

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1253

H.P. 887

House of Representatives, March 27, 2013

An Act To Allow Tribal Members a Choice of Venue

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BEAR of the Houlton Band of Maliseet Indians.

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

2 **Sec. 1. 4 MRSA §105, sub-§2**, as enacted by PL 1999, c. 731, Pt. ZZZ, §3 and
3 affected by §42, is amended to read:

4 **2. Exceptions to Superior Court's exclusive jurisdiction.** The Superior Court does
5 not have exclusive jurisdiction over matters for which:

6 A. Concurrent or exclusive jurisdiction is vested in the District Court; ~~or~~

7 B. Concurrent jurisdiction is vested in the Supreme Judicial Court as provided in
8 Title 14, section 5301-; or

9 C. Concurrent jurisdiction is vested in a tribal court as provided in Title 30, chapter
10 601.

11 **Sec. 2. 4 MRSA §152**, as amended by PL 2011, c. 542, Pt. A, §1; c. 614, §1; and
12 c. 682, §38, is further amended by adding at the end a new paragraph to read:

13 Notwithstanding the designation of exclusive jurisdiction in this section, the District
14 Court has concurrent jurisdiction with the tribal court as provided in Title 30, chapter
15 601.

16 **Sec. 3. 30 MRSA §6209-A, sub-§2-A** is enacted to read:

17 **2-A. Concurrent jurisdiction.** The Passamaquoddy Tribe has concurrent
18 jurisdiction with the State over all criminal and civil actions as set out in this subsection
19 in which the defendant is a member of the Passamaquoddy Tribe, the Penobscot Nation
20 or the Houlton Band of Maliseet Indians, other than actions in which the Passamaquoddy
21 Tribe has exclusive jurisdiction as provided in this section. If a criminal or juvenile
22 action is commenced in state court, at the time of the first appearance for the criminal or
23 juvenile action the defendant or juvenile may move the action to the Passamaquoddy
24 Tribal Court by filing a motion to transfer the action. If a civil action is commenced in
25 state court, the defendant may move the action to the Passamaquoddy Tribal Court by
26 filing a motion at the first appearance or in the first filing by the defendant, whichever
27 occurs first; both parties must agree in order for the civil action to be moved to the
28 Passamaquoddy Tribal Court. If an action is commenced in the Passamaquoddy Tribal
29 Court, the defendant may move the action to the state court by filing a motion to transfer
30 the action at the time of the first appearance for a criminal or juvenile action and at the
31 first appearance or in the first filing made by the defendant, whichever occurs first, for a
32 civil action. The Passamaquoddy Tribe has concurrent jurisdiction with the State over:

33 A. Criminal offenses for which the maximum potential term of imprisonment is less
34 than one year and the maximum potential fine does not exceed \$5,000 and that are
35 committed by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet
36 Indians or the Penobscot Nation;

37 B. Juvenile crimes against a person or property involving conduct that, if committed
38 by an adult, would fall within the jurisdiction under paragraph A, and juvenile
39 crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C.

1 committed by a juvenile member of the Passamaquoddy Tribe, the Houlton Band of
2 Maliseet Indians or the Penobscot Nation;

3 C. Civil actions between members of the Passamaquoddy Tribe, the Houlton Band of
4 Maliseet Indians or the Penobscot Nation cognizable as small claims under the laws
5 of the State, and civil actions against a member of the Passamaquoddy Tribe, the
6 Houlton Band of Maliseet Indians or the Penobscot Nation under Title 22, section
7 2383;

8 D. Indian child custody proceedings to the extent authorized by applicable federal
9 law; and

10 E. Domestic relations matters, including marriage, divorce and support, between
11 members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the
12 Penobscot Nation.

13 The governing body of the Passamaquoddy Tribe shall decide whether to exercise or
14 terminate the exercise of the concurrent jurisdiction authorized by this subsection. If the
15 Passamaquoddy Tribe chooses not to exercise, or chooses to terminate its exercise of,
16 jurisdiction over the criminal, juvenile, civil and domestic matters described in this
17 subsection, the State has exclusive jurisdiction over those matters. All laws of the State
18 relating to criminal offenses and juvenile crimes apply.

19 **Sec. 4. 30 MRSA §6209-B, sub-§1, ¶B**, as corrected by RR 2009, c. 1, §19, is
20 amended to read:

21 B. Juvenile crimes against a person or property involving conduct that, if committed
22 by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation
23 under paragraph A, and juvenile crimes, as defined in Title 15, section 3103,
24 subsection 1, paragraphs B and C, committed by a juvenile member of ~~either~~ the
25 Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation
26 on the Indian reservation of the Penobscot Nation;

27 **Sec. 5. 30 MRSA §6209-B, sub-§1, ¶¶C and E**, as enacted by PL 1995, c. 388,
28 §6 and affected by §8, are amended to read:

29 C. Civil actions between members of ~~either~~ the Passamaquoddy Tribe, the Houlton
30 Band of Maliseet Indians or the Penobscot Nation arising on the Indian reservation of
31 the Penobscot Nation and cognizable as small claims under the laws of the State, and
32 civil actions against a member of either the Passamaquoddy Tribe, the Houlton Band
33 of Maliseet Indians or the Penobscot Nation under Title 22, section 2383 involving
34 conduct on the Indian reservation of the Penobscot Nation by a member of either the
35 Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot
36 Nation;

37 E. ~~Other domestic~~ Domestic relations matters, including marriage, divorce and
38 support, between members of ~~either~~ the Passamaquoddy Tribe, the Houlton Band of
39 Maliseet Indians or the Penobscot Nation, both of whom reside on the Indian
40 reservation of the Penobscot Nation.

41 **Sec. 6. 30 MRSA §6209-B, sub-§2-A** is enacted to read:

1 **2-A. Concurrent jurisdiction.** The Penobscot Nation has concurrent jurisdiction
2 with the State over all criminal and civil actions as set out in this subsection in which the
3 defendant is a member of any federally recognized Indian tribe, nation, band or other
4 group, other than actions in which the Penobscot Nation has exclusive jurisdiction as
5 provided in this section. If a criminal or juvenile action is commenced in state court, at
6 the time of the first appearance for the criminal or juvenile action the defendant or
7 juvenile may move the action to the Penobscot Tribal Court by filing a motion to transfer
8 the action. If a civil action is commenced in state court, the defendant may move the
9 action to the Penobscot Tribal Court by filing a motion at the first appearance or in the
10 first filing by the defendant, whichever occurs first; both parties must agree in order for
11 the civil action to be moved to the Penobscot Tribal Court. If an action is commenced in
12 the Penobscot Tribal Court, the defendant may move the action to the state court by filing
13 a motion to transfer the action at the time of the first appearance for a criminal or juvenile
14 action and at the first appearance or in the first filing made by the defendant, whichever
15 occurs first, for a civil action. The Penobscot Nation has concurrent jurisdiction with the
16 State over:

17 A. Criminal offenses for which the maximum potential term of imprisonment does
18 not exceed one year and the maximum potential fine does not exceed \$5,000 and that
19 are committed by a member of any federally recognized Indian tribe, nation, band or
20 other group;

21 B. Juvenile crimes against a person or property involving conduct that, if committed
22 by an adult, would fall within the jurisdiction of the Penobscot Nation under
23 paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1,
24 paragraphs B and C, committed by a juvenile member of the Houlton Band of
25 Maliseet Indians, the Passamaquoddy Tribe or the Penobscot Nation;

26 C. Civil actions between members of the Houlton Band of Maliseet Indians, the
27 Passamaquoddy Tribe or the Penobscot Nation cognizable as small claims under the
28 laws of the State, and civil actions against a member of the Houlton Band of Maliseet
29 Indians, the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section
30 2383;

31 D. Indian child custody proceedings to the extent authorized by applicable federal
32 law; and

33 E. Domestic relations matters, including marriage, divorce and support, between
34 members of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe or the
35 Penobscot Nation.

36 The governing body of the Penobscot Nation shall decide whether to exercise or
37 terminate the exercise of the concurrent jurisdiction authorized by this subsection. If the
38 Penobscot Nation chooses not to exercise, or chooses to terminate its exercise of,
39 jurisdiction over the criminal, juvenile, civil and domestic matters described in this
40 subsection, the State has exclusive jurisdiction over those matters. All laws of the State
41 relating to criminal offenses and juvenile crimes apply.

42 **Sec. 7. 30 MRSA §6209-C, sub-§2-A** is enacted to read:

1 **2-A. Concurrent jurisdiction.** The Houlton Band of Maliseet Indians has
2 concurrent jurisdiction with the State over all criminal and civil actions as set out in this
3 subsection in which the defendant is a member of any federally recognized Indian tribe,
4 nation, band or other group, other than actions in which the Houlton Band of Maliseet
5 Indians has exclusive jurisdiction as provided in this section. If a criminal or juvenile
6 action is commenced in state court, at the time of the first appearance for a criminal or
7 juvenile action the defendant or juvenile may move the action to the Houlton Band of
8 Maliseet Indians Tribal Court by filing a motion to transfer the action. If a civil action is
9 commenced in state court, the defendant may move the action to the Houlton Band of
10 Maliseet Indians Tribal Court by filing a motion at the first appearance or in the first
11 filing by the defendant, whichever occurs first; both parties must agree in order for the
12 civil action to be moved to the Houlton Band of Maliseet Indians Tribal Court. If an
13 action is commenced in the Houlton Band of Maliseet Indians Tribal Court, the defendant
14 may move the action to the state court by filing a motion to transfer the action at the time
15 of the first appearance for a criminal or juvenile action and at the first appearance or in
16 the first filing made by the defendant, whichever occurs first, for a civil action. The
17 Houlton Band of Maliseet Indians has concurrent jurisdiction with the State over:

18 A. Criminal offenses for which the maximum potential term of imprisonment does
19 not exceed one year and the maximum potential fine does not exceed \$5,000 and that
20 are committed by a member of any federally recognized Indian tribe, nation, band or
21 other group;

22 B. Juvenile crimes against a person or property involving conduct that, if committed
23 by an adult, would fall within the jurisdiction of the Houlton Band of Maliseet
24 Indians under paragraph A, and juvenile crimes, as defined in Title 15, section 3103,
25 subsection 1, paragraphs B and C, committed by a juvenile member of the Houlton
26 Band of Maliseet Indians, the Passamaquoddy Tribe or the Penobscot Nation;

27 C. Civil actions between members of the Houlton Band of Maliseet Indians, the
28 Passamaquoddy Tribe or the Penobscot Nation cognizable as small claims under the
29 laws of the State, and civil actions against a member of the Houlton Band of Maliseet
30 Indians, the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section
31 2383;

32 D. Indian child custody proceedings to the extent authorized by applicable federal
33 law; and

34 E. Domestic relations matters, including marriage, divorce and support, between
35 members of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe or the
36 Penobscot Nation.

37 The governing body of the Houlton Band of Maliseet Indians shall decide whether to
38 exercise or terminate the exercise of the concurrent jurisdiction authorized by this
39 subsection. If the Houlton Band of Maliseet Indians chooses not to exercise, or chooses
40 to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic
41 matters described in this subsection, the State has exclusive jurisdiction over those
42 matters. All laws of the State relating to criminal offenses and juvenile crimes apply.

43 **Sec. 8. Contingent effective date.** This Act takes effect October 1, 2013 only if,
44 within 90 days after the adjournment of the First Regular Session of the 126th

1 Legislature, the Secretary of State receives written certification from the Houlton Band
2 Council of the Houlton Band of Maliseet Indians that the band has agreed to the
3 provisions of this Act, written certification from the Joint Tribal Council of the
4 Passamaquoddy Tribe that the tribe has agreed to the provisions of this Act and written
5 certification from the Governor and the Council of the Penobscot Nation that the nation
6 has agreed to the provisions of this Act pursuant to 25 United States Code, Section
7 1725(e), copies of which must be submitted by the Secretary of State to the Secretary of
8 the Senate, the Clerk of the House and the Revisor of Statutes.

9

SUMMARY

10 This bill provides that the jurisdiction over certain tribal members in civil and
11 criminal actions is shared concurrently by the state courts and the tribal courts of the
12 Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians.
13 An eligible defendant may move the action from the state court to the tribal court or from
14 the tribal court to the state court at the beginning of the action. Both parties in a civil
15 action must agree to transfer the action from the state court to the tribal court.

16 This bill also provides for consistent jurisdiction in the Penobscot Tribal Court over
17 certain actions involving members of the Passamaquoddy Tribe, the Houlton Band of
18 Maliseet Indians and the Penobscot Nation.

19 This legislation takes effect only if the Passamaquoddy Tribe, the Penobscot Nation
20 and the Houlton Band of Maliseet Indians certify their approval.