

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST SPECIAL SESSION
September 27, 2011

SECOND REGULAR SESSION
January 4, 2012 to May 31, 2012

THE EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
LAWS IS
SEPTEMBER 28, 2011

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 30, 2012

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

Augusta, Maine
2012

subparagraph (3), unless the actor is a parent of the victim; Title 17-A, section 511, subsection 1, paragraph D; Title 17-A, section 556; Title 17-A, section 852, subsection 1, paragraph B; or Title 17-A, section 855;

Sec. 4. Retroactivity. That section of this Act that amends the Maine Revised Statutes, Title 34-A, section 11203, subsection 6, paragraph B applies retroactively to September 28, 2011.

See title page for effective date.

CHAPTER 605

S.P. 672 - L.D. 1896

**An Act To Provide a
Temporary Registration
Permit to Certain Members of
the Armed Forces**

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

Sec. 1. 29-A MRSA §462-A is enacted to read:

§462-A. Temporary registration permit; United States Armed Forces deployments; rules

Upon application to the Secretary of State and evidence of insurance as required by section 402, the Secretary of State may issue a temporary registration permit to a member of the United States Armed Forces authorizing that member to operate a motor vehicle or trailer for a period of 30 days if that member has returned to the State from a deployment outside the continental United States, unless the provisions of section 353 apply. The application required by this section may be completed by an authorized representative of the member of the United States Armed Forces. The Secretary of State may delegate the authority granted under this section and may adopt rules to establish the application criteria. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

CHAPTER 606

H.P. 1351 - L.D. 1831

**An Act To Allow Forfeiture of
Maine Public Employees
Retirement System Benefits for
Persons Convicted of
Certain Crimes**

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

Sec. 1. 2 MRSA §1-A, sub-§3 is enacted to read:

3. Forfeiture and restitution. The rights and benefits of a member or retiree under this section are subject to forfeiture or assignment to the member's spouse, dependent or former spouse in accordance with the provisions of Title 5, section 17062.

Sec. 2. 3 MRSA §703, sub-§2, as amended by PL 2007, c. 137, §1, is further amended to read:

2. Accumulated contributions available for child support. A member's accumulated contributions, ~~which~~ that are refundable under sections 805-A and 805-B; are available to satisfy a child support obligation that is otherwise enforceable by execution, garnishment, attachment, assignment or other process; ~~and~~

Sec. 3. 3 MRSA §703, sub-§3, as enacted by PL 1991, c. 746, §1 and affected by §10, is amended to read:

3. Qualified domestic relations order. The rights and benefits of a member or retiree under this chapter are subject to the rights of or assignment to an alternate payee, as defined in Title 5, section 17001, subsection 3-B, under a qualified domestic relations order in accordance with Title 5, section 17059; ~~and~~

Sec. 4. 3 MRSA §703, sub-§4 is enacted to read:

4. Forfeiture and restitution. The rights and benefits of a member or retiree under this chapter are subject to forfeiture or assignment to the member's spouse, dependent or former spouse in accordance with the provisions of Title 5, section 17062.

Sec. 5. 4 MRSA §1203, sub-§2, as amended by PL 2007, c. 137, §5, is further amended to read:

2. Accumulated contributions available for child support. A member's accumulated contributions, ~~which~~ that are refundable under sections 1305-A and 1305-B; are available to satisfy a child support obligation that is otherwise enforceable by execution, garnishment, attachment, assignment or other process; ~~and~~

Sec. 6. 4 MRSA §1203, sub-§3, as enacted by PL 1991, c. 746, §2 and affected by §10, is amended to read:

3. Qualified domestic relations order. The rights and benefits of a member or retiree under this chapter are subject to the rights of or assignment to an alternate payee, as defined in Title 5, section 17001, subsection 3-B, under a qualified domestic relations order in accordance with Title 5, section 17059; ~~and~~

Sec. 7. 4 MRSA §1203, sub-§4 is enacted to read:

4. Forfeiture and restitution. The rights and benefits of a member or retiree under this chapter are subject to forfeiture or assignment to the member's spouse, dependent or former spouse in accordance with the provisions of Title 5, section 17062.

Sec. 8. 5 MRSA §17054, sub-§2, as amended by PL 2007, c. 137, §9, is further amended to read:

2. Accumulated contributions available for child support. A member's accumulated contributions, ~~which that~~ are refundable under sections 17705-A, 17706-A, 18306-A and 18307-A, are available to satisfy any child support obligation that is otherwise enforceable by execution, garnishment, attachment, assignment or other process;

Sec. 9. 5 MRSA §17054, sub-§3, as amended by PL 2009, c. 322, §1, is further amended to read:

3. Recovery of overpayments by the retirement system. Any amounts due the retirement system as the result of overpayment or erroneous payment of benefits, an excess refund of contributions or overpayment or erroneous payment of life insurance benefits may be recovered from an individual's contributions, any benefits or life insurance benefits payable under this Part to the individual or the beneficiary of the individual or any combination of contributions and benefits. If the overpayment or excess refund of contributions resulted from a mistake of or incorrect information provided by an employee of the retirement system, or a mistake of the retiree or the recipient of the benefit or life insurance benefit, a penalty or interest may not be assessed by the retirement system. In all cases of recovery of overpayments through the reduction of a retirement benefit, whether with or without the assessment of interest by the retirement system, the recovery practices must be reasonable and consider the personal economic stability of the retiree in the establishment of the recovery schedule. The executive director may also take action to recover those amounts due from any amounts payable to the individual by any other state agency or by an action in a court of competent jurisdiction. Whenever the executive director makes a decision to recover any amounts under this subsection, that decision is subject to appeal under section 17451.

Employers are responsible for enrolling employees in the correct retirement plan. The retirement system shall provide training, education and information to assist employers in the correct enrollment of employees. If an employee is enrolled in the incorrect retirement plan by the employer through no fault of the employee, the employee may not lose any retirement benefits. The State is not responsible for the employer contribution when the employer is a school district, municipality or county and those contributions and

assessed interest, if applicable, must be paid to the retirement system by the school district, municipality or county; ~~and~~

Sec. 10. 5 MRSA §17054, sub-§4, as amended by PL 2005, c. 560, §1 and affected by §5, is further amended to read:

4. Qualified domestic relations order. The rights of a member, retiree, beneficiary or other payee under this Part are subject to the rights of or assignment to an alternate payee under a qualified domestic relations order in accordance with section 17059; ~~and~~

Sec. 11. 5 MRSA §17054, sub-§5 is enacted to read:

5. Forfeiture and restitution. The rights and benefits of a member or retiree under this Part are subject to forfeiture or assignment to the member's spouse, dependent or former spouse in accordance with the provisions of Title 5, section 17062.

Sec. 12. 5 MRSA §17062 is enacted to read:

§17062. Forfeiture of benefits for crime; restitution

1. Crime. If a member is convicted of or pleads guilty or no contest to a crime committed in connection with the member's public office or public employment or to a crime the member's position placed the member in a position to commit, the member's right to receive any benefit or payment of any kind under this Part is subject to the following.

A. If the penalties for the crime are greater than or equal to the penalties for a Class C crime, the court may order the forfeiture of the member's right to receive any benefit or payment of any kind under this Part except a return of the amount contributed by the member to the retirement system without interest, subject to paragraph B.

B. If the court orders the member to make restitution to the State or any political subdivision of the State for monetary loss incurred as a result of the crime, the court may order that restitution payments be made by the retirement system from the amount contributed by the member to the retirement system.

C. Subject to the requirements of subsection 2, the court may award to the member's spouse, dependent or former spouse as an alternate payee some or all of the amount that, but for the forfeiture under paragraph A, may otherwise be payable. Upon order of the court, the retirement system shall provide information concerning the member's membership that the court considers relevant to the determination of the amount of an award under this paragraph. In determining the award, the court shall consider the totality of the circumstances, including, but not limited to:

(1) The role, if any, of the member's spouse, dependent or former spouse in connection with the crime;

(2) The degree of knowledge, if any, possessed by the member's spouse, dependent or former spouse in connection with the crime; and

(3) The extent to which the spouse, dependent or former spouse was relying on the forfeited benefits.

2. Benefit award requirements. An award ordered under subsection 1, paragraph C may not require the retirement system to:

A. Provide a type or form of benefit or an option not otherwise provided by the retirement system;

B. Provide increased benefits determined on the basis of actuarial value; or

C. Take an action contrary to its governing laws or plan provisions other than the direct payment of the benefit awarded to the spouse, dependent or former spouse.

See title page for effective date.

CHAPTER 607

H.P. 1211 - L.D. 1602

An Act To Remove the \$100 Reporting Fee for Fertilizer and Agricultural Liming Materials Sold

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

Sec. 1. 7 MRSA §743-A, sub-§1, as enacted by PL 2009, c. 393, §3, is amended to read:

1. Registrants required to report. On or before September 1st of each year, a registrant shall file with the commissioner, on a form prescribed by the commissioner, the number of tons of each brand and grade of commercial fertilizer sold by the registrant in the State during the 12 months preceding July 1st of that year. A fee of \$1 per ton ~~or \$100 for each brand and grade of fertilizer, whichever is more~~, sold during the 12 months preceding July 1st of that year must accompany the form.

Sec. 2. 7 MRSA §766, sub-§1, as amended by PL 2009, c. 393, §5, is further amended to read:

1. By registrants. On or before September 1st in each year each registrant shall file with the commissioner, on forms prescribed by the commissioner, the number of tons of each agricultural liming material sold during the 12 months preceding July 1st of that

year. A fee of \$1 per ton ~~or \$100 for each brand of agricultural liming material, whichever is more~~, sold during the 12 months preceding July 1st of that year must accompany the form.

Sec. 3. Report to the joint standing committee of the Legislature having jurisdiction over agricultural matters. The Department of Agriculture, Food and Rural Resources, referred to in this section as "the department," shall review the types and quantities of fertilizers and liming materials required to be registered under the Maine Revised Statutes, Title 7, chapter 103, subchapters 5 and 5-A. The department shall review definitions of "commercial fertilizer," "agricultural liming materials," "plant amendment" and "soil amendment" used in those subchapters and Title 7, chapter 103, subchapter 5-B and the term "agronomic benefit" as used in Department of Environmental Protection rules pertaining to the agronomic use of residuals. The department shall determine if additional definitions or statutory provisions are needed to regulate liquid fertilizers.

The department, in consultation with the Department of Environmental Protection, shall review products derived from residuals regulated by the Department of Environmental Protection under Title 38, chapter 13 and Rule Chapter 419: Agronomic Utilization of Residuals; products derived from solid waste composting facilities regulated by the Department of Environmental Protection under Title 38, chapter 13 and Rule Chapter 410: Composting Facilities; and products derived from agricultural composting operations as defined in Title 7, section 152, subsection 1. The departments shall review and consider the development of inspection, sampling and analysis of these products and the degree of inspection, sampling and analysis warranted for each type of product. The department shall compare the anticipated revenue from fees collected under Title 7, section 743-A and section 766 with the cost of maintaining inspection, sampling and analysis of these products at a level sufficient for consumer protection.

The department shall report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over agricultural matters no later than January 15, 2013. No later than January 15, 2013 the department shall submit legislation, including revisions to definitions, needed to implement its recommendations.

Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

Division of Quality Assurance and Regulation 0393

Initiative: Provides allocation for one Consumer Protection Inspector position and related All Other costs