

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1902

S.P. 678

In Senate, June 20, 1997

An Act to Amend the Filing Date Provision in the Maine Residents Property Tax Program, to Provide an Application Clause for Certain Provisions of Law Relating to Computer Software, to Clarify Provisions of Law Regarding Transfers of Money from the Tax Relief Fund for Maine Residents to the General Fund and to Correct Certain Provisions in Recently Enacted Legislation.

(EMERGENCY)

Reference to the Committee on Appropriations and Financial Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MICHAUD of Penobscot. (GOVERNOR'S BILL).
Cosponsored by Representative: SAXL of Portland.

2 **Emergency preamble. Whereas,** Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 **Whereas,** delay in making certain changes to the tax laws and
6 to Public Law 1997, chapter 557 would interfere with
administration of the tax laws; and

8 **Whereas,** legislative action is immediately necessary in
10 order to ensure continued and efficient administration of the tax
laws; and

12 **Whereas,** the 90-day period will not terminate until after
14 July 1, 1997, the beginning of the next fiscal year; and

16 **Whereas,** certain obligations and expenses will become due
and payable prior to July 1, 1997; and

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

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

26 **PART A**

28 **Sec. A-1. 36 MRSA §6204,** as amended by PL 1997, c. 557, Pt.
30 A, §2 and affected by Pt. G, §1, is further amended to read:

32 **§6204. Filing date**

34 A claim may not be paid unless the claim is filed with the
Bureau of Taxation on or after ~~October~~ August 1st and on or
36 before the following January 31st.

38 **Sec. A-2. PL 1997, c. 557, Pt. A, §5** is repealed.

40 **PART B**

42 **Sec. B-1. PL 1997, c. 557, Pt. B, §13** is repealed and the
44 following enacted in its place:

46 **Sec. B-13. Transfer of funds. The State Controller shall**
48 transfer from the Tax Relief Fund for Maine Residents to the
General Fund \$434,232 in fiscal year 1997-98 and \$2,195,280 in
50 fiscal year 1998-99 to offset the revenue loss associated with
the credits and exemptions established in this Part.

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Sec. B-2. PL 1997, c. 557, Pt. B, §14 is enacted to read:

Sec. B-14. Application. Those sections of this Part that enact the Maine Revised Statutes, Title 36, section 1752, subsection 1-E; amend Title 36, section 1752, subsection 17; and repeal Title 36, section 1752, subsection 17-A, paragraph F apply to transactions occurring on or after October 1, 1997. That section of this Part that enacts Title 36, sections 5219-L and 5219-M applies to tax years beginning on or after January 1, 1998.

Sec. B-3. PL 1997, c. 557, Pt. D, §3 is repealed and the following enacted in its place:

Sec. D-3. Transfer of funds. The State Controller shall transfer from the Tax Relief Fund for Maine Residents to the General Fund \$44,698 in fiscal year 1997-98 and \$74,022 in fiscal year 1998-99 to offset the revenue loss associated with the sales tax exemption established in this Part.

Sec. B-4. PL 1997, c. 557, Pt. D, §4 is enacted to read:

Sec. D-4. Application. This Part applies to transactions occurring on or after October 1, 1997.

Sec. B-5. PL 1997, c. 557, Pt. E, §3 is repealed and the following enacted in its place:

Sec. E-3. Transfer of funds. The State Controller shall transfer from the Tax Relief Fund for Maine Residents to the General Fund \$1,400,724 in fiscal year 1997-98 and \$982,215 in fiscal year 1998-99 to offset the revenue loss associated with the income tax credit established in this Part.

PART C

Sec.C-1. PL 1997, c. 395, as enacted, is amended by repealing the emergency clause and inserting in its place the following:

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

Sec. C-2. PL 1997, c. 556, §§1, 2, and 4, as enacted, are repealed.

2 involving licenses issued pursuant to section 1551-A are within
the jurisdiction of the Administrative Court pursuant to section
1557, subsection 1.

4
6 **Sec. D-5. 24-A MRSA §6804, sub-§1**, as enacted by PL 1997, c.
430, §1 and affected by §2, is amended to read:

8 **1. Superintendent's authority.** The superintendent may
deny, suspend, revoke or refuse to renew the license of a
10 viatical settlement provider if the superintendent finds just
cause to do so, which may include, but is not limited to, a
12 finding that:

14 A. There was any material misrepresentation in the
application for the license or other information submitted
16 to the superintendent;

18 B. The licensee or any officer, partner or key management
personnel of the licensee has been convicted of fraudulent
20 or dishonest practices, is subject to a final administrative
action to suspend or revoke a viatical license or is
22 otherwise shown to be untrustworthy or incompetent to act as
a viatical settlement provider or viatical settlement broker;

24 C. The licensee as a viatical settlement provider
26 demonstrates unreasonable payments to viators;

28 D. The licensee or any officer, partner or key management
personnel of the licensee has been convicted of any felony
30 of which criminal fraud is an element; or

32 E. The licensee has violated any of the provisions of this
chapter or any rules adopted pursuant to this chapter.

34
36 **Sec. D-6. 30-A MRSA §371-B**, as enacted by PL 1997, c. 37, §1
and c. 87, §1, is repealed and the following enacted in its place:

38 **§371-B. Selection; qualifications**

40 **1. Manner of election or appointment.** Sheriffs are elected
or appointed and hold their offices according to the Constitution
42 of Maine. Their election must be conducted and determined as is
provided for county commissioners. Sheriffs take office on the
44 first day of January following their election.

46 **2. Filling vacancies.** Vacancies in the office of sheriff
caused by death, resignation, removal from the county, permanent
48 incapacity or any other reason must be filled as provided in the
Constitution of Maine. In the case of a vacancy in the term of a

2 sheriff who was nominated by primary election before the general
4 election the sheriff appointed by the Governor to fill the
6 vacancy until a successor is chosen at election must be enrolled
8 in the same political party as the sheriff whose term is vacant.
10 In making the appointment, the Governor shall choose from any
12 recommendations submitted to the Governor by the county committee
14 of the political party from which the appointment is made.

16 3. Minimum qualifications for officers. A person may not
18 be appointed to the office of sheriff, be a candidate for
20 election to the office of sheriff or serve as sheriff of any
22 county in the State unless the candidate meets the following
24 qualifications:

26 A. The candidate swears to or affirms the Law Enforcement
28 Code of Ethics;

30 B. The candidate has never been convicted of a Class C or
32 higher crime;

34 C. The candidate applies to the Secretary of State for a
36 criminal background investigation; and

38 D. The candidate submits written certification from the
40 Maine Criminal Justice Academy that the candidate has
42 acquired the minimum college credits in required courses,
44 training hours and years of experience, or combination
46 thereof, to qualify for an executive certificate under
48 academy standards.

30 4. Exception. Any person who is serving or who has
32 previously served in the office of sheriff on the effective date
34 of this section is deemed to meet the minimum qualifications of
36 subsection 3.

38 **Sec. D-7. PL 1997, c. 347, §1 is repealed.**

40 **Sec. D-8. PL 1997, c. 554, §2, sub-§8 is amended to read:**

42 **8. Report.** The task force shall prepare and submit a
44 report, including any necessary implementing legislation, to the
46 Governor, the Chief Justice of the Supreme Judicial Court, the
Executive Director of the Legislative Council and the Joint
Standing Committee on State and Local Government by January 1,
1998 to be submitted to the ~~First~~ Second Regular Session of the
~~119th~~ 118th Legislature.

48 **Sec. D-9. Resolve 1997, c. 74, §2, sub-§5 is amended to read:**

2 5. Two representatives of the Maine School Management
3 Superintendents' Association, one of whom is a member of the
4 ~~cooperative--board~~ superintendents' advisory committee of an
5 applied technology region and one who oversees an applied
6 technology center, appointed by the President of the Maine School
7 Management Superintendents' Association;

8 **Sec. D-10. Effective date.** That section of this Act that amends
9 Title 24-A, section 6804, subsection 1 takes effect October 1,
10 1997.

11 **Sec. D-11. Effective date.** Except as otherwise provided, this
12 Part takes effect 90 days after adjournment of the First Special
13 Session of the 118th Legislature.

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

17 18 19 FISCAL NOTE

20 This bill makes technical corrections that will affect the
21 implementation of Public Law 1997, chapter 395 (LD 1138), Public
22 Law 1997, chapter 556 (LD 1854) and Public Law 1997, chapter 557
23 (LD 1897) so as to align the fiscal impact of those bills with
24 the assumed revenue and expenditure estimates associated with
25 those bills.

26 27 SUMMARY

28 Parts A and B of this bill amend the filing date provision
29 in the Maine Residents Property Tax Program; provide an
30 application clause for certain provisions of law relating to the
31 taxation of computer software, certain biotechnology products and
32 investments in certain high-technology activities; and clarify
33 provisions of law regarding transfers of money from the Tax
34 Relief Fund for Maine Residents to the General Fund.

35 Part C of this bill does the following:

36 1. It changes the effective date of Public Law 1997,
37 chapter 395 to have the supplemental fiscal year 1997
38 appropriations take effect when approved by the Governor; and

39 2. It repeals unintended provisions in Public Law 1997,
40 chapter 556 that reduced the share of unappropriated surplus
41 going into the Maine Rainy Day Fund and the Retirement Allowance
42 Fund.

Part D does the following:

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Section 1 revises the number of members of the Commission on Governmental Ethics and Election Practices necessary to close a commission meeting to the public. Prior to public approval of Initiated Bill 5, L.D. 1823 of the 117th Legislature, the commission consisted of 9 members. L.D. 1823 reduced the size of the commission to 5 members, but did not amend the number of commission members necessary to close a commission meeting to the public. The current law requires the affirmative vote of at least 6 members to close the meeting. This section of the bill reduces that number to 3.

Section 2 amends the statute governing "free fishing days." The Joint Standing Committee on Inland Fisheries and Wildlife voted to make the Saturday and Sunday immediately preceding President's Day free fishing days. Due to a clerical error, only the Sunday immediately preceding President's Day was enacted into law as a free fishing day. This section of the bill makes the Saturday immediately preceding President's Day a free fishing day also.

Sections 3 and 4 correct errors in Public Law 1997, chapter 305, governing tobacco sales to minors. In rewriting the law, the committee amendment inadvertently omitted language prohibiting possession of tobacco products by minors. Section 3 corrects that omission. Section 4 corrects a reference to the courts in which complaints alleging civil violations of the tobacco restrictions must be filed. Chapter 305 listed only the District Court when, in fact, most if not all complaints are handled by the Administrative Court. Section 4 allows complaints regarding civil violations to be filed in either the Administrative Court or the District Court.

Section 5 corrects a clerical error in the Viatical Settlements Act. The Maine Revised Statutes, Title 24-A, section 6804 authorizes the Superintendent of Insurance to deny, suspend, revoke or refuse to renew the license of a viatical settlement when, in fact, it is viatical settlement providers who are subject to licensure. This section inserts the word "provider" to carry out the intent of the Act. Section 10 makes the correction effective on the day the Viatical Settlement Act takes effect.

Section 6 corrects a conflict created by 2 public law chapters enacting the same new section number. Public Law 1997, chapter 37 establishes procedures for filling vacancies in the office of sheriff. Public Law 1997, chapter 87 specifies that if the sheriff who is leaving was nominated by a primary election before the general election, the Governor must appoint a member

2 of that same political party to fill the vacancy. This section
3 repeals both new sections and enacts a new one that combines the
4 language of both.

6 Section 7 corrects an inadvertent error created when the
7 committee amendment to LD 177 struck out section 1 but not
8 section 2 of the original bill as intended by the Joint Standing
9 Committee on Labor. The result is that minors who are 14 years
10 of age can still work in restaurants, which section 1 of the bill
11 would have prohibited, but are prohibited from working in frozen
12 dairy product establishments, which section 2 of the bill
13 prohibits. This section corrects the law to allow minors who are
14 14 years of age to continue to work in frozen dairy product
15 establishments.

16 Section 8 corrects the reporting requirements of the Task
17 Force on Information Technology in the Public Sector. The
18 committee amendment established a reporting date of November 15,
19 1998, with the recommendations to be submitted to the First
20 Regular Session of the 119th Legislature. Senate Amendment "A"
21 to Committee Amendment "A" changed the reporting date to January
22 1, 1998, but did not change the Legislature that would be
23 receiving the recommendations. This section revises the language
24 to require that the task force's recommendations be submitted to
25 the Second Regular Session of the 118th Legislature.

26 Section 9 corrects an inadvertent error that occurred in
27 establishing the Task Force to Review the Applied Technology
28 Centers and Applied Technology Regions. Resolve 1997, chapter 74
29 includes 2 representatives of the Maine School Management
30 Association. The organization intended to be represented is the
31 Maine School Superintendents' Association, a subset of the Maine
32 School Management Association. In addition, Resolve 1997,
33 chapter 74 requires one of those representatives to be a member
34 of the cooperative board of an applied technology region; the
35 intended designation is a member of the superintendents' advisory
36 committee of an applied technology region. This section makes
37 those corrections.
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