

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

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TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2002

- (5) Evidence of employment in a social service delivery field;
- (6) Payment of the application and license fee; and
- (7) Demonstration to the satisfaction of the board adherence to the ethics of the social worker profession.

See title page for effective date.

CHAPTER 543

S.P. 539 - L.D. 1670

An Act Regarding Child Abandonment

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

Sec. 1. 17-A MRSA §553, sub-§3 is enacted to read:

3. It is an affirmative defense to a prosecution under this section that, at the time the offense occurred:

A. The child was less than 31 days of age; and

B. The child was delivered by the person charged under this section to an individual the person reasonably believed to be:

- (1) A law enforcement officer;
- (2) Staff at a medical emergency room;
- (3) A medical services provider as defined in Title 22, section 4018; or
- (4) A hospital staff member at a hospital.

Sec. 2. 22 MRSA §4018 is enacted to read:

§4018. Abandoned child; safe haven provider

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Medical services provider" means an individual certified, registered or licensed in the healing arts, including, but not limited to, a physician, nurse, podiatrist, optometrist, chiropractor, physical therapist, dentist, psychologist, physician's assistant or emergency medical services person.

B. "Safe haven provider" means:

- (1) A law enforcement officer;
- (2) Staff at a medical emergency room;
- (3) A medical services provider; or
- (4) A hospital staff member at a hospital.

2. Request for information. A person who voluntarily delivers a child less than 31 days of age to a safe haven provider and who does not express an intent to return for the child may be requested to provide information helpful to the welfare of the child. The person who accepts a child under this section may not detain the person delivering the child to obtain information.

3. Action by safe haven provider; guidelines. A safe haven provider who accepts a child under this section shall promptly notify the department of the delivery of the child, transfer the child to the department at the earliest opportunity and provide to the department all information provided by the person delivering the child to the safe haven provider. The department shall establish guidelines to assist safe haven providers concerning procedures when a child is delivered to a safe haven provider under this section.

4. Confidentiality. All personally identifiable information provided by the person delivering the child to a safe haven provider is confidential and may not be disclosed by the safe haven provider to anyone except to the extent necessary to provide temporary custody of the child until the child is transferred to the department and except as otherwise provided by court order. All health care or other information obtained by a safe haven provider in providing temporary custody of the child may also be provided to the department upon request.

5. Liability. A person or entity who accepts a child under this section or provides temporary custody of a child accepted under this section is not subject to civil, criminal or administrative liability for accepting the child or providing temporary custody of the child in the good faith belief that the action is required or authorized by this section. This subsection does not affect liability for personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.

See title page for effective date.

CHAPTER 544

H.P. 1173 - L.D. 1573

An Act to Enact the Uniform Principal and Income Act of 1997

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

Sec. 1. 18-A MRSA §7-402, sub-§(c), ¶(21), as enacted by PL 1979, c. 540, §1, is amended to read:

(21) To allocate items of income or expense to either trust income or principal, as provided by law, ~~including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties~~ Article VII, Part 7;

Sec. 2. 18-A MRSA Art. VII, Pt. 7 is enacted to read:

PART 7

UNIFORM PRINCIPAL AND INCOME ACT OF 1997

SUBPART 1

DEFINITIONS AND FIDUCIARY DUTIES

§7-701. Short title

This Part may be cited as the "Uniform Principal and Income Act of 1997."

§7-702. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(b) "Beneficiary" includes, in the case of a decedent's estate, an heir and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(c) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

(d) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in subpart 4.

(e) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(f) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(g) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(h) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this Part to or from income during the period.

(i) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(j) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(k) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(l) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(m) "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

§7-703. Fiduciary duties; general principles

(a) In allocating receipts and disbursements to or between principal and income and with respect to any matter within the scope of subparts 2 and 3, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this Part;

(2) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this Part;

(3) Shall administer a trust or estate in accordance with this Part if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this Part do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under section 7-704, subsection (a) or a discretionary power of administration regarding a matter within the scope of this Part, whether granted by the terms of a trust, a will or this Part, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this Part is presumed to be fair and reasonable to all of the beneficiaries.

§7-704. Trustee's power to adjust

(a) A trustee may adjust between principal and income by allocating an amount of income to principal or an amount of principal to income to the extent the trustee considers appropriate if the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the rules in section 7-703, subsection (a), that the trustee is unable to comply with section 7-703, subsection (b).

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

- (1) The nature, purpose and expected duration of the trust;
- (2) The intent of the settlor;
- (3) The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;
- (4) The needs for liquidity, regularity of income and preservation and appreciation of capital;
- (5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to

which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) The net amount allocated to income under the other sections of this Part and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment under this section if any of the following applies:

(1) The adjustment would diminish the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) The adjustment would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) The adjustment would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) The adjustment is from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) The trustee's possession or exercise of the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) The trustee's possession or exercise of the power to make an adjustment would cause all or part of the trust assets to be included for estate

tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) The trustee is a beneficiary of the trust; or

(8) The trust has been converted to a unitrust under section 7-705.

(d) If subsection (c), paragraph (5), (6) or (7) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from possessing or exercising the power to make the adjustment.

(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income, if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (c), paragraphs (1) to (6) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c). The release of the power to adjust may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

§7-705. Power to convert to unitrust

(a) Unless expressly prohibited by the terms of the trust, a trustee may release the power to adjust under section 7-704 and convert a trust into a unitrust as described in this section if all of the following apply.

(1) The trustee determines that the conversion will improve the ability of the trustee to carry out the intent of the settlor and the purposes of the trust.

(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial deci-

sions the trustee will make under this section, to the following beneficiaries:

(i) All beneficiaries who are currently eligible to receive income from the trust; and

(ii) All beneficiaries who would receive, if no power of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.

(3) There is at least one beneficiary eligible to receive income and at least one beneficiary who would receive principal as described in paragraph (2).

(4) No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice required under paragraph (2).

(b) If a beneficiary timely objects to the conversion to a unitrust or if the requirements of subsection (a), paragraph (3) are not met, the trustee may petition the court to approve the conversion to a unitrust. A beneficiary may request a trustee to convert to a unitrust and, if the trustee does not convert, the beneficiary may petition the court to order the conversion. Upon receipt of a petition by the trustee or a beneficiary, the court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will better enable the trustee to carry out the intent of the settlor and the purposes of the trust.

(c) In deciding whether to exercise the power conferred by subsection (a), a trustee shall consider the following factors to the extent they are relevant:

(1) The nature, purpose and expected duration of the trust;

(2) The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;

(3) The needs for liquidity, regularity of income and preservation and appreciation of capital;

(4) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary;

(5) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee

from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(6) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(7) The anticipated tax consequences of the conversion.

(d) After a trust is converted to a unitrust, all of the following apply.

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from appreciation of capital, from earnings and distributions from capital or from both.

(2) The trustee shall make regular distributions in accordance with the terms of the trust construed in accordance with the provisions of this section.

(3) The term "income" in the terms of the trust means an annual distribution, known as the "unitrust distribution," equal to 4%, known as the "payout percentage," of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this Part, averaged over the lesser of the 3 preceding years or the period during which the trust has been in existence.

(e) The trustee may in the trustee's discretion from time to time determine all of the following:

(1) The effective date of a conversion to a unitrust;

(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payment commences or ceases;

(3) The frequency of unitrust distributions during the year;

(4) The effect of other payments from or contributions to the trust on the trust's valuation;

(5) Whether to value the trust's assets annually or more frequently;

(6) What valuation dates to use;

(7) How frequently to value nonliquid assets and whether to estimate their value;

(8) Whether to omit from the calculation of the unitrust distribution trust property occupied or possessed by a beneficiary; and

(9) Any other matters necessary for the proper functioning of the unitrust.

(f) After a trust is converted to a unitrust, the following allocation rules apply to the trust.

(1) Expenses that would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the terms of the trust, the unitrust distribution must be paid from net income, as net income would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution must be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution must be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution must be paid from the principal of the trust.

(g) The trustee or, if the trustee declines to do so, a beneficiary may petition the court to do any of the following:

(1) Select a payout percentage other than 4%;

(2) Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

(3) Average the valuation of the trust's net assets over a period other than 3 years; or

(4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 7-704 is revived.

(h) A conversion to a unitrust does not affect a provision in the terms of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

(i) A trustee may not convert a trust into a unitrust if any of the following applies:

(1) Payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(2) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under a will or the terms of the trust unless both income and principal are so set aside;

(3) The trustee's possession or exercise of the power to convert would cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to convert;

(4) The trustee's possession or exercise of the power to convert would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to convert;

(5) The conversion would result in the disallowance of an estate tax or gift tax marital deduction that would be allowed if the trustee did not have the power to convert; or

(6) The trustee is a beneficiary of the trust.

(j) If subsection (i), paragraph (3), (4) or (6) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from exercising the power to convert. If subsection (i), paragraph (3), (4) or (6) applies to all the trustees, the trustees may petition the court to direct a conversion.

(k) A trustee may release the power conferred by subsection (a) to convert to a unitrust if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (i), paragraph (3), (4) or (5) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (i). The release of the power to convert to a unitrust may be permanent or for a specified period, including a period measured by the life of an individual.

§7-706. Judicial review of discretionary powers

(a) A court may not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this Part unless it determines that the decision was an abuse of the fiduciary's discretion.

A court may not determine that a fiduciary abused the fiduciary's discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) If a court determines that a fiduciary has abused the fiduciary's discretion in exercising a discretionary power conferred by this Part, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, according to the following rules.

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries or the trust, or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary or that beneficiary's estate to return some or all of the distribution to the trust, notwithstanding a spendthrift or similar provision.

(3) If the abuse of discretion concerns the power to convert a trust into a unitrust, the court shall require the trustee either to convert the trust to a unitrust or to reconvert from a unitrust.

(4) To the extent that the court is unable, after applying paragraphs (1), (2) and (3), to restore the beneficiaries or the trust, or both, to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, the court may require the fiduciary to pay an appropriate amount from the fiduciary's own funds to one or more of the beneficiaries or the trust, or both.

(c) Upon a petition by the fiduciary, a court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this Part will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a

beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

SUBPART 2

DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

§7-721. Determination and distribution of net income

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply.

(a) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in subparts 3 to 5 that apply to trustees and the rules in subsection (e). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(b) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in subparts 3 to 5 that apply to trustees and by:

(1) Including in net income all income from property used to discharge liabilities;

(2) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants and fiduciaries; court costs and other expenses of administration; and interest on death taxes; but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(3) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, exempt property and allowances distributable pursuant to Article II, Part 4 and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust or applicable law.

(c) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust or applicable law from net income determined under subsection (b) or from principal to the extent that net income is insufficient. If a beneficiary is to

receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will under section 3-904.

(d) A fiduciary shall distribute the net income remaining after distributions required by subsection (c) in the manner described in section 7-722 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(e) A fiduciary may not reduce principal or income receipts from property described in subsection (a) because of a payment described in section 7-761 or 7-762 to the extent that the will, the terms of the trust or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a 3rd party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

§7-722. Distribution to residuary and remainder beneficiaries

(a) Each beneficiary described in section 7-721, subsection (d) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply.

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date.

including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

SUBPART 3

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

§7-731. When right to income begins and ends

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a 3rd party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

§7-732. Apportionment of receipts and disbursements when decedent dies or income interest begins

(a) A trustee shall allocate an income receipt or disbursement other than one to which section 7-721, subsection (a) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payor is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this Part. Distributions to shareholders or other owners from an entity to which section 7-741 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

§7-733. Apportionment when income interest ends

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5% of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.

SUBPART 4

ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

§7-741. Character of receipts

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section 7-742 applies, a business or activity to which section 7-743 applies or an asset-backed security to which section 7-755 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

- (1) Property other than money;
- (2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
- (3) Money received in total or partial liquidation of the entity; and
- (4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under subsection (d), paragraph (2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

§7-742. Distribution from trust or estate

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 7-741 or 7-755 applies to a receipt from the trust.

§7-743. Business and other activities conducted by trustee

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the

business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

- (1) Retail, manufacturing, service and other traditional business activities;
- (2) Farming;
- (3) Raising and selling livestock and other animals;
- (4) Management of rental properties;
- (5) Extraction of minerals and other natural resources;
- (6) Timber operations; and
- (7) Activities to which section 7-754 applies.

§7-744. Principal receipts

A trustee shall allocate to principal:

(a) To the extent not allocated to income under this Part, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest or a payor under a contract naming the trust or its trustee as beneficiary;

(b) Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to this subpart;

(c) Amounts recovered from 3rd parties to reimburse the trust because of disbursements described in section 7-762, subsection (a), paragraph (7) or for other reasons to the extent not based on the loss of income;

(d) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(e) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(f) Other receipts as provided in sections 7-748 to 7-755.

§7-745. Rental property

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

§7-746. Obligation to pay money

(a) An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which section 7-749, 7-750, 7-751, 7-752, 7-754 or 7-755 applies.

§7-747. Insurance policies and similar contracts

(a) Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income or, subject to section 7-743, loss of profits from a business.

(c) This section does not apply to a contract to which section 7-749 applies.

§7-748. Insubstantial allocations not required

If a trustee determines that an allocation between principal and income required by section 7-749, 7-750, 7-751, 7-752 or 7-755 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in section 7-704, subsection (c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 7-704, subsection (d) and may be released for the reasons and in the manner described in section 7-704, subsection (e). An allocation is presumed to be insubstantial if:

(a) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%; or

(b) The value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

§7-749. Deferred compensation, annuities and similar payments

(a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The term includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee

shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which section 7-750 applies.

§7-750. Liquidating asset

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 7-749, resources subject to section 7-751, timber subject to section 7-752, an activity subject to section 7-754, an asset subject to section 7-755, or any asset for which the trustee establishes a reserve for depreciation under section 7-763.

(b) A trustee shall allocate to income 10% of the receipts from a liquidating asset and the balance to principal.

§7-751. Minerals, water and other natural resources

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows.

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal, 90% must be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in paragraph (1), (2) or (3), 90% of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90% of the amount must be allocated to principal and the balance to income.

(c) This Part applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water or other natural resources on January 1, 2002, the trustee may allocate receipts from the interest as provided in this Part or in the manner used by the trustee before January 1, 2002. If the trust acquires an interest in minerals, water or other natural resources after January 1, 2002, the trustee shall allocate receipts from the interest as provided in this Part.

§7-752. Timber

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) To income to the extent the net receipts do not exceed the product of (i) mean annual growth multiplied by the number of years since the last timber sale, or, if more recent, the date the timber became a part of the trust, multiplied by (ii) the stumpage rates obtained, after netting against the stumpage rates obtained the expenses associated with the conduct of the sale;

(2) To principal to the extent that the proceeds received exceed the amount determined in paragraph (1);

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (1) and (2); or

(4) To principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph (1), (2) or (3).

(b) In determining net receipts to be allocated pursuant to subsection (a), a trustee may deduct and transfer to principal a reasonable amount for depletion.

(c) This section applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on January 1, 2003, the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in timberland after January 1, 2003, the trustee

shall allocate net receipts from the sale of timber and related products as provided in this section.

(e) For purposes of this section, the term "mean annual growth" means, at the trustee's option, either:

(1) The mean annual increment of growth of the timber involved as determined by a licensed professional forester; or

(2) Forty-five hundredths of a cord per acre of woodland.

§7-753. Property not productive of income

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 7-704 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time or exercise the power conferred by section 7-704, subsection (a). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

§7-754. Derivatives and options

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under section 7-743 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount

received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

§7-755. Asset-backed securities

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 7-741 or 7-749 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payor identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

SUBPART 5

ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

§7-761. Disbursements from income

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 7-721, subsection (b), paragraph (2) or (3) applies:

(a) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(b) One-half of all expenses for accountings, judicial proceedings or other matters that involve both the income and remainder interests;

(c) All of the other ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of

income, including interest, ordinary repairs, regularly recurring taxes assessed against principal and expenses of a proceeding or other matter that concerns primarily the income interest; and

(d) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

§7-762. Disbursements from principal

(a) A trustee shall make the following disbursements from principal:

(1) The remaining 1/2 of the disbursements described in section 7-761, subsections (a) and (b);

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) Premiums paid on a policy of insurance not described in section 7-761, subsection (d) of which the trust is the owner and beneficiary;

(6) Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and

(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by 3rd parties and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

§7-763. Transfers from income to principal for depreciation

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or

gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) During the administration of a decedent's estate; or

(3) Under this section if the trustee is accounting under section 7-743 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

§7-764. Transfers from income to reimburse principal

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a 3rd party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) Disbursements described in section 7-762, subsection (a), paragraph (7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income

interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

§7-765. Income taxes

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

(1) From income to the extent that receipts from the entity are allocated to income; and

(2) From principal to the extent that:

(i) Receipts from the entity are allocated to principal; and

(ii) The trust's share of the entity's taxable income exceeds the total receipts described in paragraph (1) and subparagraph (i).

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

§7-766. Adjustments between principal and income because of taxes

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

(1) Elections and decisions, other than those described in subsection (b), that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from

principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

SUBPART 6

MISCELLANEOUS PROVISIONS

§7-771. Uniformity of application and construction

In applying and construing the Uniform Principal and Income Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§7-772. Effective date

This Part takes effect January 1, 2003.

§7-773. Application of Part to all trusts and estates

This Part applies to every trust or decedent's estate, including those in existence on January 1, 2003, beginning with the first fiscal year of the trust or decedent's estate that begins on or after January 1, 2003, except as otherwise expressly provided in the will or terms of the trust or in this Part.

Sec. 3. 18-A MRSA Art. VIII, Pt. 2, as enacted by PL 1979, c. 540, §1, is repealed.

See title page for effective date.

CHAPTER 545

S.P. 682 - L.D. 1884

An Act to Authorize Certain Former Members of the Maine State Retirement System to Rejoin the Maine State Retirement System

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

Sec. 1. 20-A MRSA §12722, sub-§8 is enacted to read:

8. Participation in Maine State Retirement System. Notwithstanding other provisions of this section, employees of the Maine Technical College System who elected to participate in the defined contribution plan pursuant to subsection 1 may subsequently elect to participate or resume participation in the Maine State Retirement System as provided in this subsection.

A. A former member of the Maine State Retirement System who was employed by the Maine Technical College System and who elected to participate in the defined contribution plan and terminated participation in the Maine State Retirement System during calendar year 1999 or 2000 may elect to terminate participation in the defined contribution plan and to resume participation in the Maine State Retirement System and, upon repayment of earlier contributions plus interest, is entitled to all service credit acquired during the previous membership. The election must be made in writing to the Maine State Retirement System no later than January 1, 2003. The amount of repayment must be equal to the accumulated contributions withdrawn by the former member plus interest on the amount of those accumulated contributions, beginning on the date of withdrawal to the date the repayment or repayments are made, at a rate to be set by the Board of Trustees of the Maine State Retirement System, not to exceed regular interest, as defined in Title 5, section 17001, subsection 31, by 5 percentage points.

(1) Notwithstanding Title 5, section 17703, subsection 1, payment under this paragraph may be made immediately after notification of the Maine State Retirement System of the election provided in this paragraph and upon determination by the Maine State Retirement System of the amount due to repay the previously withdrawn contributions.

(2) A former member electing the option provided in this paragraph may also purchase service credit under the Maine State Retirement System for all or part of the time that the former member participated in the defined contribution plan. Purchase of service credit under this subparagraph consists of payment of an amount that, together with regular interest as defined in Title 5, section 17001, subsection 31 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 creditable service.