

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
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FIRST SPECIAL SESSION
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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

Sec. 3. 10 MRSA §1495-D, sub-§4, as enacted by PL 2003, c. 668, §6 and affected by §12, is amended to read:

4. Fees. The initial application and annual renewal application must include a fee of ~~\$250~~ \$200 if the payroll processor has fewer than 25 employers as payroll processing clients; \$500 if the payroll processor has from 25 to 500 employers as payroll processing clients; and ~~\$750~~ \$800 for those payroll processors that have more than 500 employers as payroll processing clients. The aggregate of license fees and other fees and assessments provided for by this chapter is appropriated for the use of the administrator. Any balance of these funds does not lapse but must be carried forward to be expended for the same purpose in the following fiscal year.

Sec. 4. 10 MRSA §1495-E, sub-§§1, 2 and 4, as enacted by PL 2003, c. 668, §6 and affected by §12, are amended to read:

1. Bond required; minimum amount; duration. Each application for a license under section 1495-D must be accompanied by evidence of a surety bond, in a form approved by the administrator, in an amount equal to the total of all local, state and federal tax payments and unemployment insurance premiums processed by the payroll processor on behalf of employers in this State in the 3-consecutive-month period of highest volume during the previous calendar year or ~~\$100,000~~ \$50,000, whichever is greater, but not to exceed \$500,000. The bond must designate the administrator as payee. The bond paid to the administrator may be used for the purposes of the administrator and for the benefit of any employer who may have a cause of action against the payroll processor. The terms of the bond must run continuously until cancelled and the aggregate amount of the bond must be maintained at all times during the licensing period.

2. Modification of bond requirement. If bonding is unavailable under the terms and conditions of subsection 1, the administrator, within the administrator's discretion, may modify those terms and conditions or may permit submission of an irrevocable letter of credit or other alternative form of security so as to ensure the maximum practicable protection for employers.

4. Exceptions. A payroll processor that does not have the authority to access, control, direct, transfer or disburse a client's funds is not subject to this section. A payroll processor that arranges for the transfer of funds from an employer's account directly to taxing authorities for payment of the employer's taxes is not subject to this section, as long as the payroll processor is not authorized to arrange for the transfer of funds for any other uses or to any other accounts. The administrator may construe this

subsection through issuance of an advisory ruling or through rules adopted pursuant to section 1495-F.

Sec. 5. 10 MRSA §1495-H, sub-§2, as enacted by PL 2003, c. 668, §6 and affected by §12, is amended to read:

2. Bond or security forfeiture. After notice and hearing, forfeiture of that portion of the required bond or other security instrument as proportionately may make aggrieved parties whole;

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

Effective June 2, 2005.

CHAPTER 279

H.P. 691 - L.D. 981

An Act To Add an Organizational Name to the Governor Baxter School for the Deaf

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

Sec. 1. 5 MRSA §285, sub-§1, ¶A-1, as enacted by PL 2001, c. 239, §1 and affected by §5, is amended to read:

A-1. Any employee of the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf, unless a different health program is established by collective bargaining agreement or otherwise consistent with applicable law;

Sec. 2. 5 MRSA §931, sub-§1, ¶H, as amended by PL 1989, c. 443, §7 and PL 2003, c. 20, Pt. OO, §2 and affected by §4, is further amended to read:

H. Officers and employees of the unorganized territory school system; the teachers, administrators and professional employees of the state community colleges and the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf; and the teachers, administrators and professional employees of school systems in other state institutions;

Sec. 3. 5 MRSA §17001, sub-§40, as repealed and replaced by PL 2003, c. 688, Pt. A, §4, is amended to read:

40. State employee. "State employee" means any regular classified or unclassified officer or

employee in a department, any employee of the Maine Community College System except those who make the election provided under Title 20-A, section 12722, any employee of the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf except as provided in Title 20-A, section 7407, subsection 3-A, any employee of the Maine Military Authority, any employee of the Northern New England Passenger Rail Authority and any employee transferred from the Division of Higher Education Services to the Finance Authority of Maine who elects to be treated as a state employee, but does not include:

- A. A judge, as defined in Title 4, section 1201 or 1301, who is now or later may be entitled to retirement benefits under Title 4, chapter 27 or 29;
- B. A member of the State Police who is now entitled to retirement benefits under Title 25, chapter 195; or
- C. A Legislator who is now or later may be entitled to retirement benefits under Title 3, chapter 29.

Sec. 4. 5 MRSA §19508, as enacted by PL 1989, c. 837, §1, is amended to read:

§19508. Application to residents in children's homes

This chapter also applies to exceptional students in children's homes, emergency shelters, family foster homes, specialized children's homes and residential child care facilities, as defined in Title 22, section 8101, and to other residential educational facilities, including the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and other similar facilities.

Sec. 5. 20-A MRSA c. 304, as amended, is further amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 304

MAINE EDUCATIONAL CENTER FOR THE DEAF AND HARD OF HEARING AND THE GOVERNOR BAXTER SCHOOL FOR THE DEAF

Sec. 6. 20-A MRSA §7401, as amended by PL 1999, c. 775, §1, is further amended to read:

§7401. School established

The Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf is established as a public school pursuant to this chapter for the purpose of educating deaf and

hard-of-hearing students. The school is a body politic and corporate and is an instrumentality and agency of the State. The exercise by the school of the powers conferred by this chapter is the performance of an essential public function by and on behalf of the State.

Sec. 7. 20-A MRSA §7402, as amended by PL 1999, c. 775, §3, is further amended to read:

§7402. Definitions

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

1. School. "School" means the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf established under this chapter, including the center school located at Mackworth Island known as the Governor Baxter School for the Deaf and any satellite school within the State that may be operated under a contracted services agreement.

2. School board. "School board" means the School Board of the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf.

3. Sending school. "Sending school" means any school administrative unit that has a student in attendance at the Governor Baxter School for the Deaf center school or at a satellite school.

4. Superintendent. "Superintendent" means the Superintendent of the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf.

5. Center school. "Center school" means the kindergarten to grade 12 day and residential programs established and operated by the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf at the Governor Baxter School for the Deaf located at Mackworth Island, including the residential program, day school program, statewide consultation and outreach programs, parent infant program, preschool program, communication garden program, distance education program and community education program.

6. Satellite school. "Satellite school" means the programs, including a residential program, day school programs, early childhood programs and outreach programs, that are located near the population centers of deaf and hard-of-hearing students within the State established by the School Board of the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf.

7. Statewide educational services or outreach. "Statewide educational services" or "outreach" means consultation services provided to families of children from birth to 5 years of age who are deaf or hard-of-hearing students, consulting services to school administrative units that serve school-age deaf or hard-of-hearing children and services provided through the parent-infant-toddler program, the preschool program and the communication garden program provided at the center school.

8. Statewide resource center. "Statewide resource center" means the information and referral services provided by the library at the center school and the distance education program and the community education program offered at the center school.

Sec. 8. 20-A MRSA §7406, first ¶, as enacted by PL 1995, c. 676, §5, is amended to read:

The School Board of the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf is established as the policy-making authority and the governing body of the school.

Sec. 9. 20-A MRSA §7407, sub-§4-A, as amended by PL 1999, c. 790, Pt. L, §1 and affected by §2, is further amended to read:

4-A. Budget development. The school board shall, with the aid of the superintendent and staff, prepare an annual budget for the operation of the school and exercise budgetary responsibility. The school board shall allocate for expenditure by the school and programs under its jurisdiction all the resources available for the operation of the school and its programs. Annually, not later than January 1st, beginning for fiscal year 2001-02, in addition to complying with the provisions of Title 5, sections 1665 and 1666, the school board shall present the administrative operating budget for the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf to the Governor and the Legislature for review by the joint standing committee of the Legislature having jurisdiction over education matters. The administrative operating budget must be presented as a line-item budget for each of the programs under its jurisdiction. A liability or obligation may not be incurred under this chapter beyond the amount approved in the administrative operating budget. The school board may make expenditures only in accordance with allocations approved by the Legislature. Any balance of an allocation or subdivision of an allocation made by the Legislature for the school that at the time is not required for the purpose named in the allocation or subdivision may be transferred prior to the closing of the books for the fiscal year to any other allocation or subdivision of any allocation made by the Legislature

for the use of the school for the same fiscal year. The transfer is subject to review by the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. Financial statements describing the transfer must be submitted by the school board to the Office of Fiscal and Program Review 30 days before the transfer is implemented. In case of extraordinary emergency transfers, the 30-day prior submission requirement may be waived by vote of the committee. These financial statements must include information specifying the accounts that are affected, the amounts to be transferred, a description of the transfer and a detailed explanation of the reason the transfer is needed. The school board shall also provide an annual justification for the finances and operations of the programs under the jurisdiction of the school to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over education matters. The justification for the finances and operations of the school must be presented as a line-item budget for each of the programs under its jurisdiction.

Sec. 10. 20-A MRSA §7407, sub-§17, as amended by PL 1999, c. 775, §11, is further amended to read:

17. School programs. The school board may create, maintain and expand center school programs and programs for children and families that may be served by the school at any satellite school, through statewide educational services and through the statewide resource center. For the 2000-01 and 2001-02 school years only, the residential program at the Governor Baxter School for the Deaf located on Mackworth Island is limited to enrolling up to 20 students who are deaf or hard-of-hearing. The superintendent may request that the commissioner approve a waiver of the residential enrollment limit and establish additional placements for students in the residential program at the Governor Baxter School for the Deaf located on Mackworth Island; the commissioner may approve those placements on a case-by-case basis and only if the individual education plan of the prospective student who is deaf or hard-of-hearing requires placement in a residential program. Beginning with the 2002-03 school year, the school board shall establish a satellite school program that offers an array of educational programs that provide students who are deaf or hard-of-hearing with geographically convenient access to placement options that may be required by their individualized education program.

Sec. 11. 20-A MRSA §7412, as amended by PL 2001, c. 439, Pt. T, §§6 and 7, is further amended to read:

§7412. Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf Student Trust Fund established

1. Fund established. Notwithstanding the provisions of Title 5, section 135-A, the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf Student Trust Fund, referred to in this section as the "fund," is established.

2. Investment of funds. The money in the fund may be invested by the Treasurer of State with the assistance of one or more fiduciaries or registered investment advisors. The duties and expenses of the fiduciaries or registered investment advisors must be handled in a manner consistent with Title 5, section 17108, subsections 2 and 3. All earnings must be credited to the fund.

3. Nonlapsing fund; transfer to General Fund. Until July 1, 2007, any unexpended funds remaining in the fund may not lapse but must be carried forward for the benefit of the fund. On July 1, 2007, any unexpended funds remaining in the fund must be transferred to the General Fund.

Sec. 12. 20-A MRSA §13402, sub-§3, as amended by PL 1995, c. 676, §7 and affected by §13, is further amended to read:

3. Substitute teachers. Substitute teachers must be compensated at the rate of not less than \$30 for each day of service. Any substitute teacher under contract with the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf is deemed for the purposes of civil liability to be an employee of a governmental entity under the Maine Tort Claims Act.

Sec. 13. 22 MRSA §3174-D, as amended by PL 1995, c. 676, §9 and affected by §13 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

§3174-D. Medicaid coverage for services provided by the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf

The Department of Health and Human Services may administer a program of Medicaid coverage for speech and hearing services, psychological services, occupational therapy and any other services provided by the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf that qualify for reimbursement under the United States Social Security Act, Title XIX. The Department of Education has fiscal responsibility for providing the State's match for federal revenues

acquired under this section. Any funds received as Medicaid reimbursement must be retained by the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf.

Sec. 14. 22 MRSA §4088, sub-§7, as enacted by PL 2001, c. 265, §4, is amended to read:

7. Access to records related to Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf. Notwithstanding Title 20-A, section 6101, subsection 2, when the team is conducting an investigation of a person at the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf who is subject to licensure by the Department of Education, the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and the Department of Education shall disclose to the team records related to:

- A. Background checks related to the person;
- B. The person's credentials;
- C. Any conduct on the part of the person related to the allegation; and
- D. Any action taken by the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf or the Department of Education in response to conduct of any person at the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf that is similar to the allegation.

Sec. 15. 26 MRSA §962, sub-§7, ¶A, as amended by PL 2003, c. 646, §3, is further amended to read:

- A. Any officer, board, commission, council, committee or other persons or body acting on behalf of:
 - (1) Any municipality or any subdivision of a municipality;
 - (2) Any school, water, sewer, fire or other district;
 - (3) The Maine Turnpike Authority;
 - (4) Any board of directors functioning as a regional intermediate education unit pursuant to Title 20-A, section 7730;
 - (5) Any county or subdivision of a county;
 - (6) The Maine State Retirement System; or

(7) The Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf;

Sec. 16. 26 MRSA §1419-A, sub-§4, as amended by PL 2003, c. 553, Pt. A, §3, is further amended to read:

4. Specialized customer communications equipment needs in public school system. The Department of Education, in consultation with the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and advocacy groups for deaf and hard-of-hearing persons and for the information technology interests of consumers, shall conduct an annual survey of all public schools in the State for the purpose of assessing the need for specialized customer communications equipment in the school system and report its findings to the joint standing committee of the Legislature having jurisdiction over labor matters. The report must include: the number of deaf and hard-of-hearing students and their needs for specialized customer communications equipment; the availability of specialized customer communications equipment; the number of requests for specialized customer communications equipment; and the status of training for teachers and other school personnel in the use of specialized customer communications equipment.

Sec. 17. 35-A MRSA §8704, sub-§1, ¶E, as amended by PL 2001, c. 377, §3, is further amended to read:

E. Eight members appointed by the Governor as follows:

- (1) One member from the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf;
- (2) One member from a statewide association for the deaf;
- (3) One member from a center on deafness;
- (4) One member from a company providing telecommunications relay service in this State;
- (5) One member of a telephone association in this State;
- (6) Two members from the general public who must rely on TTYs for telecommunications; and
- ~~7~~ (7) One member representing a cellular or wireless service provider.

See title page for effective date.

CHAPTER 280

H.P. 884 - L.D. 1287

An Act Pertaining to the Use of Muzzle-loading Firearms during Muzzle-loading Deer Season

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

Sec. 1. 12 MRSA §11404, sub-§1, as amended by PL 2003, c. 614, §4 and affected by §9, is repealed.

Sec. 2. 12 MRSA §11404, sub-§1-A is enacted to read:

1-A. Muzzle-loading-only open season on deer. There is a special muzzle-loading open season on deer immediately following the regular deer hunting season established under section 11401, subsection 1, paragraph A for the purpose of hunting deer only with:

A. A muzzleloader as defined in section 10001, subsection 42-A that is 40 caliber or greater and capable of firing only a single charge;

B. A muzzle-loading shotgun as defined in section 10001, subsection 42-B; or

C. A traditional muzzleloader as defined in section 10001, subsection 62-A that uses projectiles that are 40 caliber or greater or that uses buckshot.

The commissioner may terminate this open season at any time in an area if, in the commissioner's opinion, an immediate emergency action is necessary due to adverse weather conditions or severe hunting pressure. The length of the special muzzle-loading season is as follows.

The commissioner shall establish by rule the length of the special muzzle-loading season. The commissioner may establish seasons of different lengths in different regions of the State. The season may extend for no more than 12 hunting days in any part of the State.

See title page for effective date.

CHAPTER 281

H.P. 129 - L.D. 178

An Act To Support Animal Welfare

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