

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 1997**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1997**

the date of distribution. For assets ~~which~~ that do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The residuary estate ~~must~~ may be distributed ~~in a manner that is equitable~~ by the personal representative in cash or in kind, in accordance with the best interests of the residuary devisees. Residuary assets may be distributed, at the personal representative's discretion, in pro rata or non pro rata shares; except that residuary assets not distributed pro rata must be valued as of the date on which they are distributed.

**Sec. 4. Retroactivity.** This Act applies retroactively to January 1, 1997.

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

Effective April 10, 1997, unless otherwise indicated.

**CHAPTER 74**

**H.P. 306 - L.D. 370**

**An Act to Establish a Commemorative Day Recognizing the Children of this State**

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

**Sec. 1. 1 MRSA §134** is enacted to read:

**§134. Children's Day**

In recognition of the value and importance of every child, the State designates the last Friday in September as Children's Day. The Governor shall annually issue a proclamation urging citizens, businesses and organizations to observe the day with appropriate celebration and activity.

See title page for effective date.

**CHAPTER 75**

**H.P. 335 - L.D. 457**

**An Act to Discourage Frivolous Lawsuits by Prisoners**

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

**Sec. 1. 4 MRSA §1058** is enacted to read:

**§1058. Prisoner application to proceed in forma pauperis**

**1. Prepayment of filing fee and certified copies required.** A person who is confined in a federal, state, county or local correctional or detention facility may not bring a civil action arising under federal or state law in any court in this State with respect to a condition of that person's confinement or the effect of an action or inaction by a government official on the life of that person confined and may not appeal a judgment in such a civil action without prepayment of the filing fee unless, in addition to the in forma pauperis application and affidavit required by the Maine Rules of Civil Procedure, Rule 91, that person submits a certified copy of the facility account statement for that person for the 6-month period immediately preceding the filing of the action or appeal, obtained from the appropriate official of each facility at which that person is or was confined.

**2. Waiver of prepayment of filing fee.** If the court finds that the action or appeal is not frivolous and has been brought in good faith and that the person is without sufficient funds to pay the filing fee, it shall order that prepayment of the full amount of the filing fee be waived. If the court denies the in forma pauperis application, the action or appeal must be dismissed without prejudice, unless within 7 days after the denial the person pays the filing fee to the clerk of the court.

**3. Full payment of filing fee required; initial partial filing fee.** Notwithstanding subsection 2, the person shall pay the full amount of the filing fee. The court shall assess the person's financial status and, when funds exist, collect as a partial payment of the filing fee an initial partial filing fee of 20% of the greater of:

A. The average monthly deposits to the person's facility account for the 6-month period immediately preceding the filing of the action or appeal; or

B. The average monthly balance in the person's facility account for the 6-month period immediately preceding the filing of the action or appeal.

**4. Payments from prisoner's facility account.**

After payment of the initial partial filing fee, the person shall make monthly payments of 20% of the preceding month's deposits credited to the person's facility account. The facility having custody of the person shall forward monthly payments from the account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fee is paid in full.

**5. Restrictions on filing fee.** The filing fee collected may not exceed the amount of the fee permitted by law for the commencement of a civil action or an appeal of a civil action. A person may not be prohibited from bringing a civil action or appealing a civil action if the court finds that the action or appeal is not frivolous and has been brought in good faith and that the person has no assets and no means by which to pay the initial partial filing fee.

**6. Payment of outstanding restitution orders.** Any compensatory damages awarded to a person in connection with a civil action brought with respect to a condition of the person's confinement or the effect of an action or inaction by a government official on the life of the person confined must be paid directly to satisfy any outstanding restitution orders pending against the person, whether as the result of court proceedings or facility disciplinary proceedings. The remainder of any such award, after full payment of all pending restitution orders, must be forwarded to the person.

**7. Notification to victim.** Prior to payment of any compensatory damages awarded to a person in connection with a civil action brought with respect to a condition of the person's confinement or the effect of an action or inaction by a government official on the life of the person confined, reasonable efforts must be made to notify the victims of the crime for which the person was confined concerning the pending payment of any such compensatory damages.

**8. Civil liability.** Neither the failure to perform the requirements of this section nor compliance with this section subjects the Commissioner of Corrections, the Department of Corrections, the county jail, the employees or officers of the department or jail or the attorney representing any of them to liability in a civil action.

See title page for effective date.

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**CHAPTER 76**

S.P. 162 - L.D. 491

**An Act to Amend Provisions of the Probate Code Relating to Depositing Wills in Court within the Testator's Lifetime**

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

**Sec. 1. 18-A MRSA §2-901**, as enacted by PL 1979, c. 540, §1, is amended to read:

**§2-901. Disposition of will deposited with court in testator's lifetime**

~~A will may be deposited by the testator or his agent for safekeeping, under rules of the court, with the court in the office of the register of probate in the county in which the testator is domiciled at the time of the will's deposit. Such will shall be enclosed in a sealed wrapper, endorsed with the name and residence of the testator and the date when deposited, and may have endorsed thereon the name of any person to whom it is to be delivered after the death of the testator. During the testator's lifetime a deposited will shall be deposited for safekeeping with the court in the office of the register of probate and must be delivered only to him the testator or to a person authorized in writing signed by him the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to assure ensure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to him that designated person on request; or the court may deliver the will to the appropriate court.~~

See title page for effective date.

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**CHAPTER 77**

S.P. 178 - L.D. 561

**An Act to Provide the Maine Turnpike Authority with Representation on the State Employee Health Commission**

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