

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

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

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

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the State, appointed by the Governor. One public member shall be chosen from each Congressional District and one public member shall be appointed at large. The appointments shall be for 4 years.

Sec. 4. 12 MRSA §6251-A, sub-§3, as enacted by PL 1985, c. 481, Pt. A, §39, is amended to read:

3. Compensation. The appointed public member members shall be compensated as provided in Title 5, chapter 379.

Sec. 5. 12 MRSA §6251-A, sub-§5, as enacted by PL 1985, c. 481, Pt. A, §39, is amended to read:

5. Meetings. Except as otherwise provided in this section, the commission shall conduct its business in public meetings, from time to time called by the chairman, in accordance with Title 1, sections 401 to 406. Decisions of the commission require at least 2 3 affirmative votes. The commission may delegate to any of its members or to its staff any routine business as it deems necessary to carry out its purposes.

Sec. 6. 12 MRSA §6251-A, sub-§7 is enacted to read:

7. Transition. For the purposes of transition, initial terms for the additional public members shall be one member for 2 years and one member for 3 years.

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

Effective June 30, 1987.

CHAPTER 527

H.P. 581 — L.D. 779

AN ACT to Enhance Higher Educational Opportunities.

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

Whereas, the cost of post-secondary education is escalating at a rapid pace; and

Whereas, the trend in available financial aid is toward loan programs and away from grants and scholarship assistance; and

Whereas, these trends are forcing Maine students to rely more heavily on borrowing to finance their post-secondary education; and

Whereas, these trends may also be discouraging some students from pursuing post-secondary study and may be influencing the course of study and career selection of those who do attend; and

Whereas, it is in the best interests of the State to encourage as many students as possible to pursue post-secondary study and to provide a broad range of career options to those who do so; 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. 5 MRSA §12004, sub-§7, ¶A, sub-¶(11) is enacted to read:

(11) Board of Directors, \$50/day 20-A MRSA §12610
Student Educational Enhancement Deposit Plan

Sec. 2. 20-A MRSA c. 430 is enacted to read:

CHAPTER 430

STUDENT EDUCATIONAL ENHANCEMENT DEPOSIT ACT

§12601. Student Educational Enhancement Deposit Act

This chapter shall be known and may be cited as the "Student Educational Enhancement Deposit Act."

§12602. Definitions

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

1. Advance tuition payment contract. "Advance tuition payment contract" means a contract entered into by the plan and a purchaser pursuant to this Act to provide for the higher education of a qualified beneficiary.

2. Accredited institution. "Accredited institution" means any nationally accredited 2-year or 4-year institution of higher education.

3. Board. "Board" means the Board of Directors of the Student Educational Enhancement Deposit Plan described in section 12610.

4. Fund. "Fund" means the Advance Tuition Payment Fund created in section 12609.

5. Plan. "Plan" means the Student Educational Enhancement Deposit Plan created in section 12603.

6. Purchaser. "Purchaser" means a person who makes or is obligated to make advance tuition payments pursuant to an advance tuition payment contract.

7. Qualified beneficiary. "Qualified beneficiary" means any person who is a resident of this State at the

time the contract is entered into.

8. Settlement sum. "Settlement sum" means the sum of money the purchaser is entitled to at the termination of the advance tuition payment contract.

9. State institution of higher education. "State institution of higher education" means a college or university described in Private and Special Law 1865, chapter 532, or any 2-year or 4-year degree-granting institution established by the State after the effective date of this Act, which institution is designated by the State as a state institution of higher education for purposes of this Act.

§12603. Student Educational Enhancement Deposit Plan

1. Student Educational Enhancement Deposit Plan. There is created a public body corporate and politic to be known as the Student Educational Enhancement Deposit Plan. The plan shall be within the State Treasury, but shall exercise its prescribed statutory powers, duties and functions independently of the Treasurer of State.

2. Powers and duties. The powers and duties of the Student Educational Enhancement Deposit Plan are vested in and shall be exercised by a board of directors.

§12604. Advance tuition payment contract

The plan, on behalf of itself and the State, may contract with a purchaser for the advance payment of tuition by the purchaser for a qualified beneficiary to attend a state institution of higher education to which the qualified beneficiary is admitted, without further tuition cost, to the qualified beneficiary.

1. Advance tuition payment contract. In addition, an advance tuition payment contract shall set forth all of the following:

A. The amount of the payment or payments required from the purchaser on behalf of the qualified beneficiary;

B. The terms and conditions for making the payment, including, but not limited to, the date or dates upon which the payment, or portions of the payment, shall be due;

C. Provisions for late payment charges and for default;

D. The name and age of the qualified beneficiary under the contract. The purchaser, with the approval of and on conditions determined by the trust, may subsequently substitute another person for the qualified beneficiary originally named;

E. The name of the person entitled to terminate the

contract, which, as provided by the contract, may be the purchaser, the qualified beneficiary or a person to act on behalf of the purchaser or qualified beneficiary or any combination of these persons;

F. The terms and conditions under which the contract may be terminated and the amount of the refund, if any, to which the person terminating the contract, or specifically the purchaser or designated qualified beneficiary, if the contract so provides, shall be entitled upon termination;

G. The assumption of a contractual obligation by the plan to the qualified beneficiary on its own behalf and on behalf of the State to provide for credit hours of higher education, not to exceed the credit hours required for the granting of a baccalaureate degree, at a state institution of higher education to which the qualified beneficiary is admitted. The advance tuition payment contract shall provide for the credit hours of higher education that a qualified beneficiary may receive under the contract if the qualified beneficiary is not entitled to in-state tuition rates;

H. The period of time from the beginning to the end of which the qualified beneficiary may receive the benefits under the contract; and

I. Other terms, conditions and provisions as the fund considers in its sole discretion to be necessary or appropriate.

2. Form approved. The form of any advance tuition payment contract to be entered into by the plan shall first be approved by the board.

3. Necessary arrangements. The plan shall make any arrangements that are necessary or appropriate with state institutions of higher education in order to fulfill its obligations under advance tuition payment contracts, which arrangements may include, but need not be limited to, the payment by the program of the then actual in-state tuition cost on behalf of a qualified beneficiary to the state institution of higher education.

4. Community or junior college attendance. An advance tuition payment contract shall provide that the plan provide for the qualified beneficiary to attend an accredited vocational-technical institute, community or junior college before entering an accredited institution of higher education if the beneficiary chooses and that the contract may be terminated pursuant to section 12606 after completing the requirements for a degree at the vocational-technical institute, community or junior college or before entering the state institution of higher education.

5. Rights terminated. An advance tuition payment contract may provide that if, after a number of years specified in the contract, the contract has not been terminated or the qualified beneficiary's rights under the contract have not been exercised, the plan shall retain

the amounts otherwise payable and the rights of the qualified beneficiary, the purchaser or the agent of either shall be considered terminated.

6. Transfer. No provision in this section may prohibit a purchaser from directing the plan to transfer the settlement value to any accredited institution pursuant to section 12605.

§12605. Contracts

At a minimum, the plan shall offer contracts of the 2 types set forth in this section:

1. Plan A. Under Plan A:

A. A payment or series of payments shall be required from the purchaser on behalf of a qualified beneficiary. The plan shall provide:

(1) For the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for the number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary, except as provided in section 12604, for a qualified beneficiary who is not entitled to in-state tuition rates; or

(2) That a settlement sum be paid either to the purchaser directly or to any accredited institution of the purchaser's choice. For the purposes of this plan, if the purchaser elects to receive the settlement sum directly, the settlement sum shall only consist of the face amount of the payment or payments.

2. Plan B. Under Plan B:

A. A payment or series of payments shall be required from the purchaser on behalf of a qualified beneficiary. The plan shall provide:

(1) For the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for the number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary, except as provided in section 12604, for a qualified beneficiary who is not entitled to in-state tuition rates; or

(2) That a settlement sum be paid either to the purchaser directly or to any accredited institution of the purchaser's choice. For the purposes of this plan, if the purchaser elects to receive the settlement sum directly, the settlement sum shall consist of the face amount of the payment or payments and any additional interest earned on the amount of these payments at a rate of interest to be determined by the terms of the contract.

3. Qualified beneficiary. If the qualified beneficiary

chooses not to attend a state institution under Plan A or Plan B, the purchaser may direct the plan to transfer the amount the purchaser would receive as a settlement sum, on behalf of the qualified beneficiary, to any accredited institution of the purchaser's choice. The settlement sum, if transferred to an accredited institution which is not a state institution, shall not exceed the total amount of tuition at a state institution.

Contracts required to be offered by this section may require that payment or payments from a purchaser on behalf of a qualified beneficiary, who may attend a state institution of higher education in less than 4 years after the date the contract is entered into by the purchaser, be based upon attendance at a state institution of higher education or at that state institution of higher education with the highest prevailing tuition cost for the number of credit hours covered by the contract.

§12606. Authorized termination

An advance tuition payment contract may not be terminated except when one of the following occurs.

1. Death. The qualified beneficiary dies.

2. No admittance. The qualified beneficiary is not admitted to a state institution of higher education or an accredited institution after making proper application.

3. Certification. The qualified beneficiary certifies to the plan, after attaining the age of 25 years, that the beneficiary has decided not to attend a state institution of higher education or any accredited institution and requests, in writing, that the advance tuition payment contract be terminated. The certification must be signed by one or both of the purchasers.

4. Certain conditions. Certain conditions are allowable pursuant to rules adopted by the board.

The right to receive a refund shall not be authorized under the contract if the qualified beneficiary has completed more than 1/2 of the credit hours required by the state institution of higher education for the awarding of a baccalaureate degree. This provision shall not affect the termination and refund rights of a graduate of a vocational-technical institute, community or junior college.

§12607. Settlement sum

An advance tuition payment contract may provide for a refund, pursuant to this section, to a person to whom the settlement sum is payable under the contract upon termination of the contract. The settlement sum shall be calculated pursuant to Plan A or Plan B under section 12605.

1. Amount not to exceed. The amount of a refund shall not exceed the prevailing tuition cost on the date of termination for the credit hours covered by the con-

tract at the state institution of higher education which charges the highest rate of tuition.

2. Amount of refund. The amount of a refund shall be reduced by the amount transferred to a vocational-technical institute, community or junior college on behalf of a qualified beneficiary when the contract is terminated as provided in section 12604, subsection 4, and by the amount transferred to a state institution of higher education on behalf of a qualified beneficiary.

3. Right to receive settlement fund. The right to receive a settlement fund shall not be authorized under the contract if the qualified beneficiary has completed more than 1/2 of the credit hours required by the state institution of higher education for the awarding of a baccalaureate degree.

A. This provision shall not affect the termination and refund rights of a graduate of a vocational-technical institute, community or junior college.

§12608. Direct payment of the settlement sum

An advance tuition payment contract may authorize a person, who is entitled under the advance tuition payment contract to terminate the contract, to direct payment of the settlement sum, pursuant to restrictions set forth in section 12605, subsection 3, to an independent accredited degree-granting college or university or to a vocational-technical institute, community or junior college.

1. Transfer. If directed to make payments pursuant to this subsection, the plan shall transfer to the designated institution an amount equal to the tuition due for the qualified beneficiary. The plan shall not transfer a cumulative amount greater than the current tuition at a state institution.

2. Limit on settlement sum. The amount of a settlement sum paid upon termination of the advance tuition payment contract by a person who directs the plan, pursuant to this section, to transfer the settlement sum to any accredited independent degree-granting college or university shall not exceed the cost of tuition at the campus of the state institution of higher education with the highest tuition rate.

§12609. Advance Tuition Payment Fund

There is created under the jurisdiction and control of the board an Advance Tuition Payment Fund. Payments received by the plan from purchasers on behalf of qualified beneficiaries or from any other source, public or private, shall be placed in the fund. The fund may be divided into separate accounts.

1. Assets not considered state money. Assets of the fund shall not be considered state money, common cash of the State or revenue.

2. Expending of assets. Unless otherwise provided by resolution of the board, assets of the plan shall be expended for 3 fundamental purposes:

A. To make payments to state institutions of higher education on behalf of qualified beneficiaries;

B. To make refunds upon termination of an advance tuition payment contract; and

C. To pay the costs of administration and organization of the fund.

3. Investment of assets. Assets of the plan may be invested in any instrument, obligation, security or property considered appropriate by the plan and may be pooled for investment purposes with investments of the State, including, but not limited to, state pension funds, on such terms and conditions as are agreeable to the board.

§12610. Board established

The Board of Directors of the Student Educational Enhancement Deposit Plan shall be established.

1. Appointments. The board shall consist of the Treasurer of State and 6 other members with knowledge, skill and experience in the academic, business or financial field, who shall be appointed by the Governor. Not more than 2 of the 6 appointed members of the board shall be, during their term of office on the board, officials, appointees or employees of this State.

2. Terms. Four of the 6 appointed members shall serve for fixed terms. Of the 4 members first appointed, 2 shall be appointed for a term that expires December 31, 1988, and 2 shall be appointed for a term that expires December 31, 1989. Upon completion of each fixed term, a member shall be appointed for a term of 3 years. A member shall serve until a successor is appointed and a vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

3. Deputy as voting member. The chief executive officer or director of any state department, who is a designated member of or an appointee to the board, may appoint a deputy to serve as a voting member of the board in the absence of the chief executive officer or director.

4. Chairman. The Governor shall designate one member of the board to serve as its chairman.

5. Delegation. The board may delegate to its president, vice-president or others such functions and authority as the board considers necessary or appropriate. These functions may include, but are not limited to, the oversight and supervision of employees of the fund.

6. Quorum. A majority of the members of the board serving shall constitute a quorum for the transaction of business at a meeting of the board or the exercise of a

power or function of the fund, notwithstanding the existence of one or more vacancies. Voting upon action taken by the board shall be conducted by a majority vote of the members present at a meeting of the board and, if authorized by the bylaws of the board and when a quorum is present at the meeting, by use of amplified telephonic equipment. The board shall meet at the call of the chairman as may be provided in the bylaws of the plan. Meetings of the board may be held anywhere within the State.

7. Public meeting. The business which the board may perform shall be conducted at a public meeting of the board. Public notice of the time, date and place of the meeting shall be given.

8. Public information. A writing prepared, owned, used, in the possession of or retained by the board in the performance of an official function shall be made available to the public.

§12611. Powers

In addition to the powers granted by this Act, the board shall have the powers necessary or convenient to carry out and effectuate the purposes, objectives and provisions of this Act, the purposes and objectives of the plan and the powers delegated by other laws or executive orders, including, but not limited to, the power to:

1. Invest money. Invest any money of the plan, at the board's discretion, in any instruments, obligations, securities or property determined proper by the board and name and use depositories for its money;

2. Pay money. Pay money to accredited institutions from the plan;

3. Impose reasonable limits. Impose reasonable limits on the number of participants in the plan;

4. Segregate contributions. Segregate contributions and payments to the plan into various accounts and funds;

5. Contract for goods and services. Contract for goods and services and engage personnel as is necessary, and engage the services of private consultants, actuaries, managers, legal counsel and auditors for rendering professional, management and technical assistance and advice, payable out of any money of the plan;

6. Solicit and accept gifts, grants and loans. Solicit and accept gifts, grants, loans and other aids from any person or the Federal Government, State Government or a local government or any agency of the Federal Government, State Government or a local government, or to participate in any other way in any Federal Government, State Government or local government program;

7. Collect administrative fees. Charge, impose and collect administrative fees and charges in connection with any transaction and provide for reasonable penalties, in-

cluding default, for delinquent payment of fees or charges or for fraud;

8. Procure insurance. Procure insurance against any loss in connection with the plan's property, assets or activities;

9. Sue and be sued. Sue and be sued; have a seal and alter the same at pleasure; have perpetual succession; make, execute and deliver contracts, conveyances and other instruments necessary to or convenient for the exercise of its powers; and make and amend bylaws;

10. Enter into contracts. Enter into contracts on behalf of the plan;

11. Administer the fund. Administer the money in the fund;

12. Indemnify member of the board. Indemnify or procure insurance indemnifying any member of the board from personal loss or accountability from liability resulting from a member's action or inaction as a member of the board, including, but not limited to, liability asserted by a person on any bonds or notes of the board;

13. Impose reasonable time limits. Impose reasonable time limits on use of the tuition benefits provided by the plan, if the limits are made a part of the contract;

14. Define the terms and conditions. Define the terms and conditions under which money may be withdrawn from the plan, including, but not limited to, reasonable charges and fees for any such withdrawal, if the terms and conditions are made a part of the contract;

15. Provide for receiving contributions. Provide for receiving contributions in lump sums or periodic sums; and

16. Establish policies; promulgate rules. Establish policies and procedures and promulgate rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, including eligibility criteria and residency requirements to implement this Act.

§12612. Annual accounting

The board shall annually prepare or cause to be prepared an accounting of the plan and shall transmit a copy of the accounting to the Governor, the President of the Senate, the Speaker of the House and the respective majority and minority leaders of the Senate and House. The board shall also make available the accounting of the plan to the purchasers of the plan. The accounts of the board shall be subject to annual audits by the State Auditor or a certified public accountant appointed by the State Auditor.

§12613. Administering and accounting of plan

The plan shall be administered in a manner reasona-

bly designed to be actuarially sound so that the assets of the plan will be sufficient to defray the obligations of the plan.

1. Annual evaluation. In the accounting of the plan made pursuant to section 12612, the board shall annually evaluate or cause to be evaluated the actuarial soundness of the plan and determine the additional assets needed, if any, to defray the obligations of the plan. If there are not funds sufficient to ensure the actuarial soundness of the plan, it shall adjust payments of subsequent purchases to ensure its actuarial soundness.

2. Tax status. Before entering into advance tuition payment contracts with purchasers, the board shall solicit answers to appropriate ruling requests from the United States Internal Revenue Service regarding the tax status of the value received under the contract to the purchaser or qualified beneficiary. No contracts may be entered into without the board making known the status of the request.

3. United States Securities and Exchange Commission status. Before entering into advance tuition payment contracts with purchasers, the board shall solicit answers to appropriate ruling requests from the United States Securities and Exchange Commission regarding the application of federal security laws to the fund. No contracts may be entered into without the board making known the status of the request.

§12614. Enforcement of Act

State institutions of higher education, purchasers and qualified beneficiaries may enforce this Act and any contract entered into pursuant to this Act.

§12615. Exempt from taxation

The property of the plan and its income and operation shall be exempt from all taxation by this State or any of its political subdivisions.

§12616. Contract for services

The board, in its discretion, may contract with others, public or private, for the provision of all or a portion of the services necessary for the management and operation of the plan. The board shall also endeavor to work with private sector investment managers and independent degree-granting colleges and universities in this State to study the feasibility of instituting programs between these parties that ensure full tuition payment upon purchase of a prepayment plan with the private college or university.

§12617. Assets used; investing in bonds

The assets of the fund shall be preserved, invested and expended solely pursuant to and for the purposes set forth in this Act and shall not be loaned or otherwise transferred or used by the State for any purpose other

than the purposes of this Act. This section shall not be construed to prohibit the plan from investing in, by purchase or otherwise, bonds, notes or other obligations of the State, an agency of the State or an instrumentality of the State.

§12618. No guarantee of admittance

Nothing in this Act or in an advance tuition payment contract entered into pursuant to this Act may be construed as a promise or guarantee by the plan or the State that a person will be admitted to a state institution of higher education, allowed to continue to attend a state institution of higher education after having been admitted or will be graduated from a state institution of higher education.

§12619. Exempt from the Revised Maine Securities Act

An advance tuition payment contract shall be exempt from the Revised Maine Securities Act, Title 32, chapter 105. An advance tuition payment contract may not be sold or otherwise transferred by the purchaser or qualified beneficiary without the prior approval of the board.

Sec. 3. Transition. In order to cover the initial administrative expenses of the Student Educational Enhancement Deposit Plan established in this Act, a one-time appropriation of \$10,000 is made from the General Fund. That money shall be paid back to the General Fund by the plan prior to July 1, 1989, from funds collected by the plan.

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

Effective June 30, 1987.

CHAPTER 528

S.P. 443 — L.D. 1357

AN ACT to Amend the Definition of Eligibility under the Elderly Low-cost Drug Program.

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

Sec. 1. 36 MRS A §6162, as enacted by PL 1979, c. 726, §7, is repealed.

Sec. 2. 36 MRS A §6162-A is enacted to read:

§6162-A. Eligibility; definitions; appeal

Individuals are eligible for this program if they meet the following conditions.

1. Age. For fiscal year 1987-88, individuals qualify under this program if they meet the age requirements under chapter 901 and its successors.