

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

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SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

using an auxiliary light in violation of this section commits a traffic infraction.

Sec. 2. 29-A MRSA §2054, sub-§2, ¶D, as amended by PL 2003, c. 633, §4, is further amended to read:

D. Except as provided in this paragraph, a vehicle may not be equipped with or display a blue light.

(1) Emergency lights used on the following vehicles must emit a blue light or a combination of blue and white light: a police vehicle; a Department of Corrections vehicle as described in subsection 1, paragraph B, subparagraph (6); a vehicle operated by a chief of police, a sheriff or a deputy sheriff; and a vehicle operated by a qualified deputy sheriff or other qualified individual performing court security-related functions and services.

(2) Emergency lights used on an ambulance, an emergency medical service vehicle, a fire department vehicle or a hazardous material response vehicle may include one blue light mounted facing toward the rear of the vehicle so that the light is primarily visible to approaching traffic from the rear only.

(3) The taillight of a vehicle, or replica of a vehicle, manufactured prior to 1952 and registered under section 457, may contain a blue or purple insert of not more than one inch in diameter.

(4) Blue interior auxiliary lighting or dash lighting may be used on any vehicle if no portion of the beam of light is visible at a height of 42 inches above a surface parallel with the level surface on which the vehicle stands at a distance of 20 feet from any part of the vehicle.

See title page for effective date.

CHAPTER 184

S.P. 538 - L.D. 1551

An Act To Make Technical Amendments to the Maine Uniform Trust Code

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

Whereas, the Maine Uniform Trust Code, enacted by Public Law 2003, chapter 618, Part A, takes effect July 1, 2005; and

Whereas, the amendments in this legislation to the Maine Uniform Trust Code must also become effective on July 1, 2005, because allowing the amendments to become effective 90 days after the end of the legislative session would cause confusion and uncertainty for Maine citizens and taxpayers; 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. 18-A MRSA §5-508, sub-§(g), as amended by PL 1999, c. 66, §1, is further amended to read:

(g) The requirements of subsections (b), (c) and (d) do not render ineffective a durable financial power of attorney validly executed prior to September 19, 1997 or a durable financial power of attorney executed prior to December 31, 1998 in accordance with this section as in effect on September 19, 1997. The requirements of subsection (d) do not render ineffective a durable power of attorney validly executed prior to July 1, 2005 in accordance with this section.

Sec. 2. 18-B MRSA §103, sub-§1-A is enacted to read:

1-A. Ascertainable standard. "Ascertainable standard" means an ascertainable standard relating to an individual's health, education, support or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the federal Internal Revenue Code of 1986, as in effect on July 1, 2005.

Sec. 3. 18-B MRSA §103, sub-§10, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

10. Power of withdrawal. "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee that is limited by an ascertainable standard, or exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

Sec. 4. 18-B MRSA §103, sub-§12, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

12. Qualified beneficiary. "Qualified beneficiary" means a living beneficiary who on the date the beneficiary's qualification is determined:

- A. Is a distributee or permissible distributee of trust income or principal;
- B. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph A terminated on that date, but the termination of those interests would not cause the trust to terminate;
or
- C. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

"Qualified beneficiary" does not include a contingent distributee or a contingent permissible distributee of trust income or principal whose interest in the trust is not reasonably expected to vest.

Sec. 5. 18-B MRSA §105, sub-§2, ¶¶H and I, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, are amended to read:

- H. ~~The Subject to subsection 3, the~~ duty under section 813, subsection 2, paragraphs B and C to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee and of their right to request trustee's reports;
- I. ~~The Subject to subsection 3, the~~ duty under section 813, subsection 1 to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

Sec. 6. 18-B MRSA §105, sub-§3 is enacted to read:

3. Waiver or modification. The settlor, in the trust instrument or in another writing delivered to the trustee, may waive or modify the duties of a trustee under section 813, subsection 1 or 2 to give notice, information and reports to qualified beneficiaries by:

- A. Waiving or modifying such duties as to all qualified beneficiaries except the settlor's surviving spouse during the lifetime of the settlor or the lifetime of the settlor's surviving spouse; and
- B. Designating a person or persons, any of whom may or may not be a beneficiary, to act in good faith to protect the interests of the qualified beneficiaries who are not receiving notice, information or reports and to receive any notice, information or reports required under section

813, subsection 1 or 2 in lieu of providing such notice, information or reports to the qualified beneficiaries. The person or persons designated under this paragraph are deemed to be representatives of the qualified beneficiaries not receiving notice, information or reports for the purposes of the time limitation for a beneficiary to commence an action against the trustee for breach of trust as provided in section 1005, subsection 1.

Sec. 7. 18-B MRSA §110, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

§110. Others treated as qualified beneficiaries

1. Charitable organization or person to enforce trust. A charitable organization expressly designated to receive distributions under the terms of a charitable trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 408 or 409 has the rights of a qualified beneficiary under this Code. if the charitable organization, on the date the charitable organization's qualification is being determined:

- A. Is a distributee or permissible distributee of trust income or principal;
- B. Would be a distributee or a permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or
- C. Would be a distributee or permissible distributee of trust income or principal on that date.

A charitable organization whose interest in the trust as a contingent distributee of the trust income or principal is not reasonably expected to vest does not have the rights of a qualified beneficiary.

1-A. Person appointed to enforce trust. A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 408 or 409 has the rights of a qualified beneficiary under this Code.

2. Attorney General. The Attorney General has the rights of a qualified beneficiary provided in Title 5, section 194 with respect to a charitable trust having its principal place of administration in this State, but may not be treated as and does not have the rights of a qualified beneficiary.

Sec. 8. 18-B MRSA §301, sub-§4 is enacted to read:

4. Limitation on representation by settlor. A settlor may not represent and bind a beneficiary under

this chapter with respect to termination or modification of a trust under section 411, subsection 1.

Sec. 9. 18-B MRSA §411, sub-§1, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

1. Consent of settlor and all beneficiaries. ~~A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. If the settlor and all beneficiaries consent to the modification or termination of an irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust, if the court finds that the modification or termination is in the best interests of the beneficiaries.~~ A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

Sec. 10. 18-B MRSA §501, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

§501. Rights of beneficiary's creditor or assignee

To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions ~~or for the benefit of the beneficiary or other means.~~ The court may limit the award to such relief as is appropriate under the circumstances.

Sec. 11. 18-B MRSA §504, sub-§2, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

2. Right of beneficiary not limited. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for ~~an abuse of discretion~~ failure to exercise a discretionary power in accordance with the terms and purposes of the trust or for failure to comply with a standard for distribution.

Sec. 12. 18-B MRSA §504, sub-§3 is enacted to read:

3. Creditor limited. A creditor may not reach the interest of a beneficiary who is also a trustee, or otherwise compel a distribution, if the trustee's discretion is limited by an ascertainable standard.

Sec. 13. 18-B MRSA §603, sub-§1, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

1. Revocable trust. While a trust is revocable ~~and the settlor has capacity to revoke the trust,~~ rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

Sec. 14. 18-B MRSA §704, sub-§4, ¶B, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

B. By a person appointed by unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust ~~if the Attorney General concurs in the appointment;~~ or

Sec. 15. 18-B MRSA §802, sub-§§4 and 6, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, are amended to read:

4. Transaction between trustee and beneficiary. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage beyond the normal commercial advantage for such a transaction is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary. A transfer or obligation is not voidable under this section against a person who took property from the trustee in good faith for a reasonably equivalent value or against any subsequent transferee or obligee.

6. Investment. An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of chapter 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall notify the persons entitled under section 813 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

Sec. 16. 18-B MRSA §813, sub-§5 is enacted to read:

5. Applicable date. Subsection 2, paragraphs B and C apply only to a trustee who accepts a trusteeship on or after July 1, 2005, to an irrevocable trust created on or after July 1, 2005 and to a revocable trust that becomes irrevocable on or after July 1, 2005.

Sec. 17. 18-B MRSA §814, sub-§1, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

1. Discretionary power; interests of beneficiaries. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole" or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. A trustee's power to make distributions is discretionary notwithstanding terms of the trust providing that the trustee "shall" make distributions exercising a discretionary power, with or without standards.

Sec. 18. 18-B MRSA §814, sub-§2, ¶A, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

A. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support or maintenance within the meaning of the federal Internal Revenue Code of 1986, Section 2041(b)(1)(A) or 2514(c)(1), as in effect on July 1, 2005, or as later amended; and

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect July 1, 2005.

Effective July 1, 2005.

CHAPTER 185

S.P. 313 - L.D. 905

An Act To Modernize the Innkeeping Statutes

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

Sec. 1. 30-A MRSA §3802, sub-§2, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106

and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

2. Overcharge liability. No keeper may charge or collect a sum greater than the rate shown in the posted schedule. Any keeper who charges or collects more than the rate shown in the posted schedule is liable to the person so charged or who paid the bill in an amount equal to ~~3 times~~ the total amount of the bill collected minus the rate shown in the posted schedule.

Sec. 2. 30-A MRSA §3821, sub-§1, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

1. Register of guests. Every person conducting ~~any a~~ hotel or lodging house shall have a register kept and maintained in the hotel or lodging house at all times. The name of every guest or person renting ~~or occupying~~ a room or rooms in the hotel or lodging house ~~shall~~ must be written in the register. The person renting the room or rooms, or someone under that person's direction, shall sign the register. The proprietor of the hotel or lodging house, or the proprietor's agent, shall then write the number of each room assigned to ~~and occupied by~~ each guest, together with the date that room is rented, opposite the name or names so registered.

Sec. 3. 30-A MRSA §3822, sub-§1, as amended by PL 1995, c. 88, §2, is further amended to read:

1. Registration. All persons ~~occupying~~ renting a room or rooms in a hotel or lodging house must register or have themselves registered in the hotel or lodging house register. The innkeeper may require the registering guest to produce a valid driver's license, or other identification satisfactory to the innkeeper, setting forth the name and residence of the guest. If the guest is a minor, the innkeeper may require a parent of the guest to register and to accept in writing liability for the guest room costs, taxes, all charges incurred by the minor and any damages to the guest room or its furnishings caused by the minor while a guest at the hotel or lodging house.

Sec. 4. 30-A MRSA §3838, sub-§2, as amended by PL 1997, c. 59, §1, is further amended to read:

2. Minor. Any person who has not attained 18 years of age ~~unless that person.~~ An innkeeper or campground owner may, at the innkeeper's or campground owner's discretion, grant the accommodations, facilities and privileges of a hotel, lodging house or campground to a minor if that minor:

A. Presents a signed notification from a parent that the parent accepts liability ~~of~~ for the guest