

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

**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**  
**2004**

**3. Application.** This section does not apply to the sale of used products.

**Sec. 2. "Deca" mixture of polybrominated diphenyl ethers; legislative intent.** It is the intent of the Legislature to reduce the risk of the "deca" mixture of polybrominated diphenyl ethers by implementing risk management measures or by prohibiting the sale of products containing more than 1% of the "deca" mixture beginning January 1, 2008 if a safer, nationally available alternative is identified. As part of its annual report pursuant to the Maine Revised Statutes, Title 38, section 1609, subsection 2, the Department of Environmental Protection shall submit a report regarding the nationwide availability of safer alternatives to the "deca" mixture of polybrominated diphenyl ethers to the joint standing committee of the Legislature having jurisdiction over natural resources matters. If, after reviewing the recommendations of the department, the joint standing committee determines that a safer alternative to the "deca" mixture is nationally available, the joint standing committee may report out to any session of any Legislature legislation to implement risk management measures or to enact a prohibition on the sale and distribution of products containing the "deca" mixture.

See title page for effective date.

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## CHAPTER 630

H.P. 1332 - L.D. 1810

### An Act To Amend the Laws Concerning Optional Membership for Participating Local Districts in the Maine State Retirement System

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

#### PART A

**Sec. A-1. 5 MRSA §18251, sub-§1,** as amended by PL 1997, c. 709, §2, is further amended to read:

**1. Compulsory membership.** Membership is compulsory for all ~~employees~~ persons entering the service of a participating local district after the date of establishment for the participating local district, except as otherwise provided by subsection ~~2~~ 3; section 18201, subsection 3; ~~section 18252; section 18252-A; or section 18256; or section 18801, subsection 1, paragraph D.~~

**Sec. A-2. 5 MRSA §18251, sub-§2,** as amended by PL 1987, c. 739, §§28 and 48, is repealed.

**Sec. A-3. 5 MRSA §18251, sub-§§3, 4 and 5** are enacted to read:

**3. Optional membership.** Membership in the retirement system is optional for the following employees of a participating local district:

A. A person in the service of a participating local district on the date of establishment for that participating local district. Once such a person joins the retirement system, membership ceases to be optional for that person under this paragraph;

B. An elected official or an official appointed for a fixed term. Special provisions apply to certain officials as follows:

(1) Membership of trustees of a water district is governed by Title 35-A, section 6410, subsection 8;

(2) Membership of trustees of a sanitary district is governed by Title 38, section 1104; and

(3) Membership of trustees of a sewer district is governed by Title 38, section 1252;

C. A chief administrative officer of a participating local district, whether appointed for a fixed term or appointed with tenure; and

D. A person whose membership is optional under section 18252, 18252-A or 18801.

**4. Delayed election of membership.** A person whose membership is optional and who elects not to join the retirement system when first eligible to do so may at any time apply for and be admitted to membership, except as provided in section 18252.

A. For an optional member described in subsection 3, paragraph B or C who began membership before January 1, 1986, purchase of service credit for the period during which the person was eligible for membership but was not a member of the retirement system is governed by section 18305.

B. For other optional members, purchase of service credit for the period during which the person was eligible for membership but was not a member of the retirement system is governed by section 18305-A.

**5. Reentry.** A person whose membership is optional may reenter the retirement system at any time, subject to sections 18252 and 18252-A, if applicable. A person who reenters the system may purchase service credit for the time served in eligible service as follows.

A. If the person withdrew accumulated contributions at the time of withdrawal, the person, subject to any limitations set forth in section 18252-A, may repurchase that prior service credit by repaying those contributions pursuant to section 18304.

B. For the purchase of time for which the person was not a member:

(1) For an optional member described in subsection 3, paragraph B or C who began membership before January 1, 1986, purchase of service credit for the period during which the person was eligible for membership but was not a member of the retirement system is governed by section 18305; and

(2) For other optional members, purchase of service credit for the period during which the person was eligible for membership but was not a member of the retirement system is governed by section 18305-A.

**Sec. A-4. 5 MRSA §18252**, as amended by PL 2003, c. 387, §6, is further amended to read:

**§18252. Membership in districts with Social Security coverage under Social Security Section 218 agreement**

~~An employee~~ A person who is or would be covered by the United States Social Security Act as a result of employment by a participating local district having a so-called "Social Security Section 218 agreement" may elect to join, not to join, to cease contributions to or to withdraw from the retirement system under the following conditions.

**1. New employees.** A new employee may join the retirement system at the beginning of employment or on any anniversary of the beginning of employment, so long as ~~the employee that person~~ is still an employee of the participating local district and the district continues to be a participating local district.

A. Purchase of service credit for the period during which the person was not a member of the retirement system is governed by section 18305-A.

**2. Employee who is participating member.**

~~An employee~~ A person who is a participating member of the retirement system may elect to cease contributions to the system and, at ~~the employee's~~ that person's discretion, may withdraw accumulated contributions in accordance with ~~the procedures in~~ section 18306.

**3. Person who has previously ceased contributions.** ~~An employee~~ A person who has previously elected to cease contributions to the retirement system,

whether or not accumulated contributions have been withdrawn, may choose to rejoin the system at any time under the following conditions.

~~A. If the employee withdrew accumulated contributions and is rejoining the system within 3 years of the date that a refund was paid under section 18306, the employee must repay to the retirement system an amount equivalent to the withdrawn accumulated contributions plus the amount of interest that would be required of any terminated employee who had become reemployed and had elected to rejoin the retirement system and to repay the contributions.~~

~~A-1. If the employee withdrew accumulated contributions and is rejoining the system more than 3 years from the date that a refund was paid under section 18306, the employee may not repay to the retirement system the contributions withdrawn under subsection 2.~~

B. The employer must still be a participating local district allowing new membership in the retirement system.

C. Purchase of service credit for the period during which the person was not a member of the retirement system is governed by section 18305-A. Repayment of withdrawn accumulated contributions is governed by section 18304.

**5. Limit on right to rejoin.** The right of ~~an employee~~ a person to rejoin under subsection 3 is limited to one occurrence.

**6. Restoration to service.** If any person who is the recipient of a service retirement benefit is covered by the United States Social Security Act upon being restored to service, continuation of that person's benefit is governed by the following.

A. The person may elect to have the service retirement benefit continued during the period of time the person is restored to service and the person may not accumulate any additional service credits.

B. The person may elect to have the service retirement benefit terminated, again become a member of the retirement system and begin contributing at the current rate.

(1) The person is entitled to accumulate additional service credits during the period of time the person is restored to service.

(2) When the person again retires, the person is entitled to receive benefits computed on the person's entire creditable service and

in accordance with the law in effect at the time.

C. Upon being restored to service, the person must elect to have benefits either continued or terminated. If written notification of the person's election is not received by the executive director within 60 days of restoration to service, the person is deemed to have elected the provisions of paragraph A. The election, regardless of how it is made, is irrevocable during the period of restoration to services.

**Sec. A-5. 5 MRSA §18252-A, sub-§1,** as amended by PL 2003, c. 387, §7, is further amended to read:

**1. Membership.** An employee of a participating local district that does not have a so-called "Social Security Section 218 agreement" and that has a plan provided by the employer under section 18252-B may elect to be a member under the retirement system or to be covered under the plan provided by the employer in accordance with the following.

A. ~~An employee~~ A person hired by a participating local district, or rehired following a break in service, after the date on which the employer provides a plan under section 18252-B must elect at the time of hiring or rehiring whether to be a member under the retirement system or to be covered under a plan provided by the employer under section 18252-B.

(1) If the ~~employee person~~ elects to be a member under the retirement system, the election is effective as of the date of hire or rehire.

(a) ~~An employee~~ A person who elects to be a member of the retirement system may later elect to be covered under a plan provided by the employer under section 18252-B. The ~~employee person~~ who so elects may, at the ~~employee's~~ that person's discretion, withdraw accumulated contributions in accordance with ~~applicable requirements of law and rule and retirement system procedures~~ section 18306.

(b) ~~An employee~~ A person who elects under division (a) to be covered under a plan provided by the employer under section 18252-B may later elect to again become a member under the retirement system, unless to so elect would have the effect of requiring the employer, without the employer's agreement, to make an employer con-

tribution to both the retirement system and the plan provided by the employer under section 18252-B.

(c) ~~An employee~~ A person who elects under division (b) to again become a member of the retirement system may ~~not pay contributions or pick up contributions or receive service credit for the period during which the employee elected not to be a member under~~ , in accordance with section 18305-A, purchase service credit for the period during which the person elected not to be a member of the retirement system. The ~~employee person~~ may, in accordance with section 18304, repay contributions withdrawn under division (a) and may, as permitted under other relevant retirement system law, rule and policy, repay other refunded contributions.

(d) ~~An employee~~ A person who, having elected to again become a member under the retirement system under division (c), later elects again not to be a member may not thereafter become a member under the retirement system while employed by the same participating local district.

(2) ~~An employee~~ A person who elects to be covered under a plan provided by the employer under section 18252-B may later elect to become a member under the retirement system.

(a) Membership service credit for ~~an employee~~ a person joining the retirement system under this subparagraph begins as of the effective date of first contributions or pick-up contributions to the retirement system following ~~the employee's~~ that person's election under this subparagraph.

(b) ~~An employee~~ A person who joins the retirement system under this subparagraph may ~~not pay contributions or have pick up contributions made on or receive any service credit for the period during which the employee~~ , in accordance with section 18305-A, purchase service credit for the period during which the person elected not to be a member of the retirement system.

(c) ~~An employee~~ A person who, having elected to become a member

under the retirement system under this subparagraph, later elects again not to be a member may, at the employee's discretion, withdraw accumulated contributions in accordance with applicable requirements of law and rule and retirement system procedures and may not thereafter become a member under the retirement system while employed by the same participating local district.

B. An employee of the participating local district who is a member under the retirement system on the date on which the employer provides a plan under section 18252-B may elect to remain a member under the retirement system or to become covered under a plan provided by the employer under section 18252-B.

(1) If ~~the employee that person~~ elects not to remain a member, the election is effective as of the first day of the month in which no contributions or pick-up contributions are made to the retirement system by ~~the employee that person~~. An employee A person who elects not to remain a member may, at ~~the employee's that person's~~ discretion, withdraw accumulated contributions in accordance with ~~applicable requirements of law and rule and retirement system procedures~~ section 18306.

(2) ~~An employee A person~~ who elects not to remain a member under the retirement system may later elect to again become a member.

(a) Membership service credit for ~~an employee a person~~ who elects to again become a member under the retirement system under this subparagraph begins as of the effective date of the first contributions or pick-up contributions to the retirement system following ~~the employee's that person's~~ election under this subparagraph.

(b) ~~An employee A person~~ who rejoins the retirement system under this subparagraph may ~~not pay contributions or pick-up contributions or receive service credit for the period during which the employee elected not to be a member under~~, in accordance with section 18305-A, purchase service credit for the period during which that person elected not to be a member of the retirement system. The ~~employee person~~ may, in accordance with sec-

tion 18304, repay contributions refunded under subparagraph (1), unless to so elect would have the effect of requiring the employer, without the employer's agreement, to make an employer contribution to both the retirement system and the plan provided by the employer under section 18252-B.

(c) ~~An employee A person~~ who, having elected to again become a member under the retirement system under this subparagraph, later elects again not to be a member may, at ~~the employee's that person's~~ discretion, withdraw accumulated contributions in accordance with ~~applicable requirements of law and rule and retirement system procedures~~ section 18306 and may not thereafter become a member under the retirement system while employed by the same participating local district.

~~C. At no time may an employee who elects not to be a member under the retirement system under paragraph A or B pay contributions or pick-up contributions or receive service credit for any time during which the employee elected not to be a member.~~

D. If the participating local district does not have a plan provided under section 18252-B, the employees do not have the elections provided under paragraphs A and B.

**Sec. A-6. 5 MRSA §18252-A, sub-§3**, as enacted by PL 1997, c. 709, §4, is repealed and the following enacted in its place:

**3. Exclusions.** This section does not apply to employees of participating local districts:

A. Who are employed in part-time, seasonal or temporary positions;

B. Whose membership in the retirement system is optional under section 18252, section 18801, subsection 1 or section 18251, subsection 3, paragraph A, B or C;

C. For whom membership in the retirement system is denied under section 18256; or

D. Who are excluded from membership under section 18201, subsection 3.

**Sec. A-7. 5 MRSA §18304, first ¶**, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

Any former member who withdrew ~~his~~ that person's contributions after termination of service or after withdrawing from the retirement system and who again becomes a member may repay ~~his~~ earlier contributions to the Members' Contribution Fund under the following conditions.

**Sec. A-8. 5 MRSA §18304, sub-§1**, as amended by PL 1991, c. 580, §14, is further amended to read:

**1. Time.** ~~The repayment may not be made until the member has accumulated at least 2 continuous years of creditable service after the date of restoration to membership and must be made before the date any retirement benefit becomes effective for the member.~~

**Sec. A-9. 5 MRSA §18305, sub-§4**, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

**4. Exception.** This section does not apply to ~~any member who begins membership after December 31, 1985, and who had, in accordance with a person whose membership in the retirement system is optional, unless the person is described in section 18251, elected not to become a member when first employed subsection 3, paragraph B or C and the person began membership before January 1, 1986.~~

**Sec. A-10. 5 MRSA §18305-A** is enacted to read:

**§18305-A. Back contributions for optional members**

A person whose membership is optional and who did not become a member on the date of first employment or who reentered the retirement system after having previously withdrawn may elect as permitted by section 18251, 18252 or 18252-A, whichever is applicable, to pay into the Members' Contribution Fund under the following conditions:

**1. Time.** The payment must be made before the date any retirement benefit becomes effective for the member;

**2. Manner of payment.** The payment must be made to the retirement system by a single direct payment or by annual direct payments made in accordance with section 18301, subsection 4; and

**3. Amount of payment.** The amount of payment must be the amount that, together with regular interest 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. Additional amounts paid under this section become part of the member's accumulated contributions.

**Sec. A-11. 5 MRSA §18306, first ¶**, as amended by PL 1987, c. 739, §§36 and 48, is further amended to read:

If the service of any member has terminated, except by death or retirement under this Part, or if an optional member withdraws from the retirement system or if an employee of a district ~~which that~~ withdraws from participation under section 18203 wishes to have accumulated contributions refunded, the member or employee ~~shall~~ must be paid the amount of accumulated contributions under the following conditions.

**Sec. A-12. 5 MRSA §18358, sub-§2**, as amended by PL 1987, c. 739, §§41 and 48, is further amended to read:

**2. Optional members joining or rejoining system.** A person who joins the retirement system under section 18251, ~~subsection 2, paragraph D, after December 31, 1985~~ 18252 or 18252-A:

A. ~~May not pay contributions or have pick up contributions made by the employer on or receive any~~ Receives service credit for the period during which the person elected not to be a member of the retirement system only if payments are made pursuant to section 18305 or 18305-A; and

B. Begins to accrue membership service credit on the effective date of first contributions or pick-up contributions to the retirement system.

**Sec. A-13. 5 MRSA §18359**, as amended by PL 1987, c. 823, §§7 and 8, is repealed.

## PART B

**Sec. B-1. 5 MRSA §17703, sub-§1**, as amended by PL 1991, c. 580, §5, is further amended to read:

**1. Time.** ~~The repayment may not be made until the member has accumulated at least 2 continuous years of creditable service after the date of restoration to membership and must be made before the date any retirement benefit becomes effective for the member.~~

**Sec. B-2. 5 MRSA §17703, sub-§1-A**, as amended by PL 2003, c. 261, §5, is repealed.

**Sec. B-3. 5 MRSA §17705, first ¶**, as repealed and replaced by PL 1987, c. 256, §6, is amended to read:

If the service of any member has terminated, except by death or by retirement under this Part, or if an optional member withdraws from the retirement system, the member ~~shall~~ must be paid the amount of

his the member's accumulated contributions, under the following conditions.

See title page for effective date.

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## CHAPTER 631

H.P. 1289 - L.D. 1767

### An Act To Amend the Laws Relating to Corporations, Limited Partnerships, Limited Liability Companies and Limited Liability Partnerships

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

**Whereas,** the Maine Revised Statutes, Title 13-C, which governs domestic and foreign corporations in Maine, became effective on July 1, 2003, and changes to that law and other entity laws administered by the Secretary of State must be in place by July 1, 2004, in order for the Secretary of State to properly administer these laws; 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. 13-B MRSA §111** is enacted to read:

**§111. Certificate of existence; certificate of authority; certificate of fact**

**1. Application.** Any person may apply to the Secretary of State for a certificate of existence for a domestic corporation or a certificate of authority for a foreign corporation.

**2. Contents.** A certificate of existence or certificate of authority sets forth:

A. The corporation's name used in this State;

B. That, if a domestic corporation, the corporation is duly incorporated under the laws of this State and the date of its incorporation;

C. That, if a foreign corporation, the foreign corporation is authorized to carry on activities in this State, the date on which the corporation was authorized to carry on activities in this State and its jurisdiction of incorporation;

D. That all fees and penalties owed to this State have been paid if:

(1) Payment is reflected in the records of the Secretary of State; and

(2) Nonpayment affects the existence or authorization of the domestic or foreign corporation;

E. That the corporation's most recent annual report required by section 1301 has been delivered to the Secretary of State; and

F. Any facts of record in the office of the Secretary of State that may be requested by the applicant under subsection 1.

**3. Evidence of existence or authority.** Subject to any qualification stated in the certificate, a certificate of existence or certificate of authority issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to carry on activities in this State.

**4. Certificate of fact.** In addition to the certificate authorized under subsection 2, the Secretary of State may issue a certificate attesting to any fact of record in the office of the Secretary of State that may be requested by the applicant under subsection 1.

**Sec. 2. 13-B MRSA §305, sub-§4,** as enacted by PL 1989, c. 501, Pt. L, §39, is repealed.

**Sec. 3. 13-B MRSA §§1112 to 1116** are enacted to read:

**§1112. Grounds for administrative dissolution**

Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under section 1113 to administratively dissolve a corporation if:

**1. Nonpayment of fees or penalties.** The corporation does not pay when they are due any fees or penalties imposed by this Title or other law;

**2. Failure to file annual report.** The corporation does not deliver its annual report to the Secretary of State as required by section 1301;

**3. Failure to pay late filing penalty.** The corporation does not pay the annual report late filing penalty as required by section 1302;

**4. Failure to maintain registered agent or registered office.** The corporation fails to appoint or maintain a registered agent or registered office in this State as required by section 304;