

# 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**

C. The granting of a variance will not alter the essential character of the locality; and

D. The hardship is not the result of action taken by the applicant or a prior owner.

Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may be granted only for a use permitted in a particular zone.

**Sec. 2. 30-A MRSA §4353, sub-§4-C** is enacted to read:

**4-C. Variance from dimensional standards.**

A municipality may adopt an ordinance that permits the board to grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;

B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;

D. No other feasible alternative to a variance is available to the petitioner;

E. The granting of a variance will not unreasonably adversely affect the natural environment; and

F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Under its home rule authority, a municipality may, in an ordinance adopted pursuant to this subsection, adopt additional limitations on the granting of a

variance from the dimensional standards of a zoning ordinance.

See title page for effective date.

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## CHAPTER 149

### S.P. 366 - L.D. 1225

#### An Act to Amend the Maine Children's Trust Incorporated

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

**Sec. 1. 22 MRSA §3881, sub-§4**, as enacted by PL 1993, c. 600, Pt. A, §16, is amended to read:

**4. Income.** "Income" means annual contributions made to the fund through the income tax checkoff ~~and any other sources.~~

**Sec. 2. 22 MRSA §3883, sub-§2**, as enacted by PL 1993, c. 600, Pt. A, §16, is amended to read:

**2. Membership.** The board consists of at least 17 members, appointed as follows:

A. One Senator, appointed by the President of the Senate for a 2-year term served concurrently with the legislative term;

B. One Representative, appointed by the Speaker of the House of Representatives for a 2-year term served concurrently with the legislative term;

C. Four members of the Maine Association of Child Abuse and Neglect Councils, selected by that association. Of the initial appointees, one is appointed for a one-year term, one is appointed for a 2-year term and 2 are appointed for 3-year terms. After the initial appointments, appointees are appointed for 3-year terms;

D. Two representatives of the Department of Human Services appointed by the Commissioner of Human Services. One member must be a senior policy-making official and the other must be a line manager with several years of experience in child abuse and neglect. Of the initial appointees, one is appointed for a 2-year term and the other is appointed for a 3-year term. After the initial appointments, appointees are appointed for 3-year terms; and

E. Nine members of the public and the business community.

(1) Three members must be appointed by the Governor. Of the initial appointees, one

is appointed for a one-year term, one is appointed for a 2-year term and one is appointed for a 3-year term. After the initial appointments, appointees are appointed for 3-year terms.

(2) Three leaders from the business community must be appointed by the Maine Chamber of Commerce and Industry. Of the initial appointees, one is appointed for a one-year term, one is appointed for a 2-year term and one is appointed for a 3-year term. After the initial appointments, appointees are appointed for 3-year terms.

(3) ~~Three~~ At least 3 members must be elected by majority vote of the board. Of the initial appointees, one is appointed for a one-year term, one is appointed for a 2-year term and one is appointed for a 3-year term. After the initial appointments, appointees are appointed for 3-year terms.

The public members may include representatives of the following groups: parents; persons under the age of 21; the business and labor communities; the legal community; the religious community; and providers of child abuse and neglect prevention services.

**Sec. 3. 22 MRSA §3885, sub-§3, ¶B**, as enacted by PL 1993, c. 600, Pt. A, §16, is repealed.

**Sec. 4. 22 MRSA §3885, sub-§4**, as enacted by PL 1993, c. 600, Pt. A, §16, is amended to read:

**4. Discretion.** The board has sole discretion in the use of resources from sources other than the income tax checkoff by individuals ~~and federal grants pursuant to subsection 3.~~

See title page for effective date.

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**CHAPTER 150**

**H.P. 848 - L.D. 1153**

**An Act to Require that Day Care Facilities for Children and Infants Be Smoke Free**

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

**Sec. 1. 22 MRSA §1542, sub-§2, ¶J**, as enacted by PL 1993, c. 342, §1 and affected by §9, is amended to read:

J. Smoking is not prohibited in a private residence unless the private residence is used as a

~~licensed~~ day care or baby-sitting service, in which case ~~that portion~~ those portions of the private residence used to care for children ~~is a~~ and adjacent areas from which smoke could enter the areas used to care for children are public place ~~places~~ for the period of time that children who are being cared for are present in that portion of the residence.

See title page for effective date.

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**CHAPTER 151**

**H.P. 262 - L.D. 326**

**An Act to Streamline the Eviction Process**

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

**Sec. 1. 14 MRSA §6003, 2nd ¶**, as amended by PL 1989, c. 452, §1, is further amended to read:

~~If either party in a forcible entry and detainer action requests a recorded hearing, the~~ The court shall schedule and hold the hearing as soon as practicable, but no later than 10 days after the return day ~~except that the court may grant a continuance for good cause shown.~~ Any defendant requesting a recorded hearing shall file a written answer enumerating all known defenses on or before the return day.

**Sec. 2. 14 MRSA §6005, first ¶**, as amended by PL 1995, c. 208, §2, is further amended to read:

When the defendant is defaulted or fails to show sufficient cause, judgment must be rendered against the defendant by the District Court for possession of the premises and a writ of possession must be issued to remove the defendant, which may be served by a constable. If at least 3 good faith efforts on 3 different days have been made to serve the defendant, service may be accomplished by both mailing the notice by first-class mail to the defendant's last known address and leaving the writ of possession at the defendant's last and usual place of abode. A writ of possession may not issue in any case in which the ground for termination of the tenancy was rent arrearage and the defendant paid the amount necessary to reinstate the tenancy as provided by section 6002.

See title page for effective date.