

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

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.

J.S. McCarthy Company
Augusta, Maine
1997

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Sec. 1. 5 MRSA §888, as repealed and replaced by PL 1973, c. 788, §16-A, is amended to read: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.

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.

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.

CHAPTER 195

S.P. 310 - L.D. 1019

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

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

Sec. 1. 38 MRSA §1652, sub-§2, as enacted by PL 1987, c. 804, is amended to read:

2. Schools. A school or school administrative district shall comply with the provisions of this section except that a food service providing such services to satellite facilities at the school or school administrative district serviced by central kitchen facilities not at the same location is exempt. A school or school administrative district may submit a request to the Executive Department, State Planning Office for a 3-year waiver from the provisions of this section. The State Planning Office may grant the requested waiver as long as:

A. The request includes an explanation of the district's financial hardship and a waste reduction plan. The plan must be designed to achieve the goal of using durable containers in place of disposable containers, unless it is shown that the use of durable containers is not feasible and alternative goals are proposed. The plan must include a proposed capital plan for the acquisition of necessary equipment; and

B. The school or school administrative district has held a public hearing on the proposal to use polystyrene containers and the waste reduction plan.

The State Planning Office may renew the waiver for 2-year periods if it finds that the school or school administrative district has made reasonable progress toward implementing the waste reduction plan. The State Planning Office, within available resources, may provide technical and financial assistance to schools and school administrative districts to assist them with meeting the goal of using durable containers.

See title page for effective date.

CHAPTER 196

S.P. 337 - L.D. 1115

**An Act to Make Technical
Corrections in the Maine
Administrative Procedure Act**

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

Sec. 1. 5 MRSA §8052, sub-§5, ¶C is enacted to read:

C. If the adoption under this subsection is final adoption of a major substantive rule under sub-

chapter II-A, the agency must include in its written statement citation of the legislative act authorizing final adoption of that rule; or, if authorization is the result of failure of the Legislature to act under section 8072, subsection 7, the agency must indicate that fact and identify the date the agency filed the rule for review under section 8072.

Sec. 2. 5 MRSA §8072, sub-§§1 and 7, as enacted by PL 1995, c. 463, §2, are amended to read:

1. Preliminary adoption of major substantive rules. An agency proposing a major substantive rule other than an emergency rule, after filing the notice of proposed rulemaking required by section 8052, shall proceed with rule-making procedures to the point of, but not including, final adoption. At that point, known in this section as "provisional adoption," the agency shall file the provisionally adopted rule and related materials with the Secretary of State as provided in section 8056, subsection 1, paragraph B and submit the rule to the Legislature for review and authorization for final adoption as provided in this section. The rule has legal effect only after review by the Legislature followed by final adoption by the agency.

7. Consideration by the Legislature. No later than 30 days before statutory adjournment of the Legislature as provided in Title 3, section 2, each joint standing committee of the Legislature shall submit to the Secretary of the Senate and the Clerk of the House of Representatives the committee's report on agency rules the committee has reviewed as provided in this section. The report must include a copy of the rule or rules reviewed, the committee's recommendation concerning final adoption of the rule or rules, a statement of the reasons for a recommendation to withdraw or modify the rule or rules and draft legislation for introduction in that session that is necessary to implement the committee's recommendation. A committee may decline to include in its report recommendations covering any rules submitted to it later than 45 days before statutory adjournment. If an adjournment date earlier than required by statute is anticipated, the Legislative Council may establish an earlier deadline for agencies to submit provisionally adopted rules for review, except that any earlier date established by the council may not be more than 75 days before statutory adjournment. If, before adjournment of the session at which a rule is reviewed, the Legislature fails to act on all or part of any rule submitted to it for review in accordance with this section, an agency may proceed with final adoption and implementation of the rule or part of the rule that was not acted on.

See title page for effective date.