

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

FIRST REGULAR SESSION
December 6, 2006 to June 21, 2007

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 20, 2007

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

Penmor Lithographers
Lewiston, Maine
2007

**CHAPTER 367
H.P. 1068 - L.D. 1543**

**An Act To Clarify the Use of
Tips in Payment of Service
Employees**

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

Sec. 1. 26 MRSA §663, sub-§8, as enacted by
PL 1967, c. 466, §4, is amended to read:

8. Service employee. "Service employee"; means any employee engaged in an occupation, such as waiters, waitresses, bellhops, counter personnel and bartenders who serve customers, in which he the employee customarily and regularly receives more than \$20 \$30 a month in tips.

Sec. 2. 26 MRSA §664, sub-§2, as enacted by
PL 1995, c. 305, §1, is amended to read:

2. Tip credit. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

The tips received by a service employee become the property of the employee and may not be shared with the employer. Service employees may volunteer to pool their tips to be split among other service employees or may volunteer to share a part of their tips with other employees who do not generally receive tips directly from customers. Tips that are automatically included in the customer's bill or that are charged to a credit card must be given to the service employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company.

See title page for effective date.

**CHAPTER 368
H.P. 1129 - L.D. 1607**

**An Act To Establish a Fund To
Provide American Flags at
Veterans' Graves**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until

90 days after adjournment unless enacted as emergencies; and

Whereas, honoring veterans buried in the Maine Veterans' Memorial Cemetery System by placing the United States flag on their graves is our duty as citizens; and

Whereas, the somber occasion of Memorial Day 2007, the day that we honor the sacrifices of those that served their country, will come to pass prior to the adjournment of the First Regular Session of the 123rd Legislature; 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. 37-B MRSA §504, sub-§5, as amended by PL 2007, c. 167, §5, is further amended to read:

5. Weekend visitation. The superintendent director of the cemetery system shall arrange for public access during weekend daylight hours and regularly scheduled weekday visiting hours unless closure of the cemetery is considered necessary by the superintendent director for security or public safety purposes.

Sec. 2. 37-B MRSA §504, sub-§7 is enacted to read:

7. Flag placement program. The director of the cemetery system shall establish a program to facilitate the placement of 12-inch by 18-inch American flags at the graves of veterans buried in the Maine Veterans' Memorial Cemetery System. This program must allow for volunteer organizations to place flags on graves beginning 2 days prior to the day Memorial Day is observed and for removal by volunteer organizations 3 days after the day Memorial Day is observed. The director of the cemetery system shall permit a limited extension beyond the 3 days, so that the flags do not have to be removed in inclement weather. The director of the cemetery system is authorized to use funds as provided in subsection 8 and to accept private donations of flags, tools or other equipment necessary to implement the program.

Sec. 3. 37-B MRSA §504, sub-§8 is enacted to read:

8. Flag placement fund. There is established the Maine Veterans' Memorial Cemetery Flag Placement Fund, an interest-bearing account, referred to in this subsection as "the fund." The fund receives money appropriated from the General Fund and any other money contributed voluntarily to the fund. All money

deposited in the fund and the earnings on that money remain in the fund to be used to implement the flag placement program as described in subsection 7, specifically for the purchase of new flags as needed to ensure each veteran's grave is decorated as required by subsection 7 and as replacements for damaged flags. Money in the fund may not be deposited in the General Fund or any other fund except as specifically provided by law.

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

Effective June 20, 2007.

**CHAPTER 369
S.P. 567 - L.D. 1623**

**An Act To Create the Board of
Speech-language Pathology,
Audiology and Hearing Aid
Dealing and Fitting**

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

PART A

Sec. A-1. 5 MRSA §5301, sub-§2, ¶E, as amended by PL 2005, c. 347, Pt. A, §1, is further amended to read:

E. Convictions for which incarceration for less than one year may be imposed and that involve sexual misconduct by an applicant for massage therapy licensure or a licensed massage therapist or an applicant or licensee of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Examiners, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the Board of Chiropractic Licensure, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of ~~Examiners on~~ Speech-language Pathology and, Audiology, the Board of and Hearing Aid Dealers Dealing and Fitters Fitting, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, the Maine Board of Pharmacy, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Nursing and the Emergency Medical Services' Board.

Sec. A-2. 5 MRSA §5303, sub-§2, as amended by PL 2005, c. 347, Pt. A, §2, is further amended to read:

2. Ten-year limits. For applicants to and licensees and registrants of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Examiners, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the State Board of Nursing, the Board of Chiropractic Licensure, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of ~~Examiners on~~ Speech-language Pathology and, Audiology, the Board of and Hearing Aid Dealers Dealing and Fitters Fitting, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, the Maine Board of Pharmacy, and the Emergency Medical Services' Board and applicants for massage therapy licensure or licensed massage therapists, the following apply.

A. The procedures outlined in sections 5301 and 5302 for the consideration of prior criminal conviction as an element of fitness to practice a licensed profession, trade or occupation apply within 10 years of the applicant's or licensee's final discharge, if any, from the correctional system.

B. Beyond the 10-year period, ex-offender applicants or licensees with no additional convictions must be considered in the same manner as applicants or licensees possessing no prior criminal record for the purposes of licensing decisions.

C. There is no time limitation for consideration of a registrant's, an applicant's or licensee's conduct that gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action.

Sec. A-3. 5 MRSA §12004-A, sub-§20, as enacted by PL 1987, c. 786, §5, is repealed.

Sec. A-4. 5 MRSA §12004-A, sub-§39, as amended by PL 1999, c. 687, Pt. B, §1, is repealed.

Sec. A-5. 5 MRSA §12004-A, sub-§48 is enacted to read:

48.

<u>Board of Speech-</u>	<u>\$35/Day</u>	<u>32 MRSA</u>
<u>language Pathology,</u>		<u>§17201</u>
<u>Audiology and</u>		
<u>Hearing Aid Dealing</u>		
<u>and Fitting</u>		