

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2010 to June 29, 2011**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 28, 2011**

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

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**Augusta, Maine**  
**2011**

and must be 50% of the reasonable estimate of the cost to the municipality performing the recount.

**3. Forfeiture or refund of deposit.** All deposits required by this section must be made with the municipal clerk when a recount is requested by a losing candidate or an undeclared write-in candidate. This deposit, made by the candidate requesting the recount, is forfeited to the municipality if a subsequent recount fails to change the result of the election. If a recount changes the result of the election, the deposit must be returned to the candidate who paid the deposit. After the completion of the recount, if the recount has not changed the result of the election, the municipality shall calculate the actual cost of the procedure. If the deposit was greater than the actual cost, the overpayment must be refunded to the candidate. If the actual cost was greater than the deposit, the candidate shall pay the remainder of the actual cost to the municipality. A candidate who is not required to pay a deposit pursuant to subsection 1 may not be charged for the recount regardless of whether the procedure changes the result of the election.

**Sec. 8. 30-A MRSA §2532**, as amended by PL 1993, c. 608, §14, is further amended to read:

**§2532. Referendum recount procedure**

In the case of a referendum, a ballot inspection or a recount hearing must be granted upon written application of 10% or 100, whichever is less, of the persons whose names were checked on the voting list at any town referendum or ballot question under section 2105 or 2528, or any city referendum. The time limits, rules and all other matters applying to candidates under sections 2530-A and 2531-A section 2531-B apply equally to applicants for either the inspection or recount. Except as otherwise provided in this section, the method of conducting a referendum recount is governed by Title 21-A, section 737-A.

**Sec. 9. 30-A MRSA §2556**, as amended by PL 1993, c. 608, §16, is further amended to read:

**§2556. Recount; challenge for office**

Sections 2530-A 2531-B to 2533 apply in a city and govern ballot inspections, recounts of elections for office, referenda and the procedure for challenging a person who claims title to an office.

**Sec. 10. 30-A MRSA §5404, sub-§1, ¶A**, as amended by PL 1993, c. 608, §17, is further amended to read:

A. Revenue bonds of a town, as distinguished from a city, may not be issued until the general purpose for which the bonds are to be issued and the maximum principal amount of the bonds to be authorized have been approved by ballot by a majority of the votes cast on the question. The total number of votes cast must be equal to at least 20% of the total vote for all candidates for Govern-

nor cast in the municipality at the last gubernatorial election. The ballot submitted to the voters of a town to authorize the issuance of revenue bonds must state the general purpose for which the proposed bonds are to be issued and the maximum principal amount of the proposed bonds authorized to be issued. The voting at meetings held in towns must be held and conducted in accordance with sections 2528 to 2531-A 2531-B, even if the town has not accepted the provisions of section 2528.

See title page for effective date.

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**CHAPTER 256**

**S.P. 479 - L.D. 1517**

**An Act To Amend the Uniform  
Principal and Income Act**

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

**Sec. 1. 18-A MRSA §7-749**, as enacted by PL 2001, c. 544, §2, is amended to read:

**§7-749. Deferred compensation, annuities and  
similar payments**

(a). In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The term includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock bonus or stock ownership plan.:

(1). "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The term includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor. For the purposes of subsections (d), (d-1), (d-2) and (d-3), "payment" also includes any payment from any separate fund, regardless of the reason for the payment; and

(2). "Separate fund" includes a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus or stock-ownership plan.

(b). To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it the

payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

(c). If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

~~(d). If, to obtain an estate tax marital deduction for~~ Except as otherwise provided in subsection (d-1), subsections (d-2) and (d-3) apply and subsections (b) and (c) do not apply in determining the allocation of a payment made from a separate fund to a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction:

(1). That qualifies for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(7) (2010), as amended, and for which either such an election has been made for federal purposes or for which an election under the pertinent provisions of the laws of the State to qualify as Maine qualified terminable interest property has been made; or

(2). That qualifies for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(5) (2010), as amended.

(d-1). Subsections (d), (d-2) and (d-3) do not apply if and to the extent that the series of payments would, without the application of subsection (d), qualify for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(7)(C) (2010), as amended.

(d-2). A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this Part. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to in-

come to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(d-3). If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under the federal Internal Revenue Code, 26 United States Code, Section 7520 (2010), as amended, for the month preceding the accounting period for which the computation is made.

(e). This section does not apply to payments a payment to which section 7-750 applies.

**Sec. 2. 18-A MRSA §7-765**, as enacted by PL 2001, c. 544, §2, is amended to read:

#### **§7-765. Income taxes**

(a). A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b). A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c). A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

(1). From income to the extent that receipts from the entity are allocated only to income; ~~and~~

(2). From principal to the extent that ~~receipts~~ from the entity are allocated only to principal;

~~(i) Receipts from the entity are allocated to principal; and~~

~~(ii) The trust's share of the entity's taxable income exceeds the total receipts described in paragraph (1) and subparagraph (i).~~

(3). Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4). From principal to the extent that the tax exceeds the total receipts from the entity.

~~(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.~~

(e). After applying subsections (a) to (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

**Sec. 3. 18-A MRSA §7-774** is enacted to read:

**§7-774. Transitional matters**

Section 7-749 applies to a trust described in section 7-749, subsection (d) on and after the following dates:

(1). If the trust is not funded as of January 1, 2012, the date of the decedent's death;

(2). If the trust is initially funded in the calendar year beginning January 1, 2012, the date of the decedent's death; or

(3). If the trust is not described in subsection (1) or (2), January 1, 2012.

**Sec. 4. Effective date.** This Act takes effect January 1, 2012.

Effective January 1, 2012.

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**CHAPTER 257**

**H.P. 1129 - L.D. 1537**

**An Act To Amend Licensing and Certification Laws Administered by the Department of Health and Human Services**

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

**Sec. 1. 22 MRSA §1717, sub-§3, ¶A,** as enacted by PL 2003, c. 634, §1, is amended to read:

A. Has worked as a certified nursing assistant and has been the subject of a notation by the state survey agency for a substantiated complaint of abuse, neglect or misappropriation of property in a health care setting that was entered on the Maine Registry of Certified Nursing Assistants and Direct Care Workers;

**Sec. 2. 22 MRSA §1812-G,** as amended by PL 2009, c. 590, §2, is further amended to read:

**§1812-G. Maine Registry of Certified Nursing Assistants and Direct Care Workers**

**1. Established.** The Maine Registry of Certified Nursing Assistants and Direct Care Workers is established in compliance with federal and state requirements. The Department of Health and Human Services shall maintain the registry.

**1-A. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Certified nursing assistant" means an individual who has successfully completed an approved nursing assistant training program, holds a certificate of training and meets the eligibility requirements established by the State Board of Nursing for listing on the registry.

B. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct Care Workers established in subsection 1, which is a list of certified nursing assistants, with notations if applicable, and a list of unlicensed assistive persons with notations.

C. "Unlicensed assistive person" or "direct care worker" means an individual employed to provide hands-on assistance with activities of daily living or other services to individuals in homes, assisted living programs, residential care facilities, hospitals and other health care and direct care settings. "Unlicensed assistive person" and "direct care worker" include but are not limited to a direct support professional, residential care specialist, personal support specialist, mental health support specialist, mental health rehabilitation technician, behavior specialist, other qualified mental health professional, certified residential medication aide and registered medical assistant and other direct care workers as described in rules adopted by the department. "Unlicensed assistive person" ~~does~~ and "direct care worker" do not include a certified nursing assistant employed in the capacity of a certified nursing assistant.

**2. Contents.** The registry must contain a listing of certified nursing assistants. The listing must include, for any certified nursing assistant listed, a notation of:

A. Any criminal convictions, except for Class D and Class E convictions over 10 years old that did not involve as a victim of the act a patient, client or resident of a health care entity; and

B. Any specific documented findings by the state survey agency of abuse, neglect or misappropriation of property of a resident, client or patient. For purposes of this section, "state survey agency" means the agency specified under 42 United States Code, Sections 1395aa and 1396 responsible for determining whether institutions and agencies meet requirements for participation in the State's Medicare and Medicaid programs.

The registry must also contain a listing of any unlicensed assistive persons who have notations pursuant to section 1812-J.