

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTIETH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 13, 2002 to November 14, 2002**

**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 2002 to June 14, 2003**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**FEBRUARY 13, 2003**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 13, 2003**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2003**

## CHAPTER 181

## S.P. 83 - L.D. 160

**An Act To Amend the Laws  
Governing Home Instruction**

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

**Whereas,** parents and guardians who intend to provide equivalent instruction through a home instruction program for their children in the 2003-2004 school year will need sufficient time to prepare their plans for providing a home instruction program prior to the start of the upcoming school year; 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. 20-A MRSA §5001-A, sub-§3, ¶A,** as amended by PL 1991, c. 602, §1 and affected by §4 and affected by PL 1995, c. 610, §2, is further amended to read:

A. Equivalent instruction alternatives are as follows.

(1) A person is excused from attending a public day school if the person obtains equivalent instruction in:

(a) A private school approved for attendance purposes pursuant to section 2901;

(b) A private school recognized by the department as providing equivalent instruction;

~~(c) A manner approved by the commissioner pursuant to subparagraph (3); or~~

(c-1) A home instruction program that complies with the requirements of subparagraph (4); or

(d) Any other manner arranged for by the school board and approved by the commissioner.

(2) A student is credited with attendance at a private school only if a certificate show-

ing the name, residence and attendance of the person at the school, signed by the person or persons in charge of the school, has been filed with the school officials of the administrative unit in which the student resides.

~~(3) A person who wishes to obtain approval of equivalent instruction under rules established by the commissioner for equivalent instruction through home instruction shall simultaneously submit a completed application for approval to the local board and to the commissioner. The local board may review the application and submit comments on the application to the commissioner within 30 days of receipt of the application. Within 60 days of receipt of the application, the commissioner, using state criteria established by rule, shall decide whether to approve the equivalent instruction application. If the commissioner denies the application, the applicant may, within 30 days of receiving the denial, amend and resubmit the application directly to the commissioner. The commissioner shall make a decision within 30 days of receiving the amended application. If an application is approved, the commissioner shall send notice of the approval to the local board. Notice provided to local boards under this section of applications for approval of equivalent instruction through home instruction and of the commissioner's decision on those applications is only for informational purposes. Local boards are not required to play any role in the application, review and approval, or oversight of home instruction programs.~~

(4) The following provisions govern a home instruction program.

(a) The student's parent or guardian shall provide a written notice of intent to provide home instruction simultaneously to the school officials of the administrative unit in which the student resides and to the commissioner within 10 calendar days of the beginning of home instruction. The notice must contain the following information:

(i) The name, signature and address of the student's parent or guardian;

(ii) The name and age of the student;

(iii) The date the home instruction program will begin;

(iv) A statement of assurance that indicates the home instruction program will provide at least 175 days annually of instruction and will provide instruction in the following subject areas: English and language arts, math, science, social studies, physical education, health education, library skills, fine arts and, in at least one grade from grade 6 to 12, Maine studies. At one grade level from grade 7 to 12, the student will demonstrate proficiency in the use of computers; and

(v) A statement of assurance that indicates that the home instruction program will include an annual assessment of the student's academic progress that includes at least one of the forms of assessment described in division (b).

(b) On or before September 1st of each subsequent year of home instruction, the student's parent or guardian shall file a letter with the school officials of the administrative unit in which the student resides and the commissioner stating the intention to continue providing home instruction and enclose a copy of one of the following forms of annual assessment of the student's academic progress:

(i) A standardized achievement test administered through the administrative unit in which the student resides or through other arrangements approved by the commissioner. If the test is administered through the administrative unit in which the student resides, that administration must be agreed to by the school officials of the administrative unit prior to submission of the written notice of intent to provide home instruction;

(ii) A test developed by the school officials of the administrative unit in which the student resides appropriate to the stu-

dent's home instruction program, which must be agreed to by the school officials of the administrative unit prior to submission of the written notice of intent to provide home instruction;

(iii) A review and acceptance of the student's progress by an identified individual who holds a current Maine teacher's certificate;

(iv) A review and acceptance of the student's progress based on, but not limited to, a presentation of an educational portfolio of the student to a local area homeschooling support group whose membership for this purpose includes a currently certified Maine teacher or administrator; or

(v) A review and acceptance of the student's progress by a local advisory board selected by the superintendent of the administrative unit in which the student resides that includes one administrative unit employee and 2 home instruction tutors. For the purpose of this subdivision, a "home instruction tutor" means the parent, guardian or other person who acts or will act as a primary teacher of the student in the home instruction program. This provision must be agreed to by the school officials of the administrative unit in which the student resides prior to submission of the written notice of intent to provide home instruction.

(c) Dissemination of any information filed under this subparagraph is governed by the provisions of section 6001; the federal Family Educational Rights and Privacy Act of 1974, 20 United States Code, Section 1232g (2002); and the federal Education for All Handicapped Children Act of 1975, 20 United States Code, Sections 1401 to 1487 (2002), except that "directory information," as defined by the federal Family Educational Rights and Privacy Act of 1974, is confidential and is not subject to public disclosure unless the parent or guardian specifi-

cally permits disclosure in writing or a judge orders otherwise. Copies of the information filed under this subparagraph must be maintained by the student's parent or guardian until the home instruction program concludes. The records must be made available to the commissioner upon request.

(d) If the home instruction program is discontinued, students of compulsory school age must be enrolled in a public school or an equivalent instruction alternative as provided for in this paragraph. The receiving school shall determine the placement of the student. At the secondary level, the principal of the receiving school shall determine the value of the prior educational experience toward meeting the standards of the system of learning results as established in section 6209.

(e) The commissioner shall amend or adopt rules to accomplish the purposes of this subparagraph. Rules adopted pursuant to this division are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 2. 20-A MRSA §5021, first ¶,** as enacted by PL 1995, c. 610, §1, is amended to read:

A school administrative unit shall conform to the following standards in making public school resources and services available to a student enrolled in an equivalent instruction program approved by the commissioner pursuant to section 5001-A, subsection 3, paragraph A, subparagraph (3) a home instruction program under section 5001-A, subsection 3, paragraph A, subparagraph (4) for a student otherwise eligible to attend school in that school administrative unit.

**Sec. 3. 20-A MRSA §6001, sub-§1,** as enacted by PL 1999, c. 595, §2, is amended to read:

**1. Federal and state law.** The provisions of this section, the United States Family Educational Rights and Privacy Act of 1974, Public Law 93-380, as amended by Public Law 93-568, and the United States Education of All Handicapped Children Act, Public Law 94-142 govern the dissemination of information about students, as well as applications for written notices of intent to provide equivalent instruction through home instruction, comments on the completeness of those applications and all education records of students receiving equivalent instruction through home instruction.

**Sec. 4. Application.** Notwithstanding Department of Education rules to the contrary, pending adoption of rules implementing this Act, beginning with the 2003-2004 school year, the Commissioner of Education shall implement the provisions of the Maine Revised Statutes, Title 20-A, section 5001-A, subsection 3, paragraph A in excusing a child from attendance at a public day school if a parent or guardian of the child who intends to provide equivalent instruction through a home instruction program for the child complies with the provisions of Title 20-A, section 5001-A, subsection 3, paragraph A, subparagraph (4).

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

Effective May 16, 2003.

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## CHAPTER 182

### S.P. 311 - L.D. 970

#### **An Act To Allow a Judge To Assess a Fee on a Defendant To Reimburse a Municipality for a Drug Test**

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

**Sec. 1. 15 MRSA §1702,** as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is repealed and the following enacted in its place:

#### **§1702. No punishment until conviction; costs**

**1. No punishment before conviction.** A person may not be punished for an offense until convicted of that offense in a court having jurisdiction over the person and case.

**2. Costs included in sentence.** If a person is convicted and the court imposes a fine, the court:

**A. May sentence the defendant to pay the costs of prosecution;**

**B. May sentence the defendant to pay, as restitution, the costs of drug tests, other than tests under Title 29-A, administered to the defendant by a law enforcement officer or medical personnel at the request of a law enforcement officer. The court shall transfer all amounts paid by a defendant under this paragraph to the municipal, county or state agency that incurred the costs; and**

**C. Shall, if the case is prosecuted in District Court, sentence the defendant to pay a fine suffi-**