses.

5. Common investment of funds. The authority may commingle amounts credited to some or all accounts for investment purposes and may provide for the application of program earnings to pay any administrative costs of the program fund prior to crediting program earnings to participants' accounts.

§11474. Powers of the authority

The authority, in the capacity as administrator of the program fund, in addition to all of the powers set out in Title 10, section 969-A, may:

1. Enter into contracts. Make and enter into contracts necessary for the administration of the program fund, including, without limitation, agreements with any financial institution or institution of higher education or with the State or any federal or state agency or any other entity;

2. Invest funds. With the advice of the advisory committee, direct the Treasurer of State to invest and reinvest money in the program fund in any investments determined by the authority to be appropriate, notwithstanding any general statutory limitations on investments of public funds specifically determined to be inapplicable to the program fund. The authority must invest money from the program fund in financial institutions located in the State to the extent determined reasonable by the authority;

3. Participation agreements. Enter into participation agreements with participants in accordance with the requirements of section 11475;

4. Make payments. Make payments to beneficiaries and to institutions of higher education on behalf of beneficiaries;

5. Make refunds. Make refunds to participants on the termination of participation agreements

pursuant to the provisions, limitations and restrictions set forth in this chapter;

6. Appoint a program administrator. Appoint a program administrator and other employees necessary to carry out the duties of this chapter;

7. Carry out studies. Carry out studies and projections to advise participants regarding present and future estimated higher education expenses and levels of financial participation in the program required to enable participants to achieve their educational funding objectives;

8. Participate in programs. Participate in any federal, state or local governmental program for the benefit of the program or the program fund, including, without limitation, soliciting, establishing and participating in a program providing limits on future increases in the costs of education at participating institutions of higher education on those terms and conditions that the authority may negotiate with the institutions;

9. Procure insurance. Procure insurance against any loss in connection with the property or assets or activities of the program or the program fund;

10. Administer the program fund. Administer the program fund;

11. Borrow money. Borrow money the authority determines necessary and prudent to the administration of the program and the program fund. Loans may be obtained from any source, including other funds of the authority;

12. Transfer investments. Sell, assign, transfer and dispose of any of the securities and investments of the program. All investments must be clearly marked to indicate designation to the program fund and, to the extent possible, must be registered in the name of the program. All interest derived from investments and any gains from the sale or exchange of investments must be credited by the authority to the account of the program;

13. Employ investment managers and consultants. Contract for goods and services and engage personnel and consultants, including investment advisors and managers, actuaries, managers, counsel, marketing consultants, fiduciaries and auditors, and evaluation services or other services as determined necessary by the authority for the effective and efficient operation of the program. Directly or through an investment consultant, the authority may contract to provide services that are a part of the comprehensive investment plan or as determined necessary by the authority or the consultant, including, but not limited to, providing consolidated billing,

individual and collective record keeping and accounting and asset purchase, control and safekeeping; and

14. Fund costs and expenses. Fund all costs and expenses incurred in connection with the exercise of its powers under this chapter as administrative costs of the program and the program fund. The authority may not assess the program fund a fee in excess of 1% of the balance in the fund in any year for the administrative costs and expenses of the program.

§11475. Participation agreement

The authority may enter into a participation agreement with a participant on behalf of a beneficiary pursuant to the following terms and conditions.

1. Periodic payments. A participation agreement may require or permit a participant to invest a specific amount of money in the program fund for a specific period of time for the benefit of a specific beneficiary. Periodic deposits may be made through a payroll deduction plan or an automatic deposit plan or through assignment of state tax refunds. A participation agreement establishing such a periodic deposit plan may include provisions to adjust scheduled deposits on the basis of change in a participant's economic circumstances or a beneficiary's educational plans and may provide for penalties on a participant's failure to make deposits as scheduled. A participation agreement establishing such a plan must provide for the limitation of scheduled deposits by the authority as necessary to ensure that a participant's account does not exceed the amount necessary to pay the beneficiary's projected higher education expenses.

2. Lump-sum payments. A participation agreement may permit a participant to make one or more lump-sum deposits to an account for the benefit of a specific beneficiary. Lump-sum deposits may be made through the assignment of state tax refunds.

3. Designation of beneficiaries. A participation agreement must designate the name and date of birth of the beneficiary. A beneficiary designated in a participation agreement may be designated from date of birth to an age the authority may require by rule.

4. Change of beneficiary. A beneficiary may be changed as permitted by rule of the authority upon written request of the participant, provided that the substitute beneficiary is eligible.

5. Amendment. A participation agreement may be freely amended throughout its term to enable a participant to increase or decrease the level of participation, change the designation of a beneficiary and carry out similar matters.

6. Enrollment fee. The authority may not charge an enrollment fee for participation in the program.

7. Cancellation. A participation agreement must provide that the participation agreement may be canceled upon the terms and conditions of the agreement and upon payment of the fees, expenses and penalties set forth in rules adopted by the authority.

8. Separate accounts. A participation agreement must require that the authority maintain each participant's account separately, subject to commingling for investment purposes, and report the status of each participant's account to the participant on a periodic basis, as established by rule of the authority.

9. Rights and obligations. A participation agreement must include any other rights and obligations of the participant, the beneficiary and the authority.

10. Terms and conditions. A participation agreement may include other terms and conditions the authority determines necessary, including a limitation on liability of the authority to the extent funds are disbursed in good faith.

11. No guaranty of admission. The execution of a participation agreement by the authority does not guarantee in any way that higher education expenses will be equal to projections and estimates provided by the authority or that the beneficiary named in any participation agreement will:

- A. Be admitted to an institution of higher education;
- B. Be allowed to continue attendance at the institution of higher education following admission; or
- C. Graduate from the institution of higher education.

§11476. Investment options and parameters

The authority, with the advice of the advisory committee, may provide investment options for a participant within the program fund to the extent permitted by Internal Revenue Code provisions addressing qualified state tuition programs. The authority, with the advice of the advisory committee, shall invest the amounts on deposit in the program fund in a reasonable manner to achieve the objectives of each fund, exercising the discretion and care of a prudent person in similar circumstances with similar objectives. A participant or designated beneficiary may not direct the investment of any amounts on deposit in the program fund, except to the extent

allowed pursuant to provisions of the Internal Revenue Code addressing qualified state tuition programs. The authority shall give due consideration to rate of return, term or maturity, diversification and liquidity of investments within the program fund or any account in the program fund pertaining to the projected disbursements and expenditures from the program fund and the expected payments, deposits, contributions and gifts to be received.

§11477. Early termination or overfunding of participation agreement

1. Cancellation. The authority may by rule establish fees and penalties applicable to early termination, overfunding of accounts or failure to use the program fund for an eligible purpose.

2. Death or disability. The authority may not levy or assess an administration refund fee or penalty upon a participant's termination of a participation agreement under the following circumstances:

- A. Death of the beneficiary;
- B. Permanent disability or mental incapacity of the beneficiary; or
- C. Receipt by the beneficiary of a scholarship or educational funding, identified by rule of the authority, resulting in an excess of funds in the account not needed to pay higher education expenses.

§11478. Ownership of account; transfer of ownership rights

For all purposes of the laws of the State, the following provisions apply.

1. Participant retains ownership. The participant retains ownership of all contributions and all program earnings credited to a participant's account under a participation agreement up to the date of utilization for payment of higher education expenses for the beneficiary and, notwithstanding any other provision of law, an amount credited to any account is not susceptible to levy, execution, judgment or other operation of law, garnishment or other judicial enforcement and the amount is not an asset or property of either the participant or the beneficiary for purposes of any state insolvency laws. Notwithstanding this subsection, an amount credited to the participant's account may not be included in any gross estate of the participant for purposes of state tax law, except to the extent that the amount may be includable in any gross estate for purposes of federal tax law.

2. Institution of higher education is owner upon payment. The institution of higher education obtains ownership of the amounts disbursed from an

account to the institution of higher education with respect to the higher education expenses paid to the institution at the time each disbursement is made to the institution, subject to any applicable refund policy or other policies of the institution.

3. Transfer of ownership. A participant may transfer ownership rights to another eligible participant, including, but not limited to, a gift of the ownership rights to a minor beneficiary pursuant to Title 33, chapter 32; except that, notwithstanding any provision of Title 33, chapter 32, the transfer must be effected and the property distributed in accordance with rules adopted by the authority or the terms of the participation agreement.

4. Jurisdictional effect. A person may not be deemed a resident of the State or be deemed as present in the State for jurisdictional purposes solely by reason of being a beneficiary or participant of an account.

5. Not security. A person may not pledge any interest in an account as security for a loan or other debt.

§11479. Tax exemption

The assets of the program fund, all program earnings and any income from operations are exempt from all taxation by the State or any of its political subdivisions. A deposit to any account, transfer of that account to a successor participant, designation of a successor beneficiary of that account, credit of program earnings to that account or distribution from that account used for the purpose of paying higher education expenses of the designated beneficiary of that account pursuant to this chapter does not subject that participant, the estate of that participant or any beneficiary to any state income or estate tax liability. In the event of cancellation or termination of a participation agreement and distribution of funds to a participant, the increase in value over the amount deposited in the program fund by that participant may be taxable to that participant in the year distributed.

§11480. Rights of participants and beneficiaries to assets of the authority

Participants and beneficiaries do not have access or rights to any assets of the authority other than program fund assets credited to the account of that participant or beneficiary. An account may not be deemed a debt or obligation of the authority or of the State.

§11481. Release of information

Notwithstanding any other provision of law, including, without limitation, Title 1, chapter 13, subchapter I and Title 10, section 975-A, the authority

may provide information regarding individual participation accounts as required by federal law and laws of the state of residence of any participant or beneficiary.

§11482. Exemption from registration

A participation agreement offered pursuant to this chapter is not a security as defined in Title 32, section 10501, subsection 18. The authority may obtain written advice of legal counsel or written advice from the United States Securities and Exchange Commission, or both, that the offering of a participation agreement is not subject to federal securities laws but is in compliance with those laws and is not in violation of other applicable laws.

§11483. Compliance with federal law

The authority may take any action necessary to ensure that the program complies with the federal Internal Revenue Code of 1986, Section 529, as amended, and any successor provisions and other applicable laws, rules and regulations adopted pursuant to that provision to the extent necessary for the program fund to constitute a qualified state tuition program with the benefits of eligibility under provisions of the federal Internal Revenue Code addressing qualified state tuition programs.

§11484. Advisory Committee on College Savings

The Advisory Committee on College Savings, referred to in this chapter as the "advisory committee," is created to provide advice to the authority on the operation of the program and investment of the program fund.

1. Membership. The advisory committee consists of 7 members as follows:

A. The Treasurer of State, who serves as the chair of the advisory committee;

B. Two members appointed by the Governor from the members of the Maine Education Assistance Board;

C. Two members appointed by the Governor with experience in and knowledge of institutional investment of funds; and

D. Two members appointed by the Governor representing institutions of higher education with experience in and knowledge of higher education financial and investment matters. One member must be appointed to represent public institutions of higher education and one member must be appointed to represent private institutions of higher education.

2. Terms. Members of the advisory committee are appointed for terms as follows:

A. Members representing the Maine Education Assistance Board serve a term coterminous with their appointment to the Maine Education Assistance Board; and

B. Two of the remaining members appointed by the Governor under subsection 1, paragraphs C and D must be appointed for initial terms of 2 years and the other 2 members must be appointed for initial terms of 4 years. Thereafter, members must be appointed for terms of 4 years. Members may be removed for cause.

3. Compensation. Members of the advisory committee are compensated in accordance with Title 5, chapter 379.

§11485. Rulemaking

The authority must establish rules for the implementation of the program established by this chapter, including rules establishing fees and penalties and rules necessary to ensure treatment as a qualified state tuition program for federal tax purposes. Rules adopted pursuant to this section, including those setting fees and penalties, are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. The authority shall submit a report to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs by January 30, 1999 on the rules and rule-making process to implement a program providing limits on future increases in the costs of education of participating institutions of higher education pursuant to section 11474, subsection 8.

§11486. Liberal construction

This chapter must be construed liberally in order to effectuate its legislative intent.

Sec. 5. **36 MRSA §5122, sub-§2, ¶H**, as amended by PL 1995, c. 639, §16, is further amended to read:

H. For each taxable year subsequent to the year of the loss, an amount equal to the absolute value of the net operating loss arising from tax years beginning on or after January 1, 1989, but before January 1, 1993, for which federal adjusted gross income was increased in accordance with subsection 1, paragraph H and that pursuant to the Code, Section 172 was carried back for federal income tax purposes, but only to the extent that:

(1) Maine taxable income is not reduced below zero;

(2) The taxable year is within the allowable federal period for carry-over; and

(3) The amount has not been previously used as a modification pursuant to this subsection; ~~and~~

Sec. 6. **36 MRSA §5122, sub-§2, ¶I**, as amended by PL 1995, c. 639, §17, is further amended to read:

I. For income tax years beginning on or after January 1, 1991, an amount equal to the amount by which federal taxable income was reduced because of vessel earnings from fishing operations that were contributed to a capital construction fund; ~~and~~

Sec. 7. **36 MRSA §5122, sub-§2, ¶J** is enacted to read:

J. Any amount constituting a qualified withdrawal from an account established pursuant to Title 20-A, chapter 417-E and used for paying higher education expenses.

See title page for effective date.

CHAPTER 733

H.P. 1492 - L.D. 2091

An Act Providing for Additional Meetings in the Event of a Tie Vote at Town Meetings

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

Sec. 1. **30-A MRSA §2528, sub-§10**, as amended by PL 1995, c. 13, §1, is further amended to read:

10. Election by plurality vote; tie vote. Election must be by plurality vote. In the case of a tie vote, the meeting must be adjourned to a day certain, when ballots are again cast for the candidates tied for the office in question, unless all but one tied candidate withdraw from a subsequent election by delivering written notice of withdrawal signed by the candidate and notarized to the municipal offices within the ~~5-day~~ 7-day period following the election. After the ~~5-day~~ 7-day period has expired, the municipal officers shall call a run-off election between the remaining candidates by posting a warrant in the manner required for calling a town meeting. If only one candidate remains, that candidate is declared the winner and sworn into office.