

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

SECOND REGULAR SESSION
January 5, 2000 to May 12, 2000

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 11, 2000

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
2000

Whereas, law enforcement agencies and retail merchants in this State have seen increasing evidence that counterfeit goods are being brought into this State to be sold to unsuspecting consumers; and

Whereas, the sale of these counterfeit goods reduces the opportunity of legitimate merchants to compete in the marketplace; and

Whereas, the sale of these counterfeit goods is often undertaken by unlicensed individuals and results in revenue lost to the State; and

Whereas, the use of counterfeit Universal Price Code, "UPC," labels is also increasing in this State and results in revenue lost to the State and to its merchants; and

Whereas, the public health and well-being of the citizens of this State may be threatened by the unauthorized sale of certain consumer goods, such as infant formulas, cosmetics, personal care products, nonprescription drugs and medical devices, at unused property sales or flea markets; 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. 17-A MRSA §901, sub-§3, ¶B, as enacted by PL 1975, c. 499, §1, is amended to read:

B. "Misabeled" means having a label or trademark varying from the standard of truth and disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage. "Misabeled" includes but is not limited to counterfeiting or the unauthorized reproducing of a trademark.

Sec. 2. 17-A MRSA §901, sub-§3-A is enacted to read:

3-A. A commodity or item bearing marks in violation of this section or personal property, including, but not limited to, tools, machines, equipment, instrumentalities or vehicles of any kind, employed or used in connection with the violation is contraband and may be seized by a law enforcement officer. A person convicted of a violation of this section forfeits to the State all rights, privileges, interests and claims to property seized under this subsection.

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

Effective May 8, 2000.

CHAPTER 768

H.P. 1754 - L.D. 2460

An Act to Establish Criteria for Tax Incentive Programs

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

Sec. 1. 5 MRSA §13070-J, sub-§1, ¶E is enacted to read:

E. "Economic development proposal" means proposed legislation that establishes a new program or that expands an existing program that:

(1) Is intended to encourage significant business expansion or retention in the State; and

(2) Contains a tax expenditure, as defined in section 1664, or a budget expenditure with a cost that is estimated to exceed \$100,000 per year.

Sec. 2. 5 MRSA §13070-J, sub-§§3 and 4, as enacted by PL 1997, c. 761, §2, are amended to read:

3. Report. Annually, an employer receiving an economic development incentive, the value of which exceeds \$10,000 in one year, shall submit a written report to the commissioner no later than August 1st of the following year containing but not limited to the following information:

A. The amount of assistance received by the employer in the preceding year from each economic development incentive and the uses to which that assistance has been put;

B. The total amount of assistance received from all economic assistance programs;

C. The number, type and wage level of jobs created or retained as a result of an economic development incentive;

D. Current employment levels for the employer for all operations within the State, the number of employees in each job classification and the average wages and benefits for each classification;

E. Any changes in employment levels that have occurred over the preceding year; and

F. An assessment of how the employer has performed with respect to the public purpose identified in subsection 2, paragraph A, if applicable.

The department shall mail report forms by May 15th of each year to every employer required to file a report under this subsection. Reports filed under this subsection are public records for purposes of Title 1, chapter 13.

4. Agency reports. The following agencies shall submit the following reports.

A. The State Tax Assessor shall submit a report by ~~May 1st of 1999 and each odd-numbered year thereafter~~ October 1st annually to the Legislature and the commission identifying the amount of public funds spent and the amount of revenues foregone as the result of economic development incentives. The report must identify the amount of the economic development incentives under the jurisdiction of the Bureau of Revenue Services received by each employer to the extent permitted under Title 36, section 191 and other provisions of law concerning the confidentiality of information.

B. The Commissioner of Labor shall report by ~~May~~ October 1st annually to the Legislature and the commission on the amount of public funds spent on workforce development and training programs directly benefiting businesses in the State. The report must identify the amount of economic development incentives under the jurisdiction of the Department of Labor received by each employer and the public benefit resulting from those economic development incentives.

C. The Maine Technical College System shall report by ~~May~~ October 1st annually to the Legislature and the commission on the amount of public funds spent on job training programs directly benefiting businesses in the State. The report must identify the amount of economic development incentives under the jurisdiction of the system received by each employer and the public benefit resulting from those economic development incentives.

D. The department shall report by ~~May~~ October 1st annually to the Legislature and the commission on the amount of public funds spent for the direct benefit of businesses in the State under municipal tax increment financing, employment tax increment financing and the Governor's training initiative. The report must identify the amount of economic development incentives under the jurisdiction of the department received by

each employer and the public benefit resulting from those economic development incentives.

E. The department shall report by October 1st annually to the State Tax Assessor a listing of employers that have failed to submit reports required under subsection 3. The report must document that each employer included in the report was provided with reasonable official notification of its noncompliance and that its failure to submit the required report within 30 days would result in the withholding and potential forfeiture of reimbursements for which the employer may be eligible under Title 36, chapter 915. The notification must be in the form of a letter posted by certified mail before August 15th of the reporting year. If the department subsequently receives a report from the employer, the department shall so notify the State Tax Assessor.

F. Prior to any forfeiture of benefits under Title 36, section 6652, subsection 3, the department shall make a written determination that the report required by subsection 3 either has not been received or is not in an acceptable form. A copy of that written determination, including the reasons for the determination, must be mailed to the claimant by certified mail. The determination made by the department constitutes final agency action that is subject to review by the Superior Court in accordance with the Maine Administrative Procedure Act, except that sections 11006 and 11007 do not apply. The Superior Court shall conduct a de novo hearing and make a de novo determination as to whether the claimant has filed a report in substantial compliance with this section. The Superior Court shall make its own determination as to all questions of fact and law. The Superior Court shall enter such orders and decrees as the case may require. In the event that the department's determination is appealed to Superior Court pursuant to this paragraph, forfeiture of the claimant's right to receive reimbursement of taxes under Title 36, chapter 915 may not occur unless the Superior Court, subject to any appeal to the Law Court, finds that the claimant had not substantially complied with the reporting requirements of this section.

Sec. 3. 5 MRSA §13070-L, sub-§5, as enacted by PL 1997, c. 761, §2, is amended to read:

5. Staffing. ~~The Bureau of Revenue Services~~ Office of Fiscal and Program Review shall provide staff assistance to the commission.

Sec. 4. 5 MRSA §13070-M, as enacted by PL 1997, c. 761, §2, is amended to read:

§13070-M. Repeal

This article is repealed ~~October 1, 2001~~ August 1, 2002.

Sec. 5. 5 MRSA §13070-O is enacted to read:

§13070-O. Evaluation of economic development proposals

1. Criteria. An economic development proposal must:

A. Have a program name that accurately describes the nature of the program;

B. Have specific stated objectives, such as the number of jobs to be created or retained, the wage levels and benefits associated with those jobs or a project with significant value to the State or a community within the State;

C. Specify a method to measure whether the objectives of the program have been met;

D. Require that a business that receives benefits under the program report on the use of the benefits received;

E. Require that the appropriate joint standing committee of the Legislature review the program at specific and regular intervals;

F. Provide incentives for a business to meet objectives of the program and, when incentives are provided in anticipation of contractual performance, penalties for a business that does not meet the objectives of the program; and

G. Provide a cost analysis of the program based on at least a 10-year period.

2. Review of criteria. The department shall review each economic development proposal and any information relevant to the proposal and shall report to the joint standing committee of the Legislature having jurisdiction over the proposal on the extent to which the proposal meets the criteria specified in subsection 1.

Sec. 6. 36 MRSA §6652, sub-§3 is enacted to read:

3. Withholding for failure to report. Provided that the Department of Economic and Community Development has complied with the notice requirements of Title 5, section 13070-J, subsection 4, paragraph E and the notice required by that provision has been received by the claimant, the State Tax Assessor shall withhold reimbursement under this chapter for a claimant listed by the department pursuant to Title 5, section 13070-J, subsection 4, paragraph E as failing to submit the reports required

by Title 5, section 13070-J, subsection 3 and who, as of the date of the claim for which payment is being withheld, has failed to submit a report that has become due. Upon notification by the department of its receipt of the required report in an acceptable form, the State Tax Assessor shall make the payment that was withheld. The right to receive payment is forfeited if the overdue report is not received in an acceptable form by the department within 180 days following the date the claim for reimbursement was filed, except that a forfeiture may not occur unless and until the following requirements have been satisfied:

A. The assessor has notified the Department of Economic and Community Development, at least 60 days prior to the expiration of the 180 day period, of the date on which that 180 day period will expire;

B. The Department of Economic and Community Development has notified the claimant in writing by certified mail within 15 days of receiving the assessor's notice that the department has made a determination under Title 5, section 13070-J, subsection 4, paragraph F that the report filed by the claimant has not been received or is in unacceptable form and that the right to reimbursement is subject to forfeiture if a report in acceptable form is not filed within 180 days following the date the claim for reimbursement was filed; and

C. The claimant has either not appealed the determination of the Department of Economic and Community Development to Superior Court within 30 days of receipt by the claimant of the written determination in accordance with Title 5, section 13070-J, subsection 4, paragraph F or the claimant has appealed and the department's determination has been upheld on appeal.

Sec. 7. 36 MRSA §6656, as enacted by PL 1995, c. 368, Pt. FFF, §2, is amended to read:

§6656. Payment of claims

Upon receipt as provided in section 6652, subsection 3, upon receipt of a timely and properly completed claim for reimbursement, the State Tax Assessor shall certify that the claimant is eligible for reimbursement and shall pay the amount claimed from the General Fund within 180 days after the claim is filed. For those claims for which payments are withheld pursuant to section 6652, subsection 3, reimbursement must be paid within 180 days after the assessor receives notification under that subsection that the report has been received.

Sec. 8. Review of economic development incentives. The Department of Economic and Community Development, in consultation with the

Economic Development Incentive Commission established in the Maine Revised Statutes, Title 5, section 12004-I, subsection 6-A, shall review economic development incentives as defined in Title 5, section 13070-J using the criteria specified in Title 5, section 13070-O. The department shall review and report on the economic development incentives in Title 5, section 13070-J, subsection 1, paragraph D, subparagraphs (1) to (3) by November 1, 2000. The department shall review and report on the economic development incentives in Title 5, section 13070-J, subsection 1, paragraph D, subparagraphs (4) to (7) by November 1, 2001. The department's reports must be submitted to the joint standing committee of the Legislature having jurisdiction over taxation matters.

Sec. 9. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2000-01

LEGISLATURE

Economic Development Incentive Commission

All Other \$20,000

Provides funds on a one-time basis for studies, research and operating expenses for the commission to carry out its statutory duties.

See title page for effective date.

CHAPTER 769

S.P. 982 - L.D. 2532

An Act to Implement the Recommendations of the Task Force to Study the Need for an Agricultural Vitality Zone Program

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

Sec. 1. 5 MRSA §6203, sub-§3, ¶¶A and B, as amended by PL 1993, c. 728, §4, are further amended to read:

A. Acquire property or an interest in property that is determined by the board to be of state significance under the guidelines of this chapter; ~~and~~

B. Fund minor capital improvements on lands acquired by proceeds from the Land for Maine's

Future Fund to improve accessibility, as long as these improvements do not exceed 5% of the appraised value of the acquired property; ~~and~~

Sec. 2. 5 MRSA §6203, sub-§3, ¶C is enacted to read:

C. When interest in farmland is acquired, fund the development of a business plan and capital improvements to provide for the land's continuing use as a working farm, as long as these improvements do not exceed 5% of the appraised value of the acquired property.

Sec. 3. 7 MRSA §401-B, sub-§6 is enacted to read:

6. Monitoring consumption of Maine-produced food. By November 1, 2000, the commissioner shall develop a method and baseline research to estimate the percentage of food consumed in Maine that is produced within Maine. The commissioner shall update the methodology and estimate every 2 years and include the latest estimate in the biennial report submitted to the Legislature pursuant to section 2, subsection 5.

Sec. 4. 7 MRSA §434, sub-§2 is enacted to read:

2. Direct marketing. "Direct marketing" means the marketing of agricultural products by farmers directly to consumers and restaurants. "Direct marketing" includes, but is not limited to, farmers' markets, farms selling produce picked by the consumer, roadside farm stands, farms selling shares of an anticipated harvest and catalog sales.

Sec. 5. 7 MRSA §435, sub-§2, ¶G is enacted to read:

G. The commissioner shall make available a minimum of \$1,000,000 from the Agricultural Marketing Loan Fund for the purpose of providing loans to agricultural enterprises that are engaged primarily in direct marketing as defined in section 434, subsection 2. Eligibility criteria for an agricultural marketing loan under this paragraph must allow agricultural enterprises that are engaged primarily in direct marketing to apply for loans for traditional equipment and other capital expenses as provided in Title 10, section 1023-J. Notwithstanding paragraphs A and B, an agricultural loan for a project under this paragraph may not exceed \$50,000. This paragraph is repealed December 31, 2002.

Sec. 6. 7 MRSA §436-A is enacted to read:

§436-A. Development of business plans