

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

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TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1995

- (3) Pervasive developmental disorder, or autism;
- (4) Paranoia;
- (5) Panic disorder;
- (6) Obsessive-compulsive disorder; or
- (7) Major depressive disorder.

Sec. 7. 24-A MRSA §4234-A, sub-§7, ¶A, as enacted by PL 1995, c. 407, §10, is amended to read:

A. All individual and group contracts ~~shall~~ must make available coverage providing, at a minimum, benefits according to paragraph B, subparagraph (1) for a person receiving medical treatment for any of the following mental illnesses diagnosed by a licensed allopathic or osteopathic physician or a licensed psychologist who is trained and has received a doctorate in psychology specializing in the evaluation and treatment of human behavior:

- (1) Schizophrenia;
- (2) Bipolar disorder;
- (3) Pervasive developmental disorder, or autism;
- (4) Paranoia;
- (5) Panic disorder;
- (6) Obsessive-compulsive disorder; or
- (7) Major depressive disorder.

See title page for effective date.

CHAPTER 638

H.P. 1216 - L.D. 1666

An Act to Include Sexual Contact in the Definition of Prostitution

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

Sec. 1. 17-A MRSA §851, sub-§1, as amended by PL 1989, c. 401, Pt. B, §3, is further amended to read:

1. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person engaging in prostitution or a 3rd person;

Sec. 2. 17-A MRSA §851, sub-§1-A, as amended by PL 1989, c. 401, Pt. B, §4, is further amended to read:

1-A. "Engages a prostitute" means providing or agreeing to provide, either to the person whose prostitution is sought or to a 3rd person, pecuniary benefit in return for a sexual act or sexual contact as those terms are defined in section 251;

Sec. 3. 17-A MRSA §851, sub-§2, as amended by PL 1989, c. 401, Pt. B, §5, is further amended to read:

2. "Promotes prostitution" means:

A. Causing or aiding another to commit or engage in prostitution, other than as a patron; ~~or~~

B. Publicly soliciting patrons for prostitution. Publicly soliciting patrons for prostitution ~~shall include~~ includes, but is not ~~be~~ limited to, an offer, made in a public place, to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person making the offer or a 3rd person; ~~or~~

C. Providing persons for purposes of prostitution; ~~or~~

D. Leasing or otherwise permitting a place controlled by the defendant, alone or in association with others, to be regularly used for prostitution; ~~or~~

E. Owning, controlling, managing, supervising or otherwise operating, in association with others, a house of prostitution or a prostitution business; ~~or~~

F. Transporting a person into or within the State with the intent that such other person engage in prostitution; or

G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any person, other than with a patron, whereby ~~he~~ the person participates or ~~he~~ the person is to participate in the proceeds of prostitution.

See title page for effective date.

CHAPTER 639

S.P. 697 - L.D. 1771

An Act Concerning Technical Changes to the Tax Laws

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

Whereas, delay in making technical changes to the tax laws would interfere with administration of those laws; and

Whereas, legislative action is immediately necessary in order to ensure continued and efficient administration of the tax laws; 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 §112, sub-§5-A is enacted to read:

5-A. Agreements with other states. The State Tax Assessor may enter into agreements with the tax departments of other states that the assessor considers appropriate for assistance in the administration and enforcement of this Title.

Sec. 2. 36 MRSA §174, sub-§1, as enacted by PL 1981, c. 364, §12, is amended to read:

1. Generally. If ~~any~~ a taxpayer fails to pay ~~any~~ a tax imposed by this Title on or before the due date of that tax, the State Tax Assessor, through the Attorney General, may commence a civil action within 6 years of ~~that due date~~ the issuance of the demand notice required by section 171 in ~~any~~ a court of competent jurisdiction ~~within~~ in this State in the name of the State for the recovery of that tax. In this action, the certificate of the ~~State Tax Assessor~~ assessor showing the amount of the delinquency is prima facie evidence of the levy of the tax, of the delinquency and of the compliance by the ~~State Tax Assessor~~ assessor with this Title in relation to the assessment of the tax.

Sec. 3. 36 MRSA §176-A, sub-§16, as amended by PL 1993, c. 395, §5, is further amended to read:

16. Time for collection of taxes. Taxes must be collected by levy within 10 years after the assessment of the tax, becomes final or ~~prior to~~ before the expiration of ~~any~~ the period of collection agreed upon in writing by the assessor and the taxpayer. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. ~~Any~~ A levy action ordered by the assessor before the expiration of the

10-year period continues beyond the expiration of the 10-year period for a period of 6 months from the date ~~such~~ the levy is first made or until the liability out of which ~~such~~ the levy arose is satisfied or becomes unenforceable, whichever occurs first. The running of the 10-year period is stayed during the time that a consensual payment plan between the taxpayer and the assessor is in effect. ~~When any question relative to the taxes is pending before any agency or court at the end of the 10-year period, the assessor's right to collect any tax due by levy continues until 6 years after the final determination of the question.~~ When a taxpayer files for protection under the United States Bankruptcy Code, the assessor's right to collect ~~any~~ the tax due by levy continues until 6 years after the date of discharge or dismissal of the bankruptcy proceeding or until 10 years after the assessment of the tax becomes final, whichever occurs later.

Sec. 4. 36 MRSA §177, sub-§1, as amended by PL 1991, c. 546, §1, is further amended to read:

1. Generally. All sales and use taxes collected by ~~any~~ a person pursuant to Part 3, all taxes collected by ~~any~~ a person under color of Part 3 ~~which that~~ have not been properly returned or credited to the persons from whom they were collected, all taxes collected by ~~any~~ or imposed on a person pursuant to chapter 451 or 459, all fees collected pursuant to chapter 719 and all taxes collected by ~~any~~ a person pursuant to chapter 827 constitute a special fund in trust for the State Tax Assessor. The liability for the taxes or fees and ~~any~~ the interest or penalty on taxes or fees is enforceable by assessment and collection, in the manner prescribed in this Part, against the person and against any officer, director, member, agent or employee of that person who, in that capacity, is responsible for the control or management of the funds or finances of that person or is responsible for the payment of that person's taxes.

Sec. 5. 36 MRSA §187-B, sub-§7, ¶G, as enacted by PL 1991, c. 873, §5 and affected by §§8 and 9, is amended to read:

G. The amount subject to a penalty imposed by subsections ~~1 and 2~~ 1, 2 and 4-A is de minimis when considered in relation to the amount otherwise properly paid, the reason for the failure to file or pay and the taxpayer's compliance history.

Sec. 6. 36 MRSA §191, sub-§2, ¶T is enacted to read:

T. The disclosure by employees of the Bureau of Taxation to designated representatives of the Secretary of State of information required by the Secretary of State for the administration of the special fuel tax imposed by chapter 459.

Sec. 7. 36 MRSA §193 is enacted to read:

§193. Returns; declaration covering perjury; submission of returns and funds by electronic means

Any return, report or other document required to be made pursuant to this Title must contain a declaration, in a form prescribed by the State Tax Assessor, that the statements contained in the return, report or other document are true and made under the penalties of perjury. The assessor may allow the filing of a return or document by electronic data submission or by telephone. The assessor may also allow the payment of a tax or the refund of a tax by the electronic transfer of funds. An electronic funds transfer allowed by the assessor pursuant to this section is considered a return. The assessor may adopt rules to establish procedures necessary to implement the provisions of this section.

Sec. 8. 36 MRSA §1752, sub-§10, as repealed and replaced by PL 1987, c. 497, §21, is amended to read:

10. Retailer. "Retailer" means ~~any~~ a person who makes retail sales or who is required to register by section 1754 or section 1754-A or who is registered under section 1756.

Sec. 9. 36 MRSA §2113, as amended by PL 1991, c. 780, Pt. CCC, §3, is further amended to read:

§2113. Criminal penalties

~~Any violation of any provision of chapters 211 to 225 this Part for which a penalty or forfeiture is not provided by any other Title of the Revised Statutes shall be provision of law is a Class E crime, except that any violation of any provision of this Part for which a penalty or forfeiture is not provided by any other provision of law by a person who has a prior conviction under the same provision within the prior 3 years is a Class D crime. For the purpose of this section, every person required to register under section 1754 who shall engage in any business for which registration is required under section 1754, without being the holder of a currently valid registration certificate, shall commit a separate offense for each calendar week or part thereof during which he shall be so engaged.~~

~~For purposes of this section, a person required to register under section 1754 A who engages in any business for which registration is required under section 1754 A without being the holder of a currently valid registration certificate commits a separate offense for each calendar month or part of a month during which that person engages in that business.~~

Sec. 10. 36 MRSA §3204-B, sub-§1, as enacted by PL 1995, c. 271, §7, is amended to read:

1. Generally. Except as provided in subsection 2, a person may not operate a motor vehicle on the public ways of this State or allow a motor vehicle to be operated on the public ways of this State if the fuel supply tanks of the vehicle contain dyed fuel or other fuel on which the tax imposed by section 3203 has not been paid. For purposes of this subsection, there is a rebuttable presumption that the owner of a motor vehicle has operated the motor vehicle or allowed the motor vehicle to be operated on the public ways of this State with dyed fuel or other fuel when the tax imposed by section 3203 has not been paid by the owner of the motor vehicle.

Sec. 11. 36 MRSA §3219-A, sub-§2, ¶G, as enacted by PL 1995, c. 271, §11, is amended to read:

G. If the person is a user or an agent or employee of a user, consuming special fuel in a ~~registered~~ motor vehicle when the user does not have a valid license issued pursuant to section ~~3207~~ 3206. Each day or part of a day during which this paragraph is violated constitutes a separate violation within the meaning of this section.

Sec. 12. 36 MRSA §3223, as repealed and replaced by PL 1989, c. 502, Pt. A, §134, is repealed.

Sec. 13. 36 MRSA §3743 is amended to read:

§3743. Intent of provisions

~~The intent and purpose of this chapter, imposing an estate tax, is to obtain for this State the benefit of the credit allowed under Title III, section 301, subsection (b) of the Federal Revenue Act of 1926 to the extent that this State may be entitled by this chapter by imposing an additional tax, and the same shall this chapter must be liberally construed to effect this purpose. The State Tax Assessor may make such regulations relative to the assessment and the collection of the tax provided by this chapter, not inconsistent with law, as may be necessary to carry out this intent.~~

Sec. 14. 36 MRSA §4305, as repealed and replaced by PL 1977, c. 694, §711, is amended to read:

§4305. Certification

~~Every processor or shipper of blueberries, each year before processing or shipping blueberries, obtain certification from the State Tax Assessor. The State Tax Assessor assessor shall provide the applications for the certification, which shall must contain the name under which the processor or shipper is transacting business within in the State, the place or places of business, the names and addresses of the several~~

persons constituting a firm or partnership; and, if a corporation, the corporate name and names and addresses of its principal officers and agents ~~within in~~ the State. ~~No~~ A processor or shipper shall may not process or ship any blueberries until the certification has been issued. Certification may be suspended or revoked by the State Tax Assessor assessor for failure to pay such blueberry the tax as may be due imposed by section 4303 or for the filing of false or fraudulent reports or returns as required by the State Tax Assessor. All certification shall expire July 1st, annually, and shall A certificate issued by the assessor pursuant to this section is not be deemed to be a license within the meaning of that term in the Maine Administrative Procedure Act.

Sec. 15. 36 MRSA §5122, sub-§2, ¶G, as enacted by PL 1989, c. 880, Pt. G, §4, is amended to read:

G. For income tax years commencing on or after January 1, 1989, an amount equal to the total premiums spent for insurance policies for long-term care ~~which that~~ have been certified by the Superintendent of Insurance as complying with Title 24-A, chapter 68; ~~and~~

Sec. 16. 36 MRSA §5122, sub-§2, ¶H, as amended by PL 1991, c. 591, Pt. N, §7 and affected by §8, is further amended to read:

H. For each taxable year subsequent to the year of the loss, an amount equal to the absolute value of ~~any the~~ net operating loss arising from tax years beginning on or after January 1, 1989, but before January 1, 1993, for which federal adjusted gross income was increased in accordance with subsection 1, paragraph H and that pursuant to the ~~United States Internal Revenue Code Code~~, Section 172 was carried back for federal income tax purposes, but only to the extent that:

- (1) Maine ~~net~~ taxable income is not reduced below zero;
- (2) The taxable year is within the allowable federal period for carry-over; and
- (3) The amount has not been previously used as a modification pursuant to this subsection; ~~and~~

Sec. 17. 36 MRSA §5122, sub-§2, ¶I is enacted to read:

I. For income tax years beginning on or after January 1, 1991, an amount equal to the amount by which federal taxable income was reduced because of vessel earnings from fishing operations that were contributed to a capital construction fund.

Sec. 18. 36 MRSA §5164, sub-§3, as enacted by P&SL 1969, c. 154, §F, §1, is amended to read:

3. Alternate attribution of adjustment. The assessor may ~~by regulation~~ authorize, upon the taxpayer's written request, the use of ~~such~~ other methods of determining to whom the items comprising the fiduciary adjustment ~~shall be~~ are attributed, as may be appropriate and equitable, ~~on such terms and conditions as the assessor may require.~~

Sec. 19. 36 MRSA §5176, sub-§2, as enacted by P&SL 1969, c. 154, §F, §1, is amended to read:

2. Alternate methods. The assessor may ~~by regulation establish~~ authorize, upon the taxpayer's written request, the use of such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources in this State, and in the modifications related ~~thereto to such other method or methods,~~ as may be appropriate and equitable.

Sec. 20. 36 MRSA §5200-A, sub-§2, ¶H, as amended by PL 1991, c. 591, Pt. N, §12 and affected by §13, is further amended to read:

H. For each taxable year subsequent to the year of the loss, an amount equal to the absolute value of ~~any the~~ net operating loss arising from tax years beginning on or after January 1, 1989 but before January 1, 1993 and that, pursuant to the ~~United States Internal Revenue Code Code~~, Section 172, was carried back for federal income tax purposes, but only to the extent that:

- (1) Maine ~~net~~ taxable income is not reduced below zero;
- (2) The taxable year is within the allowable federal period for carry-over; and
- (3) The amount has not been previously used as a modification pursuant to this subsection.

Sec. 21. 36 MRSA §§5232, 5233 and 5240, as enacted by P&SL 1969, c. 154, §F, §1, are repealed.

Sec. 22. 36 MRSA §5241, as amended by PL 1987, c. 819, §12, is further amended to read:

§5241. Partnership and S corporation returns

Every partnership and S corporation ~~having with~~ having with a resident partner or shareholder or ~~having any with~~ income derived from sources in this State, determined in accordance with the applicable rules of section 5142 as in the case of a nonresident individual, shall

make a return for the taxable year setting forth all items of income, gain, loss, and deduction, ~~and~~ the names and addresses of the individuals whether residents or nonresidents who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual and ~~such~~ other pertinent information as the ~~assessor~~ State Tax Assessor may prescribe ~~by regulations and instructions~~. Any return, statement or other document required of a partnership must be signed by one or more partners. The appropriate return ~~shall~~ must be filed on or before the 15th day of the 4th month for partnerships or the 15th day of the 3rd month for S corporations following the close of each taxable year. For purposes of this section, "taxable year" means a year or period ~~which~~ that would be a taxable year of the partnership or S corporation if it were subject to the tax under this Part. The ~~State Tax Assessor~~ assessor may elect to waive the requirement to file a Maine return as established in this section for ~~any particular~~ a tax year and in its place require the partnership or S corporation to file a copy of its federal partnership or S corporation return.

Sec. 23. 36 MRSA §5242, as enacted by P&SL 1969, c. 154, §F, §1, is amended to read:

§5242. Information returns

The ~~assessor~~ State Tax Assessor may ~~prescribe regulations and instructions requiring~~ require returns of information to be made and filed on or before February 28th of each year by ~~any~~ a person making payment or crediting in ~~any~~ a calendar year the amounts of \$600 or more (\$10 or more in the case of interest or dividends) to ~~any~~ a person who may be subject to the tax imposed under this Part. ~~Such~~ The returns may be required of ~~any~~ a person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this State, or of ~~any~~ a municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal or payment of dividends, interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits, or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, ~~shall constitute~~ constitutes the return of information required to be made under this section with respect to ~~such those~~ wages.

Sec. 24. 36 MRSA §5250, sub-§3, as amended by PL 1979, c. 541, Pt. A, §243, is further amended to read:

3. Withholding agreements. The assessor may enter into agreements with the tax departments of other states, ~~which~~ that require income tax to be

withheld from the payment of wages and salaries, so as to govern the amounts to be withheld from the wages and salaries of residents of ~~such those~~ states under this chapter. ~~Such~~ The agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, ~~under regulations prescribed by the assessor,~~ may relieve employers in this State from withholding income tax on wages and salaries paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax department of ~~such the~~ other states grant similar treatment to residents of this State.

Sec. 25. 36 MRSA §5250-A, sub-§3, ¶¶C and D, as enacted by PL 1991, c. 591, Pt. Y, §2 and affected by §3, are amended to read:

C. The consideration for the property is less than \$50,000; ~~or~~

D. Written notification of the withholding requirements of this section has not been provided to the buyer; ~~or~~

Sec. 26. 36 MRSA §5250-A, sub-§3, ¶E is enacted to read:

E. The seller is the State or an agency or a political subdivision of the State, the Federal Government or an agency of the Federal Government, an organization exempt from income taxes pursuant to the Code, Section 501(a), an insurance company exempt from the tax imposed by this Part or a business entity referred to in Title 24-A, section 1157, subsection 5, paragraph B, subparagraph (1) that is exempt from the tax imposed by this Part.

Sec. 27. 36 MRSA §5252, as amended by PL 1981, c. 371, §3, is further amended to read:

§5252. Credit for tax withheld

Wages and other items of income upon which tax is required to be withheld ~~shall be~~ are taxable under this Part as if no withholding were required, but ~~any~~ the amount of tax actually deducted and withheld under this chapter in ~~any~~ a calendar year ~~shall be~~ is deemed to have been paid to the assessor on behalf of the person from whom withheld, and ~~such the~~ person ~~shall be~~ is credited with having paid that amount of tax for the taxable year beginning in ~~such the~~ calendar year. For a taxable year of less than 12 months, the credit shall be made under regulations of the assessor. If more than one taxable year begins in a calendar year, the amount is allowed as a credit for the most recent taxable year.

Sec. 28. 36 MRSA §5266, as amended by PL 1977, c. 694, §724, is repealed.

Sec. 29. 36 MRSA §5276-A, sub-§1, as amended by PL 1993, c. 395, §23, is further amended to read:

1. Generally. ~~Any~~ An agency of the State, including the University of Maine System or the Maine Technical College System, that is authorized to collect from ~~any~~ an individual or corporation a liquidated debt greater than \$25 shall notify in writing the State Tax Assessor and supply information necessary to identify the debtor whose refund is sought to be set off. ~~The State Tax Assessor, assessor,~~ upon ~~any such~~ notification, shall assist the requesting agency by setting off that debt, ~~pursuant to rules promulgated by the State Tax Assessor,~~ against ~~any~~ a refund to which that individual or corporation is entitled under this Part. Liquidated child support debts that the Department of Human Services has contracted to collect, pursuant to Title 19, section 448-A or 495, subsection 2, are eligible, under the provisions of this section, for setoff against ~~any~~ a refund due the obligated individual. ~~The State Tax Assessor assessor~~ shall provide the creditor agency with the name, address and social security number of each debtor whose refund is subject to setoff.

Sec. 30. 36 MRSA §5284, sub-§1, as amended by PL 1993, c. 253, §1, is further amended to read:

1. Maine Endangered and Nongame Wildlife Fund. Taxpayers who, when filing their return, are entitled to a refund under this Part may designate ~~any~~ that a part of that refund be paid into the Maine Endangered and Nongame Wildlife Fund established in Title 12, section 7757. A taxpayer who is not entitled to a refund under this Part may contribute to the Maine Endangered and Nongame Wildlife Fund by including with that taxpayer's return sufficient funds to make the contribution. Each individual income tax return form must contain a designation in substantially the following form: "Contribution to Maine Endangered and Nongame Wildlife Fund: () \$5, () \$10, () \$25 or () Other \$."

Sec. 31. 36 MRSA §5285, sub-§1, as amended by PL 1993, c. 600, Pt. A, §280, is further amended to read:

1. Maine Children's Trust Incorporated. Taxpayers who, when filing their returns, are entitled to a refund under this Part may designate that a portion of that refund be paid into the Maine Children's Trust Incorporated established in Title 22, chapter 1058. A taxpayer who is not entitled to a refund under this Part may contribute to the Maine Children's Trust Incorporated by including with that taxpayer's return sufficient funds to make the contribution. Each individual income tax return form must contain a designation in substantially the

following form: "Contributions to Maine Children's Trust Incorporated: () \$5, () \$10, () \$25 or () Other \$."

Sec. 32. 36 MRSA §6207, sub-§1, ¶A-1, as amended by PL 1995, c. 368, Pt. CCC, §8 and affected by §11, is further amended to read:

A-1. Fifty percent of that portion of the benefit base that exceeds 5.0% but does not exceed 10.0% of income ~~and plus~~ 100% of that portion of the benefit base that exceeds 10% of income to a maximum payment of \$700.

Sec. 33. 36 MRSA §6213, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

§6213. Appeal

A denial in whole or in part of relief claimed under this chapter may be appealed in accordance with section 151 and the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. 34. 36 MRSA §6652, sub-§1, as enacted by PL 1995, c. 368, Pt. FFF, §2, is amended to read:

1. Generally. Subject to the provisions of subsection 2 and of sections 6653 and 6654, a person against whom taxes have been assessed pursuant to Part 2, except for chapters 111 and 112, with respect to eligible property and who has paid those taxes is entitled to reimbursement of those taxes from the State.

Sec. 35. Retroactivity. That section of this Act that amends the Maine Revised Statutes, Title 36, section 6652, subsection 1 applies retroactively to June 29, 1995.

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

Effective April 10, 1996.

CHAPTER 640

H.P. 1251 - L.D. 1713

An Act to Amend the Tax Laws Regarding Retail Business Registration and Penalty Relief to Taxpayers with Extensions

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