

# 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 determination, the record of the board's proceedings and any other document required by the arbitration rules of the commission to be filed.

**10. Board to publish determinations.** The commission shall publish the determinations of boards, together with the statements of the reasons.

**11. Adopt rules.** The commission shall adopt and publish rules and file a copy of those rules and any amendment to the rules with the appropriate agency or officer in each of the party states.

**12. Written compromise allowed.** This section does not prevent, at any time, a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

#### **§7115. Entry into force and withdrawal**

This compact takes effect when substantively identical provisions are enacted into law by any 7 states. This compact becomes effective as to any other state in accordance with the state's enactment of this compact. The commission shall arrange for notification of all party states when there is a new enactment of the compact. The following provisions also apply.

**1. Withdrawal from compact.** Any party state may withdraw from this compact by enacting a statute repealing the compact for that state. A withdrawal does not affect any liability already incurred by or chargeable to a party state before that withdrawal.

**2. Proceedings before arbitration board.** A proceeding commenced before an arbitration board before the withdrawal of a state and to which the withdrawing state or any subdivision of that state is a party may not be discontinued or terminated by the withdrawal and the board does not lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination.

#### **§7116. Effect on other laws and jurisdiction**

This compact may not be construed to:

**1. Fix rates of taxation.** Affect the power of any state or subdivision of that state to fix rates of taxation;

**2. Tax or fixed fees.** Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than sales tax, provided that the definition of "tax" in section 7113, subsection 7 applies for the purposes of that section and that the commission's powers of study and recommendation pursuant to section 7110 apply;

**3. Limit state or local courts.** Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any

person, corporation or other entity or subject matter, except to the extent that that jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body; and

**4. Supersede United States courts.** Supersede or limit the jurisdiction of any court of the United States.

#### **§7117. Construction**

This compact may be liberally construed to effectuate the purposes of the compact. The provisions of this compact are severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or if its applicability to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person or circumstance is not affected. If this compact is held contrary to the constitution of any state participating in the compact, the compact remains in effect for the remaining party states and the state affected as to all severable matters.

See title page for effective date.

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## CHAPTER 412

### H.P. 1001 - L.D. 1393

#### **An Act Amending the Compensation for Members of the Panel of Mediators**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

**Sec. 1. 26 MRSA §892**, as amended by PL 1991, c. 798, §2, is further amended to read:

#### **§892. Panel**

The Panel of Mediators, as established by Title 5, section 12004-B, subsection 3, consisting of not less than 5 nor more than 10 impartial members, must be appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. The Maine Labor Relations Board

shall supply to the Governor nominations for filling vacancies. Vacancies occurring during a term must be filled for the unexpired term. Members of the panel are entitled to compensation according to ~~Title 5, chapter 379~~ section 965, subsection 2, paragraph C. The costs for services rendered and expenses incurred by the panel and any applicable state cost allocation program charges must be shared equally by the parties to mediation and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the panel is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

**Sec. 2. 26 MRSA §965, sub-§2, ¶C,** as amended by PL 1991, c. 798, §4, is further amended to read:

C. The Panel of Mediators, consisting of not less than 5 nor more than 10 impartial members, must be appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. The Maine Labor Relations Board shall supply to the Governor nominations for filling vacancies. Vacancies occurring during a term must be filled for the unexpired term. Members of the panel are entitled to ~~\$100 a day beginning July 1, 1988, for services for the time actually employed in the discharge of their official duties a fee for services in the amount of \$100 for up to 4 hours of mediation services provided and \$100 for each consecutive period of up to 4 hours thereafter~~ and also are entitled to traveling and all other necessary expenses. Notwithstanding the provisions

of Title 5, section 12003-A, subsection 9, members of the panel who provide mediation services in more than one dispute in a given day are entitled to the compensation as provided in this paragraph in each such case. The necessary expenses incurred by the members must be allocated to the mediation session that required the costs. The costs for services rendered and expenses incurred by members of the panel and any state cost allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the panel is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

**Sec. 3. Allocation.** The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
<b>LABOR, DEPARTMENT OF</b>		
<b>Maine Labor Relations Board</b>		
Personal Services	\$15,936	\$19,200
Allocates funds for increased compensation		

of members of the Panel  
of Mediators.

See title page for effective date.

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## CHAPTER 413

S.P. 274 - L.D. 882

### An Act to Require Defendants to Pay Restitution, Monetarily or Through Work Restitution

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

**Sec. 1. 17-A MRSA §1325, sub-§1, ¶C**, as enacted by PL 1977, c. 455, §3, is amended to read:

C. The present and future financial ~~ability~~ capacity of the offender to pay restitution.

**Sec. 2. 17-A MRSA §1325, sub-§2, ¶D**, as enacted by PL 1977, c. 455, §3, is amended to read:

D. When the amount and method of payment of monetary restitution or the performance of service restitution ~~will create~~ creates an excessive financial hardship on the offender or dependent of the offender. In making this determination, all relevant factors ~~shall~~ must be considered, including, but not limited to the following:

- (1) The number of the offender's dependents;
- (2) The ~~usual~~ minimum living expenses of the offender and ~~his~~ the offender's dependents;
- (3) The special needs of the offender and ~~his~~ the offender's dependents, including necessary travel expense to and from work;
- (4) The offender's present income and potential future earning capacity; and
- (5) The offender's resources, from whatever source.

**Sec. 3. 17-A MRSA §1325, sub-§4** is enacted to read:

**4. Burdens of proof.** An offender who asserts a present or future incapacity to pay restitution has the burden of proving the incapacity by a preponderance of the evidence. On appeal of a restitution order, the offender has the burden of demonstrating that the incapacity was proven as a matter of law.

**Sec. 4. 17-A MRSA §1328**, as enacted by PL 1977, c. 455, §3, is repealed and the following enacted in its place:

#### **§1328. Postconviction relief**

If, in any judicial proceeding following conviction, a court issues a final judgment invalidating the conviction, the judgment may include an order that any or all of a restitution payment that the convicted person paid pursuant to the sentence for that conviction be returned to the convicted person.

**Sec. 5. 17-A MRSA §1328-A** is enacted to read:

#### **§1328-A. Modification of restitution**

A convicted person who can not make restitution payments in the manner ordered by the court shall move the court for a modification of the time or method of payment or service to avoid a default. The court may modify its prior order to reduce the amount of each installment or to allow additional time for payment or service.

**Sec. 6. 17-A MRSA §1329, sub-§2**, as amended by PL 1989, c. 502, Pt. D, §15, is further amended to read:

**2. Reports.** A probation officer having knowledge of a default in restitution by an offender shall report the default to the office of the ~~prosecutor~~ attorney for the State. ~~A prosecutor~~ An attorney for the State having knowledge of a default in restitution by an offender shall report the default to the court. If the restitution was a condition of probation, the attorney for the State may file a motion to enforce payment of restitution or, with the written consent of the probation officer, a motion to revoke probation under section 1205. If the restitution was not a condition of probation, the attorney for the State may file a motion to enforce payment of restitution.

**Sec. 7. 17-A MRSA §1329, sub-§§3, 4 and 5** are enacted to read:

**3. Motion to enforce payment of restitution.** Either the attorney for the State or the court may initiate a motion to enforce payment of restitution. Notification for the hearing on the motion must be sent by regular mail to the offender's last known address. If the offender does not appear for the hearing after proper notification has been sent, the court may issue a bench warrant.

A. Unless the offender shows by a preponderance of the evidence that the default was not attributable to an intentional or knowing refusal to obey the court's order or to a failure on the offender's part to make a good-faith effort to obtain