

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 13, 1993

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
1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

all policies issued by the organization terminates as of January 1, 1995, except that, if at any time after December 1, 1993 an actuarial review indicates that the organization's remaining funds may be insufficient to provide continuing coverage to all remaining policies in force until January 1, 1995, the board may cancel these policies on 30 days' notice. Any funds remaining when the affairs of the organization are concluded revert to the General Fund.

See title page for effective date, unless otherwise indicated.

CHAPTER 478

S.P. 540 - L.D. 1562

An Act to Clarify Tax on Intangible Income

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

Whereas, the Maine Supreme Judicial Court has recently decided Boulet v. State Tax Assessor and the holding on that case is contrary to the established practice of the Bureau of Taxation; 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 §5142, sub-§1, as amended by PL 1981, c. 706, §37, is further amended to read:

1. General. The adjusted gross income of a non-resident derived from sources within this State ~~shall be~~ is the sum of the following:

A. The net amount of items of income, gain, loss, and deduction entering into ~~his the~~ federal adjusted gross income ~~which that~~ are derived from or connected with sources in this State including (i) ~~his the nonresident's~~ distributive share of partnership income and deductions determined under section 5192, (ii) ~~his the nonresident's~~ share of estate or trust income and deductions determined under section 5176, and (iii) ~~his the nonresident's~~ distributive share of the income of an electing small business corporation for federal income tax purposes derived from or connected with sources within this State; ~~and~~

B. The portion of the modifications described in section 5122, subsections 1 and 2 ~~which that~~ relate

to income derived from sources in this State, including any modifications attributable to ~~him the nonresident~~ as a partner; ~~and~~

C. Proceeds from any Maine State Lottery or Tri-state Lotto tickets purchased in this State.

Sec. 2. Moratorium on processing of claims. Notwithstanding any other provision of law, the State Tax Assessor may not process any claims filed under the Maine Residents Property Tax Program pursuant to the Maine Revised Statutes, Title 36, chapter 907, from August 1, 1993 to October 1, 1993.

Sec. 3. Effective date; contingent on passage of legislation. Section 2 of this Act takes effect only if the changes proposed to the benefit calculation and income eligibility for claimants representing nonelderly households under the Maine Revised Statutes, Title 36, section 6207, subsection 1, paragraph A-1 and subsection 2 that are contained in L.D. 1565 are enacted by the 116th Legislature.

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

Effective July 13, 1993, unless otherwise indicated.

CHAPTER 479

S.P. 34 - L.D. 40

An Act to Amend the Laws Pertaining to the Visitation Rights of Grandparents

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

Sec. 1. 19 MRSA §1003, sub-§1, as enacted by PL 1991, c. 414, is repealed and the following enacted in its place:

1. Standing to petition for visitation rights. A grandparent of a minor child may petition the court for reasonable rights of visitation or access if:

A. At least one of the child's parents or legal guardians has died;

B. There is a sufficient existing relationship between the grandparent and the child. This paragraph is repealed October 1, 1995; or

C. If a sufficient existing relationship between the grandparent and the child does not exist, a sufficient effort to establish one has been made. This paragraph is repealed October 1, 1995.

Sec. 2. 19 MRSA §1003, sub-§1-A is enacted to read:

1-A. Procedure. The following procedures apply to petitions for rights of visitation or access under subsection 1, paragraph B or C.

A. The grandparent must file with the petition for rights of visitation or access an affidavit alleging a sufficient existing relationship with the child, or that sufficient efforts have been made to establish a relationship with the child. When the petition and accompanying affidavit are filed with the court, the grandparent shall serve a copy of both on at least one of the parents or legal guardians of the child.

B. The parent or legal guardian of the child may file an affidavit in response to the grandparent's petition and accompanying affidavit. When the affidavit in response is filed with the court, the parent or legal guardian shall deliver a copy to the grandparent.

C. The court shall determine on the basis of the petition and the affidavit whether it is more likely than not that there is a sufficient existing relationship or, if a sufficient relationship does not exist, that a sufficient effort to establish one has been made.

D. If the court's determination under paragraph C is in the affirmative, the court shall hold a hearing on the grandparent's petition for reasonable rights of visitation or access and shall consider any objections the parents or legal guardians may have concerning the award of rights of visitation or access to the grandparent. The standard for the award of reasonable rights of visitation or access is provided in subsection 2.

This subsection is repealed October 1, 1995.

Sec. 3. 19 MRSA §1003-A is enacted to read:

§1003-A. Mediation

The court may refer the parties to mediation at any time after the petition is filed and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, assess attorney's fees and costs or impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation.

An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

Sec. 4. 19 MRSA §1005, as enacted by PL 1991, c. 414, is repealed.

See title page for effective date.

CHAPTER 480

H.P. 621 - L.D. 845

An Act to Create a Cause of Action Against the State for Wrongful Imprisonment

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

Sec. 1. 14 MRSA c. 747 is enacted to read:

CHAPTER 747

WRONGFUL IMPRISONMENT

§8241. Wrongful imprisonment

1. Exceptions to immunity. Notwithstanding any immunity of the State from suit, including the Maine Tort Claims Act, chapter 741, the State is liable for the wrongful imprisonment of a person.

2. Action. The State is liable for damages for wrongful imprisonment of a person if that person alleges and proves the following by clear and convincing evidence:

A. That the person was convicted of a criminal offense under the laws of this State;

B. That as a result of that conviction, the person was sentenced to a period of incarceration and was actually incarcerated;

C. That subsequent to the conviction and as a condition precedent to suit, the person received a full and free pardon pursuant to the Constitution of Maine, Article V, Part First, Section 11, which is accompanied by a written finding by the Governor who grants the pardon that the person is innocent of the crime for which that person was convicted; and

D. That the court finds that the person is innocent of the crime for which the person was convicted.

3. Scope of law. For purposes of this chapter, a person is deemed to have committed a criminal offense