

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

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

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
2002

Other Special Revenue Funds	2001-02	2002-03
Positions - Legislative Count	(0.000)	(1.000)
Personal Services	\$0	\$500
All Other	0	500
Total	\$0	\$1,000

See title page for effective date.

CHAPTER 709

S.P. 133 - L.D. 457

An Act to Clarify that the Sales Tax Exemption for Purchase of Manufacturing Equipment Applies Equitably

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

Sec. 1. 36 MRSA §1760, sub-§31, ¶A, as enacted by PL 1999, c. 516, §6 and affected by §7, is amended to read:

A. For use by the purchaser directly and primarily in either the production of tangible personal property intended to be sold or leased ultimately for final use or consumption; or in the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof, or, in the case of sales occurring on or after March 1, 2003 but prior to July 1, 2003, in the generation of digital television broadcast signals or, in the case of sales occurring after June 30, 2003, in the generation of radio and television broadcast signals. This exemption applies even if the purchaser sells the machinery or equipment and leases it back in a sale and leaseback transaction. This exemption also applies whether the purchaser agrees before or after the purchase of the machinery or equipment to enter into the sale and leaseback transaction and whether the purchaser's use of the machinery or equipment in production commences before or after the sale and leaseback transaction occurs. As used in this paragraph, "digital television broadcast signal" means an over-the-air signal transmitted by a television station licensed under 47 Code of Federal Regulations, Part 73; and

See title page for effective date.

CHAPTER 710

H.P. 1741 - L.D. 2216

An Act to Correct Recently Enacted Legislation

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

Whereas, certain legislation enacted or passed into law during the Second Regular Session of the 120th Legislature must be immediately corrected or clarified in order to effectuate legislative intent; 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. 1 MRSA §71, sub-§11, as amended by PL 1973, c. 788, §1, is further amended to read:

11. Statutory references. Wherever in the Revised Statutes the word "Title" or "chapter" or "subchapter" appears without definite reference, it refers to the Title or chapter or subchapter in which the word "Title" or "chapter" or "subchapter" appears; if the chapter or subchapter is given a number without reference to a numbered Title, it refers to the chapter or subchapter of the Title in which the numbered chapter or subchapter appears. Wherever in the Revised Statutes a numbered section appears without reference to a numbered Title, it refers to the section of the Title in which the numbered section appears.

Wherever in the Revised Statutes or any legislative Act a reference is made to several sections, subsections, paragraphs, subparagraphs, divisions, subdivisions or sentences, the section, subsection, paragraph, subparagraph, division, subdivision or sentence numbers given in the reference are connected by the word "to," the reference includes both the sections, subsections, paragraphs, subparagraphs, divisions, subdivisions or sentences whose numbers are given and all intervening sections, subsections, paragraphs, subparagraphs, divisions, subdivisions and sentences.

Wherever in the Revised Statutes the designation of a division of the statutes larger than a section is numbered with the use of a Roman numeral, it may be known and cited by its Arabic equivalent.

Sec. 2. 5 MRSA §13070-J, sub-§1, ¶D, as amended by PL 2001, c. 642, §1 and affected by §12

and c. 652, §2, is repealed and the following enacted in its place:

D. "Economic development incentive" means:

(1) Assistance from Maine Quality Centers under Title 20-A, chapter 431-A;

(2) The Governor's Training Initiative Program under Title 26, chapter 25, subchapter IV;

(3) Municipal tax increment financing under Title 30-A, chapter 207;

(4) The jobs and investment tax credit under Title 36, section 5215;

(5) The research expense tax credit under Title 36, section 5219-K;

(6) Reimbursement for taxes paid on certain business property under Title 36, chapter 915;

(7) Employment tax increment financing under Title 36, chapter 917;

(8) The shipbuilding facility credit under Title 36, chapter 919; or

(9) The credit for seed capital investment under Title 36, section 5216-B.

Sec. 3. 5 MRSA §13070-J, sub-§3, as amended by PL 2001, c. 642, §2 and affected by §12, is further amended to read:

3. Report. Annually, a business receiving an economic development incentive described in subsection 1, paragraph D, subparagraphs (1) to ~~(7)~~ (8), 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 business 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 business 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 business 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 business required to file a report under this subsection. Reports filed under this subsection are public records for purposes of Title 1, chapter 13.

Sec. 4. Effective date. Those sections of this Act that amend the Maine Revised Statutes, Title 5, section 13070-J, subsection 1, paragraph D and subsection 3 take effect 90 days after adjournment of the Second Regular Session of the 120th Legislature.

Sec. 5. 7 MRSA §3910-A, sub-§2, as enacted by PL 2001, c. 617, §6, is amended to read:

2. Surcharge imposed. A surcharge of \$10 must be added to every fine, forfeiture or penalty imposed by any court in this State for a violation of this Part ~~or Title 17, chapter 42~~. The surcharge, for the purposes of collection and collection procedures, is considered a part of the fine, forfeiture or penalty. All funds collected as a result of this surcharge must be deposited monthly in the Animal Welfare Fund established under section 3906-B, subsection 2.

Sec. 6. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 7, section 3910-A, subsection 2 takes effect 90 days after adjournment of the Second Regular Session of the 120th Legislature.

Sec. 7. 20-A MRSA §12722, sub-§8, ¶B, as enacted by PL 2001, c. 545, §1, is amended to read:

B. An employee of the Maine Technical College System hired on or after August 31, 1998 or on or after the last day of the month in which authorization pursuant to subsection 1 occurs, whichever is later, and who elected to participate in the defined contribution plan may elect to terminate participation in the defined contribution plan and to participate in the Maine State Retirement System by notifying the Maine State Retirement System in writing no later than January 1, 2003.

(1) An employee of the Maine Technical College System electing the option provided in this paragraph may also ~~elect to~~ purchase service credit under the Maine State Retirement System for all or part of the time that the employee participated in the defined contribution plan. ~~The election must be made in writing to the Maine State~~

~~Retirement System no later than January 1, 2003.~~ 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.

Sec. 8. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 20-A, section 12722, subsection 8, paragraph B takes effect 90 days after adjournment of the Second Regular Session of the 120th Legislature.

Sec. 9. 22 MRSA §332, as enacted by PL 2001, c. 664, §2, is amended by adding a new paragraph at the end to read:

This section applies to applications filed or approved on or after January 1, 1999.

Sec. 10. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 22, section 332 takes effect 90 days after the adjournment of the Second Regular Session of the 120th Legislature.

Sec. 11. 25 MRSA §2801-B, sub-§1, as amended by PL 2001, c. 559, Pt. KK, §1; c. 604, §21; and c. 697, Pt. B, §1, is repealed and the following enacted in its place:

1. Exemption. The training standards and requirements of this chapter do not apply to a person defined by this chapter as a law enforcement officer who is:

A. An employee of the Department of Corrections with a duty to perform probation functions or to perform intensive supervision functions;

B. An agent or a representative of the Department of Conservation, Bureau of Parks and Lands whose law enforcement powers are limited to those specified in Title 12, section 1806;

C. An agent or a representative of the Department of Conservation, Bureau of Forestry whose law enforcement powers are limited to those specified by Title 12, section 8901, subsection 3;

E. A harbor master;

F. A municipal shellfish conservation warden;

G. A security officer appointed by the Commissioner of Public Safety pursuant to section 2908;

H. The State Fire Marshal; or

I. The Chief of the Bureau of Liquor Enforcement within the Department of Public Safety.

This exemption does not include training requirements set out in this chapter that are specific to the positions identified in this subsection.

Sec. 12. Effective date. That section of this Act that repeals and replaces the Maine Revised Statutes, Title 25, section 2801-B, subsection 1 takes effect 90 days after adjournment of the Second Regular Session of the 120th Legislature.

Sec. 13. 29-A MRSA §1304, sub-§1, ¶E, as amended by PL 2001, c. 671, §25 and c. 687, §15, is repealed and the following enacted in its place:

E. Unless the permittee is operating a motorcycle or motor-driven cycle, the permit requires the permittee to be accompanied by a licensed operator who:

(1) Has held a valid license for the immediately preceding 2 consecutive years;

(2) Is at least 20 years of age;

(3) Is occupying a seat beside the driver; and

(4) Is licensed to operate the class vehicle operated by the permittee.

The accompanying operator must adhere to all restrictions applied to the license when functioning as the permittee's accompanying operator. A person who meets the conditions of subparagraphs (2), (3) and (4) whose license was canceled or suspended for physical, mental or emotional reasons within the immediately preceding 2 consecutive years may act as an accompanying operator pursuant to this paragraph with the approval of the Secretary of State.

Sec. 14. Effective date. That section of this Act that repeals and replaces the Maine Revised Statutes, Title 29-A, section 1304, subsection 1, paragraph E takes effect 90 days after adjournment of the Second Regular Session of the 120th Legislature.

Sec. 15. 29-A MRSA §2081, sub-§3, ¶B, as enacted by PL 2001, c. 585, §3, is amended to read:

B. The operator shall ensure that a child who is less than 18 years of age ~~but more than~~ and at least 8 years of age or who is less than 18 years of age and more than 4 feet, 7 inches in height is properly secured in a seat belt unless that child is required to be secured in a federally approved child restraint system pursuant to this subsection or in a child safety seat pursuant to subsection 2.

Sec. 16. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 29-A, section 2081, subsection 3, paragraph B takes effect January 1, 2003.

Sec. 17. 32 MRSA §1094-C, as enacted by PL 2001, c. 385, §1, is amended to read:

§1094-C. Brochure and poster

1. Display. Beginning July 1, 2002, a dentist who uses mercury or a mercury amalgam in any dental procedure shall display the poster adopted by the Department of Human Services, Bureau of Health under this section in the public waiting area of that dentist's office and must provide each patient with a copy of the brochure adopted by the bureau under this section. The Department of Human Services shall also post on its publicly accessible site on the Internet a copy of the brochure that is suitable for downloading and printing by dentists, patients and other interested parties.

2. Rules. The Director of the Bureau of Health within the Department of Human Services shall develop a brochure that explains the potential advantages and disadvantages to oral health, overall human health and the environment of using mercury or mercury amalgam in dental procedures. The brochure must describe what alternatives are available to mercury amalgam in various dental procedures and what potential advantages and disadvantages are posed by the use of those alternatives. The brochure may also include other information that contributes to the patient's ability to make an informed decision when choosing between the use of mercury amalgam or an alternative material in a dental procedure, including, but not limited to, information on the durability, cost, aesthetic quality or other characteristics of the mercury amalgam and alternative materials. The director shall also develop a poster that informs patients of the availability of the brochure.

The Director of the Bureau of Health shall, in consultation with the Department of Environmental Protection, adopt the brochure and the poster described in this subsection as major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. The brochure and poster must be provisionally adopted and submitted to the Legislature for consideration during the Second Regular Session of the 120th Legislature. ~~Copies of the brochure and one poster must be provided to dentists in the State at cost.~~

Sec. 18. 39-A MRSA §102, sub-§11, ¶A, as amended by PL 2001, c. 518, §1, is further amended by amending subparagraph (5) to read:

- (5) Except for persons engaged in harvesting of forest products, the parent, spouse or child of a sole proprietor who is employed

by that sole proprietor or the parent, spouse or child of a partner who is employed by the partnership of that partner or the parent, spouse or child of a member of a limited liability company who is employed by that limited liability company may state, in writing, that the parent, spouse or child waives all the benefits and privileges provided by the workers' compensation laws if the board finds that the waiver is not a prerequisite condition to employment;

Sec. 19. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 39-A, section 102, subsection 11, paragraph A, subparagraph (5) takes effect 90 days after adjournment of the Second Regular Session of the 120th Legislature.

Sec. 20. PL 2001, c. 559, Pt. BB, §5 is amended to read:

Sec. BB-5. Transition. During the transition of the consumer-directed personal care assistance services program from the Department of Human Services, Bureau of ~~Medical Elder and Adult Services~~ to the Department of Labor, Bureau of Rehabilitation Services, all rules and procedures pertaining to the program that were in effect on April 1, 2002 remain in effect until rules regarding the program are adopted by the Bureau of Rehabilitation Services.

Sec. 21. PL 2001, c. 559, Pt. CC, §8, in that part designated "HUMAN SERVICES, DEPARTMENT OF" in that part relating to "Youth in Need of Services 0923," is amended by striking out all of the initiative and inserting in its place the following:

Initiative: Effective October 1, 2002, provides funds to continue the pilot program for homeless youth conducted in Portland, Lewiston and Bangor at ~~\$125,000~~ \$105,000 each.

Sec. 22. Resolve 2001, c. 112, §1, sub-§2 is amended to read:

2. The person was the owner of a vessel named on a sea urchin dragging license under Title 12, section 6748-A in ~~2001~~ 2000 but not the person named on that license and the holder of that license did not authorize a transfer of the license pursuant to Title 12, section 6748-A, subsection 2-A;

Sec. 23. Retroactivity. That section of this Act that amends Resolve 2001, chapter 112 takes effect retroactively to April 9, 2002.

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

Effective April 30, 2002, unless otherwise indicated.

CHAPTER 711

H.P. 1623 - L.D. 2123

An Act to Implement the Recommendations of the Commission to Develop a Plan to Implement the Closure of State Liquor Stores

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

Sec. 1. 28-A MRSA §2, sub-§27-A is enacted to read:

27-A. Reselling agent. "Reselling agent" means an agency liquor store with a federal and state license permitting the agency liquor store to sell spirits to a retail licensee licensed for on-premises consumption.

Sec. 2. 28-A MRSA §453, as amended by PL 1997, c. 373, §46, is further amended to read:

§453. Location of agency stores

1. Location requirements. The bureau may license an agency liquor store only when the following requirements are met.

A. The proposed agency liquor store is located in a municipality or unincorporated place that has voted in favor of the operation of state liquor stores under local option provisions.

~~C. The proposed agency liquor store is not within 3.5 miles of an existing state liquor store or an existing agency liquor store that was licensed before May 1, 1993.~~

~~D. If a state liquor store closes, the bureau may grant more than one agency store license in a municipality when the bureau considers it appropriate. Agency liquor stores licensed before May 1, 1993 that replace closed state liquor stores are exempt from the distance requirement in paragraph C.~~

~~**2. Replacement of state or agency liquor stores.** The alcohol bureau may not replace a state liquor store and the bureau may not replace an existing agency liquor store that closes with a new agency liquor store if there is another state or existing agency liquor store within 3.5 miles. This subsection does not~~

~~prevent the bureau from locating a replacement agency liquor store within 3.5 miles of another replacement agency liquor store for the same town.~~

2-A. Replacement of state liquor stores. The bureau may replace a closed state liquor store ~~closed after July 1, 1990 with 3~~ with an agency liquor stores store if:

~~A. The agency stores are within a 10-mile radius of the location of the closed state liquor store; and~~

B. The bureau does not issue to a person or corporation more than 2 of the 3 licenses issued to replace a state liquor store. For purposes of this restriction, each partner of a partnership, each corporation that owns an interest in another corporation and each person who owns 20% or more of the shares or other interest in a corporation is deemed to own a license granted to the partnership or corporation.

Sec. 3. 28-A MRSA §453-A, sub-§§1 and 1-A, as amended by PL 1997, c. 373, §47, are repealed.

Sec. 4. 28-A MRSA §453-A, sub-§2, as amended by PL 1997, c. 373, §47, is further amended to read:

2. Public notice. The bureau shall, in accordance with the Maine Administrative Procedure Act, give public notice that an agency liquor store may be established in a particular municipality or unincorporated place. ~~The bureau shall summarize in the public notice the bidding requirements for the agency store license, including the minimum bid required.~~ The bureau shall request all parties in the municipality or unincorporated place interested in ~~bidding on~~ a license to establish an agency liquor store there to submit ~~bids and~~ applications to the bureau.

Sec. 5. 28-A MRSA §453-A, sub-§5, as amended by PL 1997, c. 373, §47, is further amended to read:

5. Licensing decisions. The bureau shall conduct an investigation to determine the feasibility of the location and type of facility for the agency liquor store and shall issue the license to one or more of the applicants, taking into consideration ~~the bid offered and any other~~ factors the bureau considers appropriate. When considering the issuance of a license, the bureau shall consider the proximity of the proposed agency store to existing agency stores and the potential impact the location of the proposed agency store may have on an existing agency store. The bureau may deny a license if the bureau determines the proposed agency store location is in too close proximity to an existing agency store.