

# 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**

2. Absence without pay. The Except as provided in section 17765, the board may not allow service credit for a period of absence without pay of more than a month's duration for a full-time position.

**Sec. 2. 5 MRSA §17765** is enacted to read:

**§17765. Service credit for educational leave**

A member may purchase service credit for the period during which the member took an unpaid or partially paid educational leave pursuant to the Maine Educational Leave Act under the following conditions.

1. Payment. The member must, before any retirement benefit becomes effective, pay into the Members' Contribution Fund by a single payment or annual direct payments to the retirement system an amount that, together with regular interest on that amount, is the actuarial equivalent, at the effective date of the retirement benefit, of the portion of the retirement benefit based on the additional service credit purchased under this section. Payments must be made as provided in section 17701, subsection 4.

If any retirement benefit becomes effective before the completion of the payment under this subsection, the member is entitled to the additional creditable service that the total amount of payments actually made, plus regular interest on those payments to the date the retirement benefit becomes effective, bears to the actuarial equivalent of the total portion of the retirement benefit based on the additional creditable service.

2. Limitation on use of purchased service credit. Notwithstanding any other provision of law, service credit purchased under this section may be used only for the purpose of increasing the amount of a member's service retirement benefit by inclusion of the purchased service credit and may not be used to establish a member's qualification for a service retirement benefit.

3. Return to employment. The member must have returned to state employment after completion of the educational leave.

See title page for effective date.

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**CHAPTER 191**

**H.P. 751 - L.D. 1028**

**An Act to Amend the Maine Probate Code**

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

**Sec. 1. 18-A MRSA §7-402, sub-§(c), ¶(26),** as enacted by PL 1979, c. 540, §1, is amended to read:

(26) To execute and deliver all instruments ~~which that~~ will accomplish or facilitate the exercise of the powers vested in the trustee; and

**Sec. 2. 18-A MRSA §7-402, sub-§(c), ¶(27)** is enacted to read:

(27) To divide the funds and properties constituting a trust into 2 or more identical separate trusts that represent 2 or more fractional shares of the funds and properties being divided and to make distributions of income and principal by a method other than pro rata from the separate trusts created as the trustee determines to be in the best interest of the trust beneficiaries. In any case when a single trust has been divided by the trustee into 2 separate trusts, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the trustee may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy those distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

See title page for effective date.

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**CHAPTER 192**

**S.P. 132 - L.D. 411**

**An Act to Bring Certain State Retirement Laws into Compliance with Federal Laws**

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

**Whereas,** the federal Small Business Protection Act of 1996 amended the law regarding treatment of assets and income of deferred compensation plans for state and local employees under the United States Internal Revenue Code, Section 457 making state law inconsistent with the federal law; and

**Whereas,** immediate amendment of current state law is necessary to permit state and local governments to convert the provisions of existing deferred compensation plans for employees and to establish new plans consistent with federal law; 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. 5 MRSA §888**, as repealed and replaced by PL 1973, c. 788, §16-A, is amended to read:

**§888. Application**

Any compensation or portion of compensation reduced by an employee in conjunction with a deferred compensation program shall remain as a general, unpledged asset of the State, county, city, town or other political subdivision until such time as the deferred compensation program covering such employee calls for distribution and any earnings or income thereon must be held in trust for the exclusive benefit of that participant and that participant's beneficiary as provided in the United States Internal Revenue Code, Section 457. For purposes of this section, custodial accounts, annuity contracts and other contracts described in the United States Internal Revenue Code, Section 457(g) must be treated as trusts. Any compensation or portion of compensation reduced shall ~~must~~ be considered in calculating any employee benefits and ~~it shall be~~ is subject to any withholding imposed on ~~such~~ the employee. Any compensation or portion of compensation reduced ~~shall is~~ not ~~be~~ subject to any income taxation until distribution is actually made to the employee.

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

Effective May 15, 1997.

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**CHAPTER 193**

**H.P. 549 - L.D. 740**

**An Act to Permit the Temporary Removal of Gravestones from Cemeteries for the Purpose of Repair**

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

**Sec. 1. 13 MRSA §1371, sub-§2**, as enacted by PL 1987, c. 326, §1, is amended to read:

**2. Conditions on removal.** Removal of ~~any~~ a tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the

dead, or ~~any~~ a portion or fragment of ~~any such~~ a memorial, is permitted only for the purpose of preservation. ~~Any~~ A tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead, or ~~any~~ a portion or fragment of ~~any such~~ a memorial, ~~must~~ may not be removed from the confines of the cemetery or burial ground, except that a person who has obtained authorization or approval described in subsection 1, paragraph A or B, may remove all or a portion of a memorial for a period of no longer than 6 months for the purpose of repair, restoration or preservation, but only when repair, restoration or preservation can not reasonably be accomplished on the site of the cemetery or burial ground. Prior to removal of the memorial, a notice must be submitted to the municipality, or to the county in the case of an unorganized territory, stating the location of the burial ground, the identification of the memorial, the authority requesting the removal, the site to which the memorial will be temporarily removed, the proposed date of removal and the proposed date of replacement in the burial ground.

See title page for effective date.

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**CHAPTER 194**

**S.P. 387 - L.D. 1272**

**An Act to Ensure Enforcement of Protection from Abuse Laws**

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

**Sec. 1. 16 MRSA §635, sub-§4** is enacted to read:

**4. Report.** The board shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than January 1st of each year concerning the methods devised to keep accurate, updated records of misdemeanor crimes of domestic violence, to ensure enforcement of 18 United States Code, Section 922 (1996).

See title page for effective date.

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**CHAPTER 195**

**S.P. 310 - L.D. 1019**

**An Act to Allow Foam Food and Beverage Containers in School Cafeterias under Certain Circumstances**