

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

FIRST SPECIAL SESSION
August 29, 2013

SECOND REGULAR SESSION
January 8, 2014 to May 2, 2014

THE EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
EMERGENCY LAW IS
SEPTEMBER 6, 2013

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 1, 2014

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

Augusta, Maine
2014

Sec. 1. 38 MRSA §638 is enacted to read:

§638. Notice of relicensing deadline

By January 15, 2015, and annually thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report describing all pending applications for water quality certification under Section 401 of the federal Clean Water Act for dams located in the State that are subject to the jurisdiction of the Federal Energy Regulatory Commission. The report submitted under this section must include, for each pending application, the filing date of the application, the respective response deadline for the department and a short statement describing the department's plan to address that deadline. The report must also include a list of the licensing or relicensing deadlines for the dams described in this section that are anticipated to occur within 5 years after the date of the report and, if applicable, the department's plan to address each deadline.

See title page for effective date.

CHAPTER 546

S.P. 673 - L.D. 1707

An Act To Amend the State's Tax Laws

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

Sec. 1. 25 MRSA §1542-A, sub-§1, ¶H, as amended by PL 2001, c. 52, §5, is further amended to read:

H. Charged with the commission of a juvenile crime; ~~or~~

Sec. 2. 25 MRSA §1542-A, sub-§1, ¶I, as enacted by PL 2001, c. 52, §6, is amended to read:

I. Who is a prospective adoptive parent not the biological parent as required under Title 18-A, section 9-304, subsection (a-1); ~~or~~

Sec. 3. 25 MRSA §1542-A, sub-§1, ¶J is enacted to read:

J. Who has applied for employment with the Department of Administrative and Financial Services, Bureau of Revenue Services and whose fingerprints have been required by the State Tax Assessor pursuant to Title 36, section 194-B.

Sec. 4. 25 MRSA §1542-A, sub-§3, ¶J is enacted to read:

J. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph J, at the request of that person and

upon payment of the expenses by the Department of Administrative and Financial Services, Bureau of Revenue Services as specified under Title 36, section 194-B, subsection 2.

Sec. 5. 25 MRSA §1542-A, sub-§4, as amended by PL 2005, c. 663, §15, is further amended to read:

4. Duty to submit to State Bureau of Identification. It is the duty of the law enforcement agency taking the fingerprints as required by subsection 3, paragraphs A, B and G to transmit immediately to the State Bureau of Identification the criminal fingerprint record. Fingerprints taken pursuant to subsection 1, paragraph C, D, E or F or pursuant to subsection 5 may not be submitted to the State Bureau of Identification unless an express request is made by the commanding officer of the State Bureau of Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Education. The bureau may not use the fingerprints for any purpose other than that provided for under Title 20-A, section 6103. The bureau shall retain the fingerprints, except as provided under Title 20-A, section 6103, subsection 9. Fingerprints taken pursuant to subsection 1, paragraph I and subsection 3, paragraph I must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the court and the Department of Public Safety, Gambling Control Board, respectively. Fingerprints taken pursuant to subsection 1, paragraph J must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Administrative and Financial Services, Bureau of Revenue Services.

Sec. 6. 25 MRSA §2399, 2nd ¶, as amended by PL 2013, c. 95, §1, is further amended to read:

Every fire insurance company or association that does business or collects premiums or assessments in the State shall pay to the State Tax Assessor, in addition to the taxes now imposed by law to be paid by those companies or associations, 1.4% of the gross direct premiums for fire risks written in the State, less the amount of all direct return premiums thereon and all dividends paid to policyholders on direct fire premiums. The Beginning in 2013 and every 5 years thereafter, by October 1st the Department of Professional and Financial Regulation, Bureau of Insurance shall determine every for the subsequent 5 years the basis percentage of fire risk allocated to each line of insurance, and every fire insurance company or association shall pay the 1.4% tax based on that basis allocation. That tax must be paid as provided for insurance premium taxes as specified in Title 36, section

2521-A, except that the tax prescribed by this section must be paid on an estimated basis at the end of each month ~~starting July 31, 1998~~, with each installment equal to at least 1/12 of the estimated total tax to be paid for the current calendar year. The State Tax Assessor shall pay over all receipts from that tax to the Treasurer of State daily. Of these funds 75.7% must be used to defray the expenses incurred by the Commissioner of Public Safety in administering all fire preventive and investigative laws and rules and in educating the public in fire safety and is appropriated for those purposes and to carry out the administration and duties of the Office of the State Fire Marshal. Of these funds 24.3% must be used to defray the expenses of the fire training and education program as established in Title 20-A, chapter 319.

Sec. 7. 36 MRSA §194-B is enacted to read:

§194-B. National criminal history record information

As part of the process of evaluating an applicant for employment with the bureau on or after January 1, 2015, the assessor shall perform a national criminal history record check in accordance with this section.

1. Criminal history record information obtained from the Federal Bureau of Investigation.

The assessor shall obtain national criminal history record information from the Federal Bureau of Investigation for any person not then employed with the Bureau of Revenue Services who has applied for and may be offered employment.

2. Fingerprinting. An individual not then employed with the Bureau of Revenue Services applying for employment with the bureau must consent to having fingerprints taken for use in accordance with this section before the individual may be employed by the bureau. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the Department of Public Safety, State Bureau of Identification so that the State Bureau of Identification can conduct state and national criminal history record checks for the Bureau of Revenue Services. The State Police may charge the Bureau of Revenue Services for the expenses incurred in processing state and national criminal history record checks. The full fee charged under this subsection must be deposited in a dedicated revenue account for the State Bureau of Identification with the purpose of paying costs associated with the maintenance and replacement of the criminal history record systems.

3. Confidentiality. All information obtained by the assessor pursuant to this section is confidential and not a public record pursuant to Title 1, chapter 13.

4. Applicant's access to criminal history record information. The Bureau of Revenue Services shall provide an applicant with access to information obtained pursuant to this section, if requested, by pro-

viding a paper copy of the criminal history record information directly to the applicant, but only after the Bureau of Revenue Services confirms that the applicant is the subject of the record. In addition, the Bureau of Revenue Services shall publish guidance on requesting such information from the Federal Bureau of Investigation.

Sec. 8. 36 MRSA §653, sub-§1, ¶G, as amended by PL 2013, c. 222, §1, is further amended to read:

G. Any person who desires to secure exemption under this subsection shall make written application and file written proof of entitlement on or before the first day of April, in the year in which the exemption is first requested, with the assessors of the place in which the person resides. Notwithstanding Title 1, chapter 13, an application and proof of entitlement filed pursuant to this paragraph is confidential and may not be made available for public inspection. The application and proof of entitlement must be made available to the State Tax Assessor upon request. The assessors shall thereafter grant the exemption to any person who is so qualified and remains a resident of that place or until they are notified of reason or desire for discontinuance.

Sec. 9. 36 MRSA §1752, sub-§17, as amended by PL 1997, c. 557, Pt. B, §2 and affected by §14 and Pt. G, §1, is further amended to read:

17. Tangible personal property. "Tangible personal property" means personal property that may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity. "Tangible personal property" includes any computer software that is not a custom computer software program. "Tangible personal property" includes any product transferred electronically.

Sec. 10. 36 MRSA §1754-B, sub-§1-A, as enacted by PL 2013, c. 200, §4 and affected by §6, is amended to read:

1-A. Persons presumptively required to register. This subsection ~~creates a~~ defines the basis for and obligations associated with the rebuttable presumption created by this subsection that a seller not ~~subject to~~ registered under subsection 1 is engaged in the business of selling tangible personal property or taxable services for use in this State and is required to register as a retailer with the assessor.

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

(1) "Affiliated person" means a person that is a member of the same controlled group of corporations as the seller or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations. For purposes of this subparagraph, "controlled group of corporations" has the same meaning as in the Code, Section 1563(a).

(2) "Person" means an individual or entity that qualifies as a person under the Code, Section 7701(a)(1).

(3) "Seller" means a person that sells, other than in a casual sale, tangible personal property or taxable services.

B. A seller is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this State if an affiliated person has a substantial physical presence in this State or if any person, other than a person acting in its capacity as a common carrier, that has a substantial physical presence in this State:

(1) Sells a similar line of products as the seller and does so under a business name that is the same as or similar to that of the seller;

(2) Maintains an office, distribution facility, warehouse or storage place or similar place of business in the State to facilitate the delivery of property or services sold by the seller to the seller's customers;

(3) Uses trademarks, service marks or trade names in the State that are the same as or substantially similar to those used by the seller;

(4) Delivers, installs, assembles or performs maintenance services for the seller's customers within the State;

(5) Facilitates the seller's delivery of property to customers in the State by allowing the seller's customers to pick up property sold by the seller at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the State; or

(6) Conducts any activities in the State that are significantly associated with the seller's ability to establish and maintain a market in the State for the seller's sales.

A seller who meets the requirements of this paragraph shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part. A seller may rebut the presumption created in this paragraph by demonstrating that

the person's activities in the State are not significantly associated with the seller's ability to establish or maintain a market in this State for the seller's sales.

C. A seller that does not otherwise meet the requirements of paragraph B is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this State if the seller enters into an agreement with a person under which the person, for a commission or other consideration, while within this State:

(1) Directly or indirectly refers potential customers, whether by a link on an Internet website, by telemarketing, by an in-person presentation or otherwise, to the seller; and

(2) The cumulative gross receipts from retail sales by the seller to customers in the State who are referred to the seller by all persons with this type of an agreement with the seller are in excess of \$10,000 during the preceding 12 months.

A seller who meets the requirements of this paragraph shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part.

A seller may rebut the presumption created in this paragraph by submitting proof that the person with whom the seller has an agreement did not engage in any activity within the State that was significantly associated with the seller's ability to establish or maintain the seller's market in the State during the preceding 12 months. Such proof may consist of sworn, written statements from all of the persons within this State with whom the seller has an agreement stating that they did not engage in any solicitation in the State on behalf of the seller during the preceding 12 months; these statements must be provided and obtained in good faith.

A person who enters into an agreement with a seller under this paragraph to refer customers by a link on an Internet website is not required to register or collect taxes under this Part solely because of the existence of the agreement.

Sec. 11. 36 MRSA §4102, sub-§6, ¶C, as enacted by PL 2011, c. 380, Pt. M, §9, is amended to read:

C. With respect to which an election is made, on a return timely filed with the assessor, to treat the property as Maine qualified terminable interest property for purposes of the tax imposed by this chapter. The amount of property with respect to which the election is made may not be less than zero or greater than the amount by which the federal applicable exclusion amount under the Code,

Section 2010 exceeds the Maine exclusion amount. For the purposes of this paragraph, "federal applicable exclusion amount" does not include any deceased spousal unused exclusion amount under the Code, Section ~~2810~~ 2010.

Sec. 12. 36 MRSA §4109, sub-§1, as enacted by PL 2011, c. 380, Pt. M, §9, is amended to read:

1. Deferred payment arrangement. If the United States Internal Revenue Service has approved a federal estate tax deferral and installment payment arrangement under the Code, Section 6166, the personal representative may elect a similar deferred payment arrangement under this section for payment of the tax imposed by this chapter, subject to acceptance by the assessor. The assessor may approve a deferral and installment arrangement under similar circumstances and on similar terms with respect to an estate of a decedent dying after December 31, ~~2011~~ 2012 that does not incur a federal estate tax.

Sec. 13. 36 MRSA §5122, sub-§2, ¶M-1, as enacted by PL 2011, c. 657, Pt. R, §2 and affected by §3, is amended to read:

M-1. For tax years beginning on or after January 1, 2014, for each individual who is a primary recipient of retirement plan benefits under an employee retirement plan or an individual retirement account, an amount that is the lesser of the aggregate of retirement plan benefits under employee retirement plans or individual retirement accounts included in the individual's federal adjusted gross income and the pension deduction amount reduced by the total amount of the individual's social security benefits and railroad retirement benefits paid by the United States, but not less than \$0. The social security benefits and railroad retirement benefits reduction does not apply to benefits paid under a military retirement plan.

For purposes of this paragraph, the following terms have the following meanings.

(1) "Employee retirement plan" means a state, federal or military retirement plan or any other retirement benefit plan established and maintained by an employer for the benefit of its employees under the Code, Section 401(a), Section 403 or Section 457(b), except that distributions made pursuant to a Section 457(b) plan are not eligible for the deduction provided by this paragraph if they are made prior to age 55 and are not part of a series of substantially equal periodic payments made for the life of the primary recipient or the joint lives of the primary recipient and that recipient's designated beneficiary.

(2) "Individual retirement account" means an individual retirement account under Section 408 of the Code, a Roth IRA under Section

408A of the Code, a simplified employee pension under Section 408(k) of the Code or a simple retirement account for employees under Section 408(p) of the Code.

(3) "Military retirement plan" means retirement plan benefits received as a result of service in the active or reserve components of the Army, Navy, Air Force, Marines or Coast Guard.

(4) "Pension deduction amount" means \$10,000 for tax years beginning on or after January 1, 2014.

(5) "Primary recipient" means the individual upon whose earnings or contributions the retirement plan benefits are based or the surviving spouse of that individual.

(6) "Retirement plan benefits" means employee retirement plan benefits, except pick-up contributions for which a subtraction is allowed under paragraph E, reported as pension or annuity income for federal income tax purposes and individual retirement account benefits reported as individual retirement account distributions for federal income tax purposes. "Retirement plan benefits" does not include distributions that are subject to the tax imposed by the Code, Section 72(t);

Sec. 14. 36 MRSA §5122, sub-§2, ¶X, as amended by PL 2007, c. 466, Pt. A, §67 and affected by §70, is further amended to read:

X. The taxpayer's pro rata share of an amount that was previously added back to federal taxable income pursuant to section 5200-A, subsection 1, paragraph N; section 5200-A, subsection 1, paragraph T; section 5200-A, subsection 1, paragraph Y, subparagraph (2); or section 5200-A, subsection 1, paragraph AA, subparagraph (2) by ~~an S~~ an S corporation of which the taxpayer is a shareholder and by which, absent ~~the an S~~ an S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph M, R, V or Y;

Sec. 15. 36 MRSA §5251, as amended by PL 2007, c. 437, §19 and affected by §22, is further amended to read:

§5251. Information statement

Every person who is required to deduct and withhold tax under this Part, or who would have been required to deduct and withhold tax if an employee had claimed no more than one withholding exemption, shall furnish a written statement as prescribed by the assessor to each person in respect to the items of income subject to withholding paid to that person during the calendar year on or before January 31st of the suc-

ceeding year, or, in the case of an employee who is terminated before the close of the calendar year, within 30 days from the date of receipt of a written request from the employee if that 30-day period ends before January 31st. The assessor may establish an alternative due date for providing a written statement under this section that is consistent with the due date for the related federal statement. The statement must show the amount of wages paid by the employer to the employee or, in the case of withholding pursuant to sections 5250-B and 5255-B, the total items of income that were subject to withholding, the amount deducted and withheld as tax and such other information as the assessor requires.

Sec. 16. 36 MRSA §6901, sub-§2, as amended by PL 2011, c. 240, §45 and affected by §47, is further amended to read:

2. Certified production wages. "Certified production wages" means wages subject to withholding under section 5250, subsection 1 that are paid by a visual media production company for work on a certified visual media production. ~~"Certified production wages" includes~~ an amount paid to a temporary employee-leasing company for personal services rendered in this State by a leased employee in connection with a certified visual media production ~~and~~ an amount paid for the services of a performing artist working in the State in connection with a certified visual media production and other contractual payments for the services of individuals working in the State in connection with a certified visual media production. "Certified production wages" includes only the first \$50,000 paid to or with respect to a particular individual for personal services rendered in connection with a particular certified visual media production.

Sec. 17. Retroactive application. That section of this Act that amends the Maine Revised Statutes, Title 25, section 2399, 2nd paragraph applies retroactively to the fire risk allocation determination required for tax periods beginning on or after January 1, 2014.

See title page for effective date.

CHAPTER 547

S.P. 685 - L.D. 1724

An Act To Conform Licensing Requirements for Real Estate Appraisers with Federal Law

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

Sec. 1. 32 MRSA §14021, sub-§7 is enacted to read:

7. Fingerprinting. In accordance with standards adopted by the appraiser qualifications board, an applicant shall submit a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary for a statewide and nationwide criminal history record check to be completed by the Department of Public Safety, State Bureau of Identification and the Federal Bureau of Investigation, commencing at the time determined by the appraiser qualifications board. All costs associated with the criminal history record check are the responsibility of the applicant and must be submitted with the fingerprints. Criminal history records provided to the board of real estate appraisers are confidential and may only be used to determine an applicant's eligibility for licensure. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of a criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal record check may inspect and review criminal history record information pursuant to Title 16, section 709.

Sec. 2. 32 MRSA §14024, sub-§2, as enacted by PL 1999, c. 185, §5, is repealed.

Sec. 3. 32 MRSA §14024, sub-§3, as enacted by PL 1999, c. 185, §5, is amended to read:

3. Applicants licensed in another jurisdiction. ~~An applicant who is licensed under the laws of another jurisdiction is governed by this subsection. may be issued a license if:~~

~~A. An applicant who is licensed under the laws of a jurisdiction that has a current reciprocal agreement with the board may obtain a license upon such terms and conditions as may be agreed upon through the reciprocal agreement.~~

~~B. An applicant who is licensed, in good standing, under the laws of a jurisdiction that has not entered into a reciprocal agreement with the board may qualify for licensure by submitting evidence, satisfactory to the board, that the applicant has met all of the qualifications for licensure equivalent to those as set forth by this subchapter for that level of licensure.~~

C. The applicant holds a license in good standing from a jurisdiction with requirements for licensure that meet or exceed the license requirements as set forth by this subchapter for that level of licensure; and

D. The appraiser licensing program of the other jurisdiction complies with Title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as determined by the federal agency responsible for the determination under that Act.