

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

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
1999

of the Maine income tax law and certain other state taxes; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §111, sub-§1-A, as amended by PL 1997, c. 596, §1 and affected by §2, is further amended to read:

1-A. Code. "Code" means the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, ~~1997~~ 1998.

Sec. 2. 36 MRSA §5122, sub-§1, ¶J, as amended by PL 1997, c. 746, §2 and affected by §24, is further amended to read:

J. The amount claimed as a business expense that is included in the investment credit for the high-technology investment tax credit; ~~and~~

Sec. 3. 36 MRSA §5122, sub-§1, ¶K, as enacted by PL 1997, c. 746, §3 and affected by §24, is amended to read:

K. For income tax years beginning on or after January 1, 1997, all items of loss, deduction and other expense of a financial institution subject to the tax imposed by section 5206, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the financial institution is an S corporation, the taxpayer's pro rata share and, if the financial institution is a partnership or limited liability company, the taxpayer's distributive share. An addition may not be made under this paragraph for any losses recognized on the disposition by a taxpayer of an ownership interest in a financial institution; ~~and~~

Sec. 4. 36 MRSA §5122, sub-§1, ¶L is enacted to read:

L. For income tax years beginning on or after January 1, 1999, but before January 1, 2000, an amount equal to 25% of any amount allowed to a self-employed individual as a deduction for health insurance expenses pursuant to Section 162(l) of the Code; and for income tax years beginning on or after January 1, 2000, but before January 1, 2002, an amount equal to 16.67% of any amount allowed as a deduction pursuant to Section 162(l) of the Code.

Sec. 5. Application. This Act applies to tax years beginning on or after January 1, 1998.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 17, 1999.

CHAPTER 521

H.P. 131 - L.D. 162

An Act to Make Minor Substantive Changes in the Tax Laws

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

PART A

Sec. A-1. 36 MRSA §142, as amended by PL 1997, c. 504, §2, is further amended to read:

§142. Cancellation and abatement

The State Tax Assessor may, within 3 years from the date of assessment, or whenever a written request has been submitted by a taxpayer within 3 years of the date of assessment, cancel any tax that has been levied illegally. In addition, if justice requires, the ~~State Tax Assessor~~ assessor may, with the approval of the Governor or the Governor's designee, abate within 3 years from the date of assessment, or whenever a written request has been submitted by a taxpayer within 3 years of the date of assessment, all or any part of any tax assessed by the ~~State Tax Assessor~~ assessor.

Sec. A-2. 36 MRSA §187-B, sub-§1, as amended by PL 1995, c. 657, §7 and affected by §10, is further amended to read:

1. Failure to file return. Any person who fails to make and file any return required under this Title at or before the time the return becomes due is liable for one of the following penalties if the person's tax liability shown on such return or otherwise determined to be due is greater than \$25.

A. If the return is filed before or within 30 days after the taxpayer receives from the ~~State Tax Assessor~~ assessor a formal demand that the return be filed, or if the return is not filed but the tax due is assessed by the assessor before the taxpayer receives from the assessor a formal demand that the return be filed, the penalty is \$25 or 10% of the tax due, whichever is greater.

B. If the return is not filed ~~later than~~ within 30 days after the taxpayer receives from the ~~State Tax Assessor~~ assessor a formal demand that the return be filed, the penalty is 100% of the tax due.

C. If the return is not filed and the ~~State Tax Assessor~~ assessor issues a jeopardy assessment pursuant to section 141, subsection 2, paragraph D, the penalty is 100% of the tax due.

Sec. A-3. 36 MRSA §187-B, sub-§2, ¶A, as amended by PL 1995, c. 281, §8, is further amended to read:

A. Any person who fails to pay, on or before the due date, any amount shown as tax on any return required under this Title or on any assessment made against the person is liable for a penalty of 1% of the unpaid tax for each month or fraction of a month during which the failure continues, to a maximum in the aggregate of 25% of the unpaid tax.

Sec. A-4. 36 MRSA §841, sub-§8, as enacted by PL 1979, c. 73, is amended to read:

8. Approval of the Governor. The State Tax Assessor may abate taxes under this section only with the approval of the Governor or the Governor's designee.

Sec. A-5. 36 MRSA §1752, sub-§15 is amended to read:

15. Storage. "Storage" includes any keeping or retention in this State ~~for any purpose, except subsequent use outside of this State,~~ of tangible personal property purchased at retail sale.

Sec. A-6. 36 MRSA §1760, as amended by PL 1999, c. 286, §1, is further amended by amending the first paragraph to read:

~~No~~ Subject to the provisions of section 1760-C, no tax on sales, storage or use ~~shall~~ may be collected upon or in connection with:

Sec. A-7. 36 MRSA §1760, sub-§81 is enacted to read:

81. Sales of certain printed materials. Sales of advertising or promotional materials printed on paper and purchased for the purpose of subsequently transporting such materials outside the State for use by the purchaser thereafter solely outside the State.

Sec. A-8. 36 MRSA §1760-C is enacted to read:

§1760-C. Exempt activities

Unless otherwise provided by section 1760, the sales or use tax exemptions provided by that section to a purchaser apply only if the property or service sold is intended to be used by the purchaser primarily in the activity identified by the particular exemption. Exemption certificates issued by the State Tax Assessor pursuant to section 1760 must identify the exempt activity and must state that the certificate may be used by the holder only to purchase property or services intended to be used by the holder primarily in the exempt activity. When an otherwise qualifying exempt person is engaged in both exempt and nonexempt activities, an exemption certificate may be issued to the person only if the person has established to the satisfaction of the assessor that the applicant has adequate accounting controls to limit the use of the certificate to exempt purchases.

Sec. A-9. 36 MRSA §1861-A, as corrected by RR 1991, c. 2, §133, is amended to read:

§1861-A. Reporting use tax on individual income tax returns

The assessor shall provide that individuals report use tax on their Maine individual income tax returns. Taxpayers are required to attest to the amount of their use tax liability for the period of the tax return. Alternatively, they may elect to report an amount that is .04% of their Maine adjusted gross income. The table amount does not relate to items with a purchase price in excess of \$1,000. Liability arising from such items must be added to the table amount. ~~If a taxpayer fails to attest to an alternate liability on the return, the taxpayer is subject to an increase in income tax liability amounting to .04% of the taxpayer's Maine adjusted gross income.~~ Upon subsequent review, if use tax liability for the period of the return exceeds the amount of liability arising from the return, a credit of the amount of liability arising from the return is allowed subject to the limitation set out in this section. The credit is limited to the amount of liability arising from the return for items with a sales price of \$1,000 or less and may be applied only against a liability determined on review with regard to items with a sales price of \$1,000 or less.

Sec. A-10. 36 MRSA §4064, first ¶, as amended by PL 1995, c. 281, §22, is further amended to read:

A tax is imposed upon the transfer of real property and tangible personal property situated in this State ~~and upon the transfer of tangible personal property located in this State of every person and held by an individual who at the time of death was not a resident of this State. When real or tangible personal property has been transferred into a trust, the tax imposed by this section applies as if the trust did not exist and the property was personally owned by the~~

decedent. Maine property is subject to the tax imposed by this section to the extent that such property is included in the decedent's gross estate as finally determined for federal estate tax purposes. The amount of this tax is a sum equal to that proportion of the credit for state death taxes provided by ~~section the Code, Section 2011 of the code~~ that the value of Maine real and tangible personal property taxed in this State that qualifies for the credit bears to the value of the decedent's total federal gross estate. All values are as finally determined for federal estate tax purposes. The share of the federal estate death tax credit used to determine the amount of the nonresident individual's estate tax under this section is computed without regard to whether the specific real or tangible personal property located in the State is marital deduction property.

Sec. A-11. Application. That section of this Part that amends the Maine Revised Statutes, Title 36, section 1752, subsection 15 and that section of this Part that enacts Title 36, section 1760, subsection 81 apply to all taxable periods that are open for purposes of administrative or judicial review. That portion of this Part that amends Title 36, section 1861-A applies to tax years beginning on or after January 1, 1999.

PART B

Sec. B-1. 36 MRSA §5111, sub-§4, as enacted by PL 1989, c. 596, Pt. J, §1, is amended to read:

4. Additional tax. Additionally, a tax is imposed for each taxable year beginning on or after January 1, 1989, on the Maine adjusted gross income of every nonresident individual. The amount of the tax ~~shall equal~~ equals the tax computed under this section and chapter 805, as if the nonresident were a resident, ~~less applicable tax credits other than that provided by section 5217-A, and~~ multiplied by the ratio of the individual's Maine adjusted gross income, as defined in section 5102, subsection 1-C, paragraph B, to the nonresident's entire federal adjusted gross income, as modified by section 5122.

Sec. B-2. 36 MRSA §5142, sub-§8 is enacted to read:

8. Minimum taxability threshold. Minimum taxability thresholds for nonresidents are as follows.

A. Compensation for personal services performed in Maine is Maine-source income, subject to taxation under this Part, if the nonresident taxpayer is present in Maine performing personal services for more than 20 days during the taxable year and directly earns or derives more than \$6,000 in gross income during the taxable year in Maine from all sources.

B. A nonresident individual who is present for business in Maine on other than a systematic or regular basis, either directly or through agents or employees, has Maine-source income derived from or effectively connected with a trade or business in Maine and subject to taxation under this Part only if the nonresident individual earns or derives more than \$6,000 of gross income during the taxable year from contractual or sales-related activities.

Sec. B-3. 36 MRSA §5200-A, sub-§2, ¶H, as amended by PL 1997, c. 746, §11 and affected by §24, 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 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. B-4. 36 MRSA §5200-A, sub-§2, ¶I, as enacted by PL 1997, c. 746, §12 and affected by §24, is amended to read:

I. For income tax years beginning on or after January 1, 1997, all items of income, gain, interest, dividends, royalties and other income of a financial institution subject to the tax imposed by section 5206, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the financial institution is an S corporation, the taxpayer's pro rata share and, if the financial institution is a partnership or limited liability company, the taxpayer's distributive share. A subtraction may not be made under this paragraph for:

- (1) Income of the taxpayer earned on interest-bearing or similar accounts of the taxpayer at a financial institution as a customer of that financial institution;
- (2) Any dividends or other distributions with respect to a taxpayer's ownership interest in a financial institution; and

(3) Any gain recognized on the disposition by the taxpayer of an ownership interest in a financial institution; and

Sec. B-5. 36 MRSA §5200-A, sub-§2, ¶J is enacted to read:

J. An amount equal to an income tax refund to the taxpayer by this State or another state of the United States that is included in that taxpayer's federal taxable income for the taxable year under the Code, but only to the extent that:

(1) Maine net income is not reduced below zero; and

(2) The amount to be refunded from this State or another state of the United States has not been previously used as a modification pursuant to this subsection.

If this modification amount results in Maine net income that is less than zero for the taxable year, the negative modification amount may be carried back or forward in the same manner as a net operating loss deduction carry-back or carry-forward to a taxable year that is within the allowable federal period for a carry-back or carry-forward, subject to the above limitations.

Sec. B-6. 36 MRSA §5218, as amended by PL 1987, c. 772, §40, is repealed and the following enacted in its place:

§5218. Income tax credit for child care expenses

1. Resident taxpayer. A resident individual is allowed a credit against the tax otherwise due under this Part in the amount of 25% of the federal tax credit allowable for child and dependent care expenses in the same tax year. In no case may this credit reduce the Maine income tax to less than zero.

2. Nonresident or part-year resident taxpayer. A nonresident or part-year resident individual is allowed a credit against the tax otherwise due under this Part in the amount of 25% of the federal tax credit allowable for child and dependent care expenses multiplied by the ratio of the individual's Maine adjusted gross income, as defined in section 5102, subsection 1-C, paragraph B, to the nonresident's entire federal adjusted gross income, as modified by section 5122. In no case may this credit reduce the Maine income tax to less than zero.

Sec. B-7. 36 MRSA §5219-A, as enacted by PL 1987, c. 504, §32, is repealed and the following enacted in its place:

§5219-A. Retirement and disability credit

1. Resident taxpayer. A resident individual is allowed a credit against the tax otherwise due under this Part equal to 20% of any credit the taxpayer received for the same taxable year under the Code, Section 22. In no case may this credit reduce the Maine income tax to less than zero.

2. Nonresident or part-year resident taxpayer. A nonresident or part-year resident individual is allowed a credit against the tax otherwise due under this Part equal to 20% of any credit the individual received for the same taxable year under the Code, Section 22 multiplied by the ratio of the individual's Maine adjusted gross income, as defined in section 5102, subsection 1-C, paragraph B, to the nonresident's entire federal adjusted gross income, as modified by section 5122. In no case may this credit reduce the Maine income tax to less than zero.

Sec. B-8. 36 MRSA §5219-G, as amended by PL 1997, c. 746, §20 and affected by §24, is repealed and the following enacted in its place:

§5219-G. Tax credits for partners, S corporation shareholders and beneficiaries of estates and trusts

1. Tax credits for partners and S corporation shareholders. Each partner of a partnership or shareholder of an S corporation is allowed a credit against the tax imposed by chapter 803 in an amount equal to the partner's or shareholder's pro rata share of the tax credits described in this chapter, except that in the case of credits attributable to a financial institution subject to tax under chapter 819, the credits are allowable only against the tax imposed by that chapter. A partner's pro rata share must equal the partner's percentage interest in the taxable income or loss of the partnership for federal income tax purposes for the taxable year. The pro rata share of a shareholder of an S corporation must equal the shareholder's percentage share of stock of the S corporation as of the end of the taxable year.

2. Tax credits for beneficiaries of estates and trusts. Each beneficiary of an estate or trust is allowed a credit against the tax imposed by this Part in an amount equal to the beneficiary's pro rata share of the tax credits described in this chapter. A beneficiary's pro rata share must equal the beneficiary's share of federal distributable net income of the estate or trust. If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the applicable tax credits is in proportion to that beneficiary's share of the estate or trust income for that year, under local law or the terms of the instrument, which is required to be distributed currently, and any other amounts of income distributed in that year. Any balance of the applicable credits is allocated to the estate or trust.

Sec. B-9. 36 MRSA §5220, sub-§2, as repealed and replaced by PL 1987, c. 819, §11, is amended to read:

2. Nonresident individuals. Every nonresident individual who, pursuant to this Part, has a Maine individual income tax liability for the taxable year, except that an individual who does not exceed the threshold contained in section 5142, subsection 8 is not subject to taxation under this Part and need not file a return.

Sec. B-10. 36 MRSA §5278, sub-§§1 and 2, as enacted by P&SL 1969, c. 154, §F, are amended to read:

1. General. A claim for credit or refund of an overpayment of any tax imposed by this Part ~~shall~~ must be filed by the taxpayer within 3 years from the time the return was filed, whether or not the return was timely filed, or 2 3 years from the time the tax was paid, whichever of such periods expires the later; ~~or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.~~ No ~~A~~ credit or refund ~~shall be~~ is not allowed or may not be made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such a period.

2. Limit on amount of claim or refund. If the claim is filed by the taxpayer during the 3-year period prescribed in subsection 1, the amount of the credit or refund ~~shall~~ may not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. ~~If the claim is not filed within such 3-year period, but is filed within the 2-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.~~ If no claim is filed, ~~the any credit or refund shall~~ allowed upon an audit of the taxpayer may not exceed the amount ~~which that~~ would be allowable under ~~either of the preceding sentences, as the case may be, if a claim was filed this subsection, if a claim had been filed by the taxpayer on the date the credit or refund is allowed.~~

Sec. B-11. Application. This Part applies to tax years beginning on or after January 1, 1996.

PART C

Sec. C-1. 36 MRSA §2525, sub-§1, as enacted by PL 1989, c. 556, Pt. B, §6, is amended to read:

1. Credit. A taxpayer under this chapter constituting an employing unit is allowed a credit against the tax imposed by this chapter for each taxable year that

begins on or after July 10, 1989 and before January 1, 2000 equal to the lowest of the following:

- A. Five thousand dollars;
- B. Twenty percent of the costs incurred by the taxpayer in providing long-term care policy coverage as part of a benefit package; or
- C. One hundred dollars for each employee covered by an employer-provided long-term care policy.

Sec. C-2. 36 MRSA §2525-A is enacted to read:

§2525-A. Employer-provided long-term care benefits on and after January 1, 2000

1. Credit. A taxpayer under this chapter constituting an employing unit is allowed a credit against the tax imposed by this chapter for each taxable year that begins on or after January 1, 2000 equal to the lowest of the following:

- A. Five thousand dollars;
- B. Twenty percent of the costs incurred by the taxpayer in providing qualified long-term care insurance contract coverage as part of a benefit package; or
- C. One hundred dollars for each employee covered by an employer-provided long-term care insurance contract.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Employing unit" has the same meaning as in Title 26, section 1043.
- B. "Qualified long-term care insurance contract" means a qualified long-term care insurance contract as defined in the Code, Section 7702B(b).

3. Limitation. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of tax otherwise due under this chapter. Any unused credit may be carried over to the following year or years for a period not to exceed 15 years.

Sec. C-3. 36 MRSA §5122, sub-§2, ¶G, as amended by PL 1995, c. 639, §15, is further amended to read:

G. For income tax years commencing on or after January 1, 1989 and before January 1, 2000, an amount equal to the total premiums spent for insurance policies for long-term care that have

been certified by the Superintendent of Insurance as complying with Title 24-A, chapter 68;

Sec. C-4. 36 MRSA §5122, sub-§2, ¶J, as corrected by RR 1997, c. 2, §59, is amended 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; ~~and~~

Sec. C-5. 36 MRSA §5122, sub-§2, ¶K, as reallocated by RR 1997, c. 2, §60 and affected by §61, is amended to read:

K. For income tax years beginning on or after January 1, 1997, all items of income, gain, interest, dividends, royalties and other income of a financial institution subject to the tax imposed by section 5206, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the financial institution is an S corporation, the taxpayer's pro rata share and, if the financial institution is a partnership or limited liability company, the taxpayer's distributive share. A subtraction may not be made under this paragraph for:

- (1) Income of the taxpayer earned on interest-bearing or similar accounts of the taxpayer at a financial institution as a customer of that financial institution;
- (2) Any dividends or other distributions with respect to a taxpayer's ownership interest in a financial institution; and
- (3) Any gain recognized on the disposition by the taxpayer of an ownership interest in a financial institution; and

Sec. C-6. 36 MRSA §5122, sub-§2, ¶L is enacted to read:

L. For income tax years beginning on or after January 1, 2000, an amount equal to the total premiums spent for qualified long-term care insurance contracts as defined in the Code, Section 7702B(b), as long as the amount subtracted is reduced by the long-term care premiums claimed as an itemized deduction pursuant to Section 5125.

Sec. C-7. 36 MRSA §5217-B, sub-§1, as enacted by PL 1989, c. 556, Pt. B, §11, is amended to read:

1. Credit. A taxpayer constituting an employing unit is allowed a credit against the tax imposed by this Part for each taxable year that begins on or after July 10, 1989 and before January 1, 2000 equal to the lowest of the following:

- A. Five thousand dollars;
- B. Twenty percent of the costs incurred by the taxpayer in providing long-term care policy coverage as part of a benefit package; or
- C. One hundred dollars for each employee covered by an employer-provided long-term care policy.

Sec. C-8. 36 MRSA §5217-C is enacted to read:

§5217-C. Employer-provided long-term care benefits on and after January 1, 2000

1. Credit. A taxpayer constituting an employing unit is allowed a credit against the tax imposed by this Part for each taxable year that begins on or after January 1, 2000 equal to the lowest of the following:

- A. Five thousand dollars;
- B. Twenty percent of the costs incurred by the taxpayer in providing qualified long-term care insurance contract coverage as part of a benefit package; or
- C. One hundred dollars for each employee covered by an employer-provided long-term care insurance contract.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Employing unit" has the same meaning as in Title 26, section 1043.
- B. "Qualified long-term care insurance contract" means a qualified long-term care insurance contract as defined in the Code, Section 7702B(b).

3. Limitation. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of tax otherwise due under this Part. Any unused credit may be carried over to the following year or years for a period not to exceed 15 years.

Sec. C-9. Application. Notwithstanding the provisions of this Part, a taxpayer who purchased a long-term care policy prior to the effective date of this Act that was certified by the Bureau of Insurance as deductible for Maine income tax purposes may continue to deduct the premiums for the certified policy to the same extent as was allowed prior to the enactment of this Act, as long as the amount subtracted is reduced by the long-term care premiums

claimed as an itemized deduction pursuant to the Maine Revised Statutes, Title 36, section 5125.

See title page for effective date.

CHAPTER 522

H.P. 1255 - L.D. 1809

An Act to Increase Access to Cub Care for Children

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

Sec. 1. 22 MRSA §3174-T, sub-§11, as enacted by PL 1999, c. 401, Pt. QQ, §2 and as affected by §5, is repealed and the following enacted in its place:

11. Cub Care drug rebate program. Effective October 1, 1999, the department shall enter into a drug rebate agreement with each manufacturer of prescription drugs that results in a rebate equal to that which would be achieved under the federal Social Security Act, Section 1927. These rebate agreements do not include the additional 6 percentage points required under section 3174-R.

See title page for effective date.

CHAPTER 523

S.P. 450 - L.D. 1325

An Act to Provide Fairness to Victims of Medical Malpractice

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

Sec. 1. 24 MRSA §2853, sub-§4, as amended by PL 1995, c. 571, §1, is further amended to read:

4. Filing of records; time for hearing; extensions. Within 20 days of entry of appearance, the person or persons accused shall contact the claimant's counsel and by agreement shall designate a timetable for filing all the relevant medical and provider records necessary to a determination of the panel and for completing discovery. If the parties are unable to agree on a timetable within 60 days of the entry of appearance, the claimant shall notify the chair of the panel. The chair shall then establish a timetable for the filing of all relevant records and reasonable discovery, which must be filed at least 30 days before any hearing date. Depositions of persons other than the parties and the experts designated by the parties

may not be taken except as permitted by the chair upon the request of a party. The hearing may not be later than 6 months from the service of the notice of claim upon the clerk, except when the time period has been extended by the panel chair in accordance with this subchapter.

Sec. 2. 24 MRSA §2854, as amended by PL 1989, c. 361, §§7 and 10, is further amended to read:

§2854. Hearing

1. Procedure. The claimant or a representative of the claimant shall present the case before the panel. The person accused of professional negligence or ~~his~~ that person's representative shall make a responding presentation. Wide latitude ~~shall~~ must be afforded the parties by the panel in the conduct of the hearing including, but not limited to, the right of examination and cross-examination by attorneys. Depositions are admissible whether or not the person deposed is available at the hearing. The ~~chairman~~ chair shall make all procedural rulings and ~~his~~ those rulings ~~shall~~ be final. ~~A tape recorded record shall be maintained by the panel for its purpose only. The record shall be maintained until 30 days after its decision and then destroyed pursuant to section 2856. The record shall not be made public and the hearings are not to be public without the consent of both or all parties.~~ The Maine Rules of Evidence ~~shall~~ do not apply. Evidence ~~shall~~ must be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The panel shall make such findings upon such evidence as is presented at the hearing, the records and any expert opinions provided by or sought by the panel or the parties.

After presentation by the parties, as provided in this section, the panel may request from either party additional facts, records or other information to be submitted in writing or at a continued hearing, which continued hearing ~~shall~~ must be held as soon as possible. The continued hearings ~~shall~~ must be attended by the same members of the panel who have sat on all prior hearings in the same claim, unless otherwise agreed by all parties.

1-A. Record; hearings. The panel shall maintain a tape recorded record. Except as provided in section 2857, the record may not be made public and the hearings may not be public without the consent of both or all parties.

2. Settlement; mediation. The ~~chairman~~ chair of the panel shall attempt to mediate any differences of the parties before proceeding to findings.

3. Failure to comply. Failure of a party, without good cause, to attend a properly scheduled hearing to participate in authorized discovery, or to otherwise substantially comply with this subchapter, ~~shall~~ must