

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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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
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

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able income, as defined in the Code, Section 55(b), over the taxpayer's Maine exemption amount, exceeds the taxpayer's liability for all other taxes under this Part, except withholding taxes, and that portion of the ~~individual~~ income tax arising from modifications pursuant to section 5122, subsection 1. For purposes of this subsection, "Maine exemption amount" means the sum of the taxpayer's exemption amount, as defined in the Code, Section 55(d) and, to the extent included in the taxpayer's alternative minimum taxable income, the taxpayer's income from obligations of the United States and railroad retirement benefits. Additionally, a tax is imposed for each taxable year on every nonresident ~~individual~~ noncorporate taxpayer with Maine-source Maine-source income equal to the tax computed under this subsection, as if the nonresident were a resident, and multiplied by the ratio of the nonresident's Maine-source alternative minimum taxable income to the nonresident's total alternative minimum taxable income.

Sec. 19. 36 MRSA §5231, as amended by PL 1973, c. 12, §6, is further amended to read:

§5231. Extension of time for filing and payment

1. **General.** The assessor may grant a reasonable extension of time for payment of tax or estimated tax or any installment ~~thereof~~, or for filing any return, declaration, statement or other document required pursuant to this Part, on ~~such~~ terms and conditions ~~as he~~ the assessor may require. Except for a taxpayer who is outside the United States, ~~no such an~~ extension for filing any return, declaration, statement or document, ~~shall~~ may not exceed 8 months.

1-A. Federal extension. When a taxable corporation or taxable entity is granted an extension of time within which to file its federal income tax return for any taxable year, the due date for filing the taxpayer's income tax or franchise tax return with respect to the tax imposed by this Part is automatically extended for an equivalent period plus 30 days.

2. **Security.** If any extension of time is granted for payment of any amount of tax, the assessor may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on ~~such~~ terms and conditions ~~as~~ the assessor may require.

Sec. 20. 36 MRSA §6201, sub-§9, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

9. **Income.** "Income" means the sum of Maine adjusted gross income determined in accordance with Part 8, the amount of capital gains excluded from adjusted gross income, the absolute value of the amount of trade or business loss, net operating loss carry-over, capital loss, rental loss, farm loss, partnership or S Corporation loss included in adjusted gross income, alimony, inheritance, life insurance proceeds paid on death of

insured, nontaxable lawsuit rewards, such as slander, libel and pain and suffering, excluding reimbursements such as medical and legal expenses associated with the case, support money, nontaxable strike benefits, the gross amount of any pension or annuity, including railroad retirement benefits, all payments received under the ~~United States~~ federal Social Security Act, state unemployment insurance laws, veterans' disability pensions, nontaxable interest received from the Federal Government or any of its instrumentalities, interest or dividends on obligations or securities of this State and its political subdivisions and authorities, workers' compensation and the gross amount of "loss of time" insurance, cash public assistance and relief, but not including relief granted under this chapter. ~~Income~~ does not include gifts from nongovernmental sources or surplus foods or other relief in kind supplied by a governmental agency.

Sec. 21. PL 1989, c. 683 is repealed.

Sec. 22. Effective date. The Maine Revised Statutes, Title 30-A, section 5681, subsection 7, as enacted by this Act, takes effect for distributions occurring from the Local Government Fund after July 1, 1990.

Sec. 23. Effective date. The Maine Revised Statutes, Title 36, chapter 105, subchapter V-A, as repealed by this Act, takes effect with regard to property tax years based on the status of property as of April 1, 1990, or thereafter.

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

Effective April 19, 1990, unless otherwise indicated.

CHAPTER 872

H.P. 1672 - L.D. 2314

An Act to Increase the Penalty for Vehicular Manslaughter and to Remove the Habitual Drunk Driver Offender from the Highways

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

Sec. 1. 17-A MRSA §203, sub-§3, ¶A, as enacted by PL 1989, c. 505, §2, is repealed and the following enacted in its place:

A. It is a defense to a prosecution of a manslaughter based upon the reckless or criminally negligent operation of a motor vehicle, which reduces the crime to a Class B crime, that the death of the victim resulted from conduct that would otherwise be defined only as a civil violation or civil infraction; and

Sec. 2. 17-A MRSA §203, sub-§3-A, as amended by PL 1987, c. 678, §1, is repealed.

Sec. 3. 17-A MRSA §1301, sub-§1, as amended by PL 1977, c. 510, §§83 to 85, is repealed.

Sec. 4. 17-A MRSA §1301, sub-§1-A is enacted to read:

1-A. A natural person who has been convicted of a Class A, Class B, Class C, Class D or Class E crime may be sentenced to pay a fine, unless the statute that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person must be sentenced to the imprisonment and required to pay the fine authorized in that statute. Subject to these sentences and to section 1302, the fine may not exceed:

A. \$25,000 for a Class A crime;

B. \$10,000 for a Class B crime;

C. \$2,500 for a Class C crime;

D. \$1,000 for a Class D crime;

E. \$500 for a Class E crime; and

F. Regardless of the classification of the crime, any higher amount that does not exceed twice the pecuniary gain derived from the crime by the defendant.

Sec. 5. 17-A MRSA §1322, sub-§3, as amended by PL 1989, c. 188, is further amended to read:

3. Economic loss. "Economic loss" includes economic detriment consisting of property loss, allowable expense, work loss, replacement services loss and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. Economic detriment is loss although caused by pain and suffering or physical impairment. "Economic loss" includes expenses of an emergency response by any public agency.

A. Allowable expense. "Allowable expense" means reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing. The term includes reasonable and customary charges incurred for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for

semiprivate accommodations, unless other accommodations are medically required.

B. ~~Dependent's economic loss.~~ "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to ~~his~~ the decedent's dependents, not including services they would have received from the decedent if ~~he~~ the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death.

C. ~~Dependent's replacement services loss.~~ "Dependent's replacement loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if ~~he~~ the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death and not subtracted in calculating dependent's economic loss.

C-1. "Expense of an emergency response" means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but only includes those costs directly arising because of the response to the particular incident. Reasonable costs include the costs of providing police, firefighting, rescue and emergency medical services at the scene of the incident, as well as the compensation for the personnel responding to the incident. "Public agency" means the State or any county, municipality, district or public authority located, in whole or in part, within this State that provides or may provide police, firefighting, ambulance or other emergency services.

D. ~~Property loss.~~ "Property loss" means the value of property taken from the victim, or of property destroyed or otherwise broken or harmed. A property loss ~~shall include~~ includes the value of taxes or other obligations due to the government that have not been paid.

E. ~~Replacement services loss.~~ "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of ~~himself~~ the injured person or ~~his~~ the injured person's family, if ~~he~~ the injured person had not been injured.

F. ~~Work loss.~~ "Work loss" means loss of income from work the injured person would have performed if ~~he~~ the injured person had not been injured and expenses reasonably incurred by ~~him~~ the injured person in obtaining services in lieu of those ~~he~~ the injured person would have performed for income, reduced by any income for substitute work actually performed by ~~him~~ the injured person or by income ~~he~~ the injured person would have earned in

available appropriate substitute work ~~to~~ the injured person was capable of performing but unreasonably failed to undertake.

Sec. 6. 29 MRSA §1312-B, sub-§2-A, as enacted by PL 1987, c. 791, §20, is amended to read:

2-A. Aggravated punishment category. If the State pleads and proves that, while operating a motor vehicle in violation of this section, the actor in fact caused serious bodily injury as defined in Title 17-A, section 2, subsection 23, to another person or in fact caused the death of another person, the sentencing class for the offense in subsection 1 is a Class C crime. The minimum penalties specified in subsection 2 ~~shall~~ apply, but the minimum period of suspension ~~shall be~~ is 18 months unless a longer minimum period otherwise applies.

If the State pleads and proves that, while operating a motor vehicle in violation of this section, the actor had been previously convicted of 3 or more violations of former section 1312, subsection 10, former section 1312-B or this section within a 6-year period, the sentencing class for the offense in subsection 1 is a Class C crime. The minimum penalties specified in subsection 2 apply, but the minimum fine is \$1,000.

Sec. 7. 29 MRSA §§1312-G and 1312-H, as enacted by PL 1987, c. 791, §23, are repealed.

Sec. 8. 29 MRSA §1312-I is enacted to read:

§1312-I. Forfeiture of motor vehicles in certain operating-under-the-influence cases

1. Forfeiture of motor vehicles upon conviction of operating under the influence and operating after suspension or revocation. After notice and hearing, a motor vehicle used by a defendant who is the sole owner-operator of that motor vehicle and who is convicted of operating or attempting to operate that motor vehicle under the influence of alcohol or drugs or while having 0.08% or more by weight of alcohol in the blood, and when the defendant is also convicted of a simultaneous offense of operating after suspension or revocation when the underlying suspension or revocation was imposed as a result of a prior conviction for operating under the influence of alcohol or drugs or while having 0.08% by weight of alcohol in the blood, must be forfeited to the State. The court shall order the forfeiture unless another person can satisfy the court prior to the judgment and by a preponderance of the evidence that the other person had a right to possess that motor vehicle, to the exclusion of the defendant, at the time of the offense.

The Attorney General shall adopt rules in accordance with Title 5, chapter 375, governing the disposition to state, county and municipal agencies of motor vehicles forfeited under this section.

2. Seizure of vehicle of owner-operator. Any motor vehicle operated by a sole owner is subject to

seizure by any law enforcement officer authorized to enforce the motor vehicle laws of this State when:

A. The owner-operator operates or attempts to operate that motor vehicle under the influence of intoxicating liquor or drugs or while having 0.08% of alcohol by weight in the blood; and

B. The owner-operator is under suspension or revocation as a result of a previous conviction of operating under the influence of alcohol or drugs or while having 0.08% of alcohol by weight in the blood.

3. Bona fide lienholders. A forfeiture under this section of a motor vehicle encumbered by a perfected bona fide security interest is subject to the interest of the secured party if the party neither had knowledge of nor consented to the act upon which the right of forfeiture is based.

4. Preliminary order or process; exceptions. The court may issue, at the request of the attorney for the State, ex parte, any preliminary order or process necessary to seize or secure the motor vehicle for which forfeiture is or will be sought and to provide for its custody. That order may include an order to a financial institution or to any fiduciary or bailee to require that entity to impound a motor vehicle in its possession or control and to release it only upon further order of the court. The court shall issue process for seizure of the property only upon a showing of probable cause. The application for process and the issuance, execution and return of process are subject to applicable state law. Criminal complaints of operating under the influence and operating after suspension must be filed against the owner-operator prior to issuance of a preliminary order under this subsection. Any motor vehicle subject to forfeiture under this section may be seized upon process, except that seizure without process may be made when:

A. The seizure is incident to an arrest with probable cause for a violation of section 1312-B; or

B. The property subject to seizure has been the subject of a prior judgment in favor of the State in a forfeiture proceeding under this section or any other provision of law.

5. Reports. Every officer, department or agency seizing any vehicle subject to forfeiture under subsection 1 shall file a report of seizure with the Attorney General or a district attorney having jurisdiction over the vehicle. This report must be filed within 21 days from the date of seizure. The report must be labeled "Vehicle Report" and include:

A. A description of the vehicle;

B. The place and date of seizure;

C. The name and address of the owner or operator of the vehicle at the time of seizure; and

D. The name and address of any other person who appears to have an ownership interest in the vehicle.

6. Storage of seized motor vehicles. Any motor vehicle seized under this section must be held in secure storage by the seizing agency or at the direction of the prosecuting official until disposition of the underlying criminal charges. The State shall assume all costs of storage of any vehicles not ordered forfeited upon the disposition of the underlying criminal charges.

7. Records of seized motor vehicles. Every officer, department or agency having custody of a motor vehicle subject to forfeiture under subsection 1 or having disposed of the motor vehicle shall maintain complete records showing:

- A. From whom the motor vehicle was received;
- B. Under what authority the motor vehicle was held, received or disposed;
- C. To whom the motor vehicle was delivered; and
- D. The date and manner of destruction or disposition of the motor vehicle.

Sec. 9. 29 MRSA §2241-H, as amended by PL 1987, c. 39, is further amended to read:

§2241-H. Notice of suspension by court; surrender of license to court

In the case of any conviction or adjudication under former section 1312, subsection 10, section 1312-B, 1312-C, 1314 or for any offense for which the suspension of a license or the right to operate a motor vehicle or the right to apply for or obtain a license is required by law the court shall also suspend the defendant's right to register a motor vehicle and the registration certificate and plates issued by this State to the defendant for that motor vehicle, or in any case in which the court suspends a license under section 2305, the court may also suspend the defendant's right to register a motor vehicle and the registration certificate and plates issued by this State to the defendant for that motor vehicle, and the court shall inform the defendant of the suspension suspensions and the defendant shall acknowledge this notice in writing on a form to be provided by the court. The court, as part of its sentence, unless the defendant appeals and a stay of execution of the suspension is granted, shall take any license certificate issued by this State from the person convicted or adjudicated or any license certificate issued by another state, foreign country or province from the person convicted or adjudicated if that person is residing, domiciled or employed in this State. The court, as part of its sentence, unless the defendant appeals and a stay of execution of the suspension is granted, may take from the person convicted or adjudicated any license certificate issued by another state or foreign country or province if the person is not residing, domiciled or employed in this

State. At sentencing, the court, upon reasonable cause shown, may stay the ~~suspension of the license or a right to operate a motor vehicle suspensions~~ for a period not to exceed 4 hours from the time of sentencing. The court may issue such evidence of that stay as it deems determines necessary. The court shall forward the license certificate, a copy of the sentence and the acknowledgment of notice by mail to the Secretary of State, and the court shall order the defendant to return the suspended registration certificate and plates to the Secretary of State. The Secretary of State shall return the certificate of registration and plates to the defendant when the defendant's license and operating and registration privileges have been restored.

Notwithstanding the court order suspending the defendant's right to register a motor vehicle, registration certificate and plates, the Secretary of State may restore only the registration certificate and plates for reissuance, without fee during the remaining term of the registration, to a spouse or other family member of the defendant upon receipt of an affidavit, on a form prescribed by the Secretary of State, authorizing the spouse or other family member to register the motor vehicle in the name of the spouse or other family member.

The court, upon reasonable cause shown, may allow a convicted or adjudicated person, who does not have the license certificate in ~~his~~ that person's possession at the time of sentencing, up to 96 hours to surrender ~~his~~ that person's license certificate.

Notwithstanding section 2241-E, the period of suspension ~~shall commence~~ commences immediately upon announcement of sentence. Two additional days of suspension ~~shall~~ must be added to the period for each day beyond any extension granted that the convicted or adjudicated person fails to surrender ~~his~~ that person's license to the court.

Refusal to sign the acknowledgment of notice or unexcused failure to surrender a license certificate within any period of extension ~~shall be~~ is a misdemeanor.

Sec. 10. 29 MRSA §2241-I, as amended by PL 1981, c. 679, §46, is further amended to read:

§2241-I. Surrender of suspended license and registration certificate and plates to law enforcement officer

In the event that a law enforcement officer, in the course of stopping or detaining a motor vehicle, obtains from the operator of the motor vehicle a State of Maine license or registration certificate, or a license issued by another state, foreign country or province when, according to records of the Secretary of State which are available by telecommunications, that person's license or, right to operate in this State or registration certificate is under suspension or revocation, the officer shall retain physical custody of confiscate the suspended or revoked license, registration certificate or plates and shall transmit the

~~license~~ confiscated items, together with a report stating the circumstances under which ~~it was~~ they were obtained, to the Secretary of State.

See title page for effective date.

CHAPTER 873

H.P. 1758 - L.D. 2423

An Act to Clarify the Laws on Manslaughter in the Workplace

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

Whereas, unless this legislation is enacted as an emergency measure, certain public employees or persons performing a public service may be held criminally liable for performing that public service or responding to a life-threatening situation; 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:

17-A MRSA §203, sub-§1, ¶C, as enacted by PL 1989, c. 505, §1, is amended to read:

C. Has direct and personal management or control of any employment, place of employment or other employee, and intentionally or knowingly violates any occupational safety or health standard of this State or the Federal Government, and that violation in fact causes the death of an employee and that death is a reasonably foreseeable consequence of the violation. This paragraph does not apply to:

(1) Any person who performs a public function either on a volunteer basis or for minimal compensation for services rendered; or

(2) Any public employee responding to or acting at a life-threatening situation who is forced to make and does make a judgment reasonably calculated to save the life of a human being.

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

Effective April 19, 1990.

CHAPTER 874

H.P. 1753 - L.D. 2416

An Act to Establish Fees for Nonferrous Metal Mining

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

Whereas, several enterprises have expressed interest in beginning nonferrous metal mining operations in the State; and

Whereas, the existing fee structure for permits from the Department of Environmental Protection is inadequate to assess properly the environmental impacts of large-scale mining operations; and

Whereas, considerable state resources are expended for review of mining projects in advance of submission of an application to mine; and

Whereas, the Department of Environmental Protection must have sufficient resources to assess the environmental, health and safety issues related to nonferrous metal mining in the State; and

Whereas, the Legislature has determined that nonferrous metal mining, if conducted properly, is an acceptable and necessary activity which results in benefits to the State and the nation; 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. 38 MRSA §349-A is enacted to read:

§349-A. Mining rules

The board and the Maine Land Use Regulation Commission shall jointly adopt or amend rules necessary to regulate nonferrous metal mining by February 1, 1991. The commissioner and the Maine Land Use Regulation Commission shall convene a joint task force composed of 3 members from each agency to carry out the duties of this section. Any consultants hired must be jointly chosen by both the commissioner and the Director of the Maine Land Use Regulation Commission. Any rules adopted pursuant to this section must include reclamation requirements for a nonferrous metal mining site.

Sec. 2. 38 MRSA §352, sub-§4-A is enacted to read: