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ERRORS BILL §: SUPP-2 & 3

LAW AMENDED: 22 MRSA §3741-M
§3769-D

Prepared by: MJR

Date: 5/12/03

File name: G:\COMMITTEES\JUD\ERRORS 2003\Supp - 2&3.DOC (5/12/03 2:12 PM)

Has the error already been fixed in another bill? NO

Has section been amended/repealed in another bill? NO

General Subject: Nontraditional job training and placement services

Type of correction (conflict, reference, other): conflict

Category: (technical, substantive) T?

Is a further amendment needed? YES - DO NOT ENACT §3769-D
(If so, explain below)

EXPLANATION

In 1997, LD 1701, enacted as PL 1997, c. 284, enacted a new section in Title 22, chapter 1053 (Aid to Dependent Children) to require DHS to contract for the provision of nontraditional job training and placement services for women receiving assistance under TANF.

Also in 1997, the Legislature passed LD 1896 (PL 1997, c. 530), which repealed chapter 1053, and enacted a new chapter 1053-B (Temporary Assistance for Needy Families).

This created a conflict with §3741-M being enacted into a chapter that was being repealed.

These sections of the Errors Bill repeal 22 MRSA §3741-M as enacted by PL 1997, c. 284, and enact the language into c. 1053-B as §3769-D.

DHS does not agree with this correction. §3741-M should be repealed. But the new chapter 1053-B deals with training contracts slightly differently. §3741-M required contracting with a specific category of organizations (only one exists); c.1053, § 3762, sub-§2, ¶G requires DHS to work collaboratively with "statewide organizations that work with women on self-sufficiency and employment opportunities." DHS's recommendation is to repeal §3741-M, and to NOT enact the proposed § 3769-D.

2 Sec. ?. 22 MRSA §3741-M, as enacted by PL 1997, c. 284, §1, is OK
repealed. JR

4 Sec. ?. 22 MRSA §3769-D is enacted to read:

6 §3769-D. Nontraditional job training and placement services

8 The department shall contract with a statewide nonprofit
10 corporation with a proven history of successfully training and
12 placing women in nontraditional trade and technical occupations
14 to provide nontraditional job training and placement services for
women receiving assistance under TANF.

16 SUMMARY

18 Sections ? and ? correct a conflict created by Public Law
20 1997, chapter 284, which enacted the Maine Revised Statutes,
22 Title 22, section 3741-M, and Public Law 1997, chapter 530, that
24 repealed the chapter of Title 22 which contained that provision.
These sections correct the conflict by repealing Title 22,
section 3741-M and enacting a new section 3769-D that
incorporates the substance of the chapter 284 version of section
3741-M.

CHAPTER 284

H.P. 1201 - L.D. 1701

An Act to Promote Economic
Independence for Low-income
Families

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

Sec. 1. 22 MRSA §3741-M is enacted to
read:

§3741-M. Nontraditional job training and
placement services

The department shall contract with a statewide
nonprofit corporation with a proven history of
successfully training and placing women in nontradi-
tional trade and technical occupations to provide
nontraditional job training and placement services for
women receiving assistance under the temporary
assistance to needy families program.

See title page for effective date.

CHAPTER 285

S.P. 294 - L.D. 945

An Act to Establish Basic Standards
and Procedures for Personal Services
Contracting by the State

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

Sec. 1. 5 MRSA §1816-A is enacted to read:

§1816-A. Personal services contracting

1. Conditions: general. Except for contracts
requiring specific legislative approval, personal
services contracting is permissible when any one of
the following conditions is met.

A. The services contracted are not currently
available within a state agency, can not be per-
formed satisfactorily by civil service employees
or are of such a highly specialized or technical
nature that the necessary expert knowledge, ex-
perience or ability is not available through the
civil service system.

B. The services are incidental to a contract for
the purchase or lease of real or personal property.
Contracts under this criterion, known as service
agreements, include, but are not limited to,

agreements to service or maintain office equip-
ment or computers that are leased or rented.

C. The legislative, administrative or legal goals
and purposes can not be accomplished by using
persons selected pursuant to the civil service sys-
tem. Contracts are permissible under this crite-
rion to protect against a conflict of interest or to
ensure independent and unbiased findings when
there is a clear need for a different outside per-
spective.

D. A state agency needs private counsel because
a conflict of interest on the part of the Depart-
ment of the Attorney General prevents it from
representing the agency without compromising
the agency's position. A contract entered into
under this condition requires the written consent
of the Attorney General.

E. The contractor provides equipment, materials,
facilities or support services that the State can
not feasibly provide in the location where the
services are to be performed.

F. The contractor conducts training courses for
which appropriately qualified civil service in-
structors are not and can not be made available.

G. The services are of such an urgent, temporary
or occasional nature that the delay incumbent in
implementation under civil service would frus-
trate the purpose.

H. The contracting agency demonstrates a quan-
tifiable improvement in services that can not be
reasonably duplicated within existing resources.

2. Conditions: cost savings. Personal services
contracting is permissible to achieve actual cost
savings when all the following conditions are met.

A. The contracting agency clearly demonstrates
that the proposed contract would result in actual
overall cost savings to the State as long as, in
comparing costs:

(1) The State's costs of providing the same
service as proposed by a contractor are in-
cluded. These costs must include the sala-
ries and benefits of additional staff that
would be needed and the cost of additional
space, equipment and materials needed to
perform the service; and

(2) Any continuing state costs directly as-
sociated with a contractor providing a con-
tracted function are included. These
continuing state costs include, but are not
limited to, those costs for inspection, super-
vision, monitoring and any pro rata share of

D. A person who intentionally violates this subsection is subject to a civil penalty not to exceed \$1,000, payable to the State and recoverable in a civil action.

See title page for effective date.

CHAPTER 530

S.P. 671 - L.D. 1896

An Act Regarding Temporary Assistance for Needy Families and Welfare Reform

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, funding for programs, services and equipment needed to meet the requirements of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and to further welfare reform in the State is dependent on enactment of the provisions of this legislation; 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:

PART A

Sec. A-1. 5 MRSA §12004-I, sub-§36, as amended by PL 1993, c. 360, Pt. C, §1, is repealed.

Sec. A-2. 5 MRSA §12004-I, sub-§36-C is enacted to read:

36-C.	<u>Temporary</u>	<u>Not</u>	<u>22 MRSA</u>
<u>Human</u>	<u>Assistance</u>	<u>Authorized</u>	<u>§3789-D</u>
<u>Services</u>	<u>for Needy</u>		
	<u>Families</u>		
	<u>Advisory</u>		
	<u>Council</u>		

Sec. A-3. 19 MRSA §776, sub-§1, ¶B, as enacted by PL 1979, c. 668, §6, is amended to read:

B. "Public assistance" means public assistance as provided under Title 22, section 3173, 3271 or 3741, 3762 or 3790.

Sec. A-4. 19-A MRSA §2605, sub-§1, ¶A, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

A. "Public assistance" means public assistance as provided under Title 22, section 3173, 3271 or 3741, 3762 or 3790.

Sec. A-5. 20-A MRSA §10908, first ¶, as amended by PL 1993, c. 360, Pt. C, §2, is further amended to read:

In conjunction with the Maine Aid to Families with Dependent Children Temporary Assistance for Needy Families Advisory Council established pursuant to Title 22, section 3774 3789-D, the University of Maine System:

Sec. A-6. 22 MRSA §9-A, sub-§1, ¶A, as enacted by PL 1989, c. 566, is amended to read:

A. "Public assistance" means any of the following:

(1) Aid to families with dependent children Temporary assistance for needy families under chapter 4053 1053-B;

(2) Food stamp assistance under section 3104;

(3) General assistance under chapter 855 and any state-funded portion under chapter 1161; and

(4) Medical assistance under chapter 855; or

(5) Assistance under the Parents as Scholars Program pursuant to chapter 1054-B.

Sec. A-7. 22 MRSA §16, sub-§1, ¶C, as reenacted by PL 1985, c. 819, Pt. A, §24, is amended to read:

C. "Public assistance" means aid, assistance or benefits available through:

(1) A program of aid to families with dependent children temporary assistance for needy families administered in this State pursuant to chapter 4053 1053-B or the Parents as Scholars program pursuant to chapter 1054-B;

(2) A program of medical assistance administered in this State pursuant to chapter 855; or

(3) Any other program that is based on need and is conducted or administered by this State.

Sec. A-8. 22 MRSA §675, as amended by PL 1995, c. 675,

1. AFDC. "with Dependent pursuant to former

Sec. A-9. 11-A are enacted to

8-A. Parent as Scholars" means 1054-B.

11-A. Temp means the program

Sec. A-10. 22 MRSA §675, as amended by PL 1995, c. 675

The department electronic benefit benefits under the Assistance for Needy Families and Medicaid program

Sec. A-11. PL 1993, c. 158, §3733. Designated

To the extent the department shall coordinate federal and state limited to, those States Social Security the federal Omnibus Section 5081; and Supplemental Block Grant Federal Personal Responsibility and Work Opportunity Reconciliation Act Stat 2105.

Sec. A-12. 22 MRSA §675, as amended by PL 1993

2. Block grant months of receipt Child Care and Fund, the department of the payment.

Sec. A-13. PL 1993, c. 158, §3735. Child care

The department for part of the ASPIRE-TANF

Sec. A-8. 22 MRSA §21, sub-§1, as enacted by PL 1995, c. 675, §1, is amended to read:

1. AFDC. "AFDC" means the Aid to Families with Dependent Children program administered pursuant to former chapter 1053.

Sec. A-9. 22 MRSA §21, sub-§8-A and 11-A are enacted to read:

8-A. Parents as Scholars Program. "Parents as Scholars" means the program established in chapter 1054-B.

11-A. Temporary Assistance for Needy Families. "Temporary Assistance for Needy Families" means the program established in chapter 1053-B.

Sec. A-10. 22 MRSA §22, first ¶, as enacted by PL 1995, c. 675, §1, is amended to read:

The department is authorized to establish an electronic benefit transfer system for the issuance of benefits under the AFDC, food stamp, Temporary Assistance for Needy Families, Parents as Scholars and Medicaid programs.

Sec. A-11. 22 MRSA §3733, as enacted by PL 1993, c. 158, §2, is amended to read:

§3733. Designated agency

To the extent permitted by federal law, the department shall coordinate and administer all available federal and state child care funds, including, but not limited to, those available under the federal United States Social Security Act, Title IV, Part A and Title XX; the federal Family Support Act of 1988; the federal Omnibus Budget Reconciliation Act of 1990, Section 5081; and the federal Child Care and Development Block Grant Act of 1990, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Public Law 104-193, 110 Stat. 2105.

Sec. A-12. 22 MRSA §3734, sub-§2, as enacted by PL 1993, c. 158, §2, is amended to read:

2. Block grant funds encumbered. Within 6 months of receiving any payment under the federal Child Care and Development Block Grant Program Fund, the department shall expend or encumber 100% of the payment.

Sec. A-13. 22 MRSA §3735, as enacted by PL 1993, c. 158, §2, is amended to read:

§3735. Child care for ASPIRE-TANF participants

The department shall ensure that all persons referred for participation in the State's ASPIRE-JOBS ASPIRE-TANF program receive information regard-

ing child care options from caseworkers who are knowledgeable about the range of child care subsidies available in this State and who can explain the relative advantages of each option. This may be done directly by the department or by the department's designee.

Sec. A-14. 22 MRSA §3739, sub-§5, ¶E, as enacted by PL 1993, c. 158, §2, is amended to read:

E. Determine Advise how the State can better use child care funds available under the federal Social Security Act, Title IV, Part A, particularly those funds available through the federal Transitional Child Care Program, and develop a proposal to use federal and state funds to supplement the earned income disregard for families receiving aid to families with dependent children temporary assistance for needy families;

Sec. A-15. 22 MRSA c. 1053, as amended, is repealed.

Sec. A-16. 22 MRSA c. 1053-B is enacted to read:

CHAPTER 1053-B

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

§3762. Temporary assistance for needy families; promotion of economic self-support

The department shall promote family economic self-support in accordance with the provisions of this chapter.

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

A. "ASPIRE-TANF" means the ASPIRE-TANF program established in section 3781-A.

B. "Domestic violence" has the same meaning as provided in Section 408(a)(7)(C)(iii) of PRWORA.

C. "Federal poverty level" means the nonfarm income official poverty line for a family of the size involved, as defined by the federal Office of Management and Budget and revised annually in accordance with the United States Omnibus Budget Reconciliation Act of 1981, Section 673, Subsection 2.

D. "PRWORA" means the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105.

***38295 22 M.R.S.A. § 3741-M**

**MAINE REVISED STATUTES ANNOTATED
TITLE 22. HEALTH AND WELFARE
SUBTITLE 3. INCOME SUPPLEMENTATION
PART 3. CHILDREN
CHAPTER 1053. AID TO DEPENDENT CHILDREN [REPEALED]**

Current through 2001 2nd Reg. Sess. of 120th Legislature

§ 3741-M. Nontraditional job training and placement services

The department shall contract with a statewide nonprofit corporation with a proven history of successfully training and placing women in nontraditional trade and technical occupations to provide nontraditional job training and placement services for women receiving assistance under the temporary assistance to needy families program.

< Text of section as added by Laws 1997, c. 284, § 1. See,
also, 22 M.R.S.A. §3741-M , post. >

CREDIT(S)

2002 Electronic Pocket Part Update

1997, c. 284, § 1.

<General Materials (GM) - References, Annotations, or Tables>

***38296 22 M.R.S.A. § 3741-M**

**MAINE REVISED STATUTES ANNOTATED
TITLE 22. HEALTH AND WELFARE
SUBTITLE 3. INCOME SUPPLEMENTATION
PART 3. CHILDREN
CHAPTER 1053. AID TO DEPENDENT CHILDREN [REPEALED]**

Current through 2001 2nd Reg. Sess. of 120th Legislature

§ 3741-M. Repealed. Laws 1997, c. 530, Pt. A, § 15

< Text of section as repealed by Laws 1997, c. 530, §
15. See, also, 22 M.R.S.A. §§ 3741-M, ante. >

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Title 22: HEALTH AND WELFARE

Subtitle 3: INCOME SUPPLEMENTATION

Part 3: Children

Chapter 1053: AID TO DEPENDENT CHILDREN (HEADING: PL 1997, c. 530, Pt. A, @15 (rp))

§3741. Aid to dependent children; promotion of economic self-support (REPEALED)

§3741-A. Recipients with children 3 years of age and older (REPEALED)

§3741-B. Teenage parents (REPEALED)

§3741-C. Program requirements (REPEALED)

§3741-D. Eligibility for federal Aid to Families with Dependent Children based on unemployment (REPEALED)

§3741-E. Voluntary participants given priority (REPEALED)

§3741-F. Transitional support services (REPEALED)

§3741-G. Transitional medical assistance (REPEALED)

§3741-H. Child care during participation in employment, education and training (REPEALED)

§3741-I. Transitional support services; child care; transportation (REPEALED)

§3741-J. Family contract (REPEALED)

§3741-K. ASPIRE-Plus (REPEALED)

§3741-L. Family planning services (REPEALED)

→ §3741-M. Nontraditional job training and placement services (CONFLICT)

§3742. Eligibility for aid (REPEALED)

§3743. Recipients and relatives not to be pauperized (REPEALED)

§3744. Applications for aid (REPEALED)

§3745. Duties of commissioner (REPEALED)

§3746. Amount of aid (REPEALED)

§3747. Administration of funds (REPEALED)

§3748. Appeals (REPEALED)

§3749. Acceptance of provisions of federal law (REPEALED)

§3750. Assessment of towns (REPEALED)

§3751. Federal grants (REPEALED)

§3752. Payments to guardian or conservator (REPEALED)

§3753. Inalienability of assistance (REPEALED)

§3754. Parental responsibility (REPEALED)

§3755. Locating those liable for support of dependents (REPEALED)

§3755-A. Disclosure of information in medical support recoupment and child support cases (REPEALED)

§3756. Fraud in obtaining aid, civil recovery (REPEALED)

§3757. Substantiation of eligibility (REPEALED)

§3758. Disbursements (REPEALED)

§3758-A. Transfer of funds (REPEALED)

§3759. Report of commissioner (REPEALED)

§3760. Assistance for needy full-time students 18 to 21 years of age (REPEALED)

§3760-A. Assistance to first-time pregnant women (REPEALED)

§3760-B. Notification to the Legislature (REPEALED)

§3760-C. Households headed by minor parents (REPEALED)

§3760-D. Special needs payment for recipients with excessive shelter costs (REPEALED)

§3760-E. Equivalent standard of need (REPEALED)

§3760-F. Continuation of Medicaid and report (REPEALED)

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Title 22: HEALTH AND WELFARE

Subtitle 3: INCOME SUPPLEMENTATION

Part 3: Children

Chapter 1053-B: TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (HEADING: PL 1997, c. 530, Pt. A, @16 (new))

§3762. Temporary assistance for needy families; promotion of economic self-support

§3763. Program requirements

§3764. Federal grants

§3765. Payments to guardian or conservator

§3766. Inalienability of assistance

§3767. Parental responsibility

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*38339 22 M.R.S.A. § 3762

MAINE REVISED STATUTES ANNOTATED
TITLE 22. HEALTH AND WELFARE
SUBTITLE 3. INCOME SUPPLEMENTATION
PART 3. CHILDREN
CHAPTER 1053-B. TEMPORARY ASSISTANCE FOR NEEDY
FAMILIES

Current through 2001 2nd Reg. Sess. of 120th Legislature

§ 3762. Temporary assistance for needy families; promotion of economic self-support

The department shall promote family economic self-support in accordance with the provisions of this chapter.

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

A. "ASPIRE-TANF" means the ASPIRE-TANF program established in section 3781-A.

B. "Domestic violence" has the same meaning as provided in Section 408(a)(7)(C)(iii) of PRWORA.

C. "Federal poverty level" means the nonfarm income official poverty line for a family of the size involved, as defined by the federal Office of Management and Budget and revised annually in accordance with the United States Omnibus Budget Reconciliation Act of 1981, Section 673, Subsection 2.

D. "PRWORA" means the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105.

E. "TANF" means the Temporary Assistance for Needy Families program, under the United States Social Security Act, as amended by PRWORA. "TANF" provides temporary assistance to needy, dependent children and their parents or caretaker relatives.

2. Collaboration. The department shall work collaboratively with the following agencies and entities to provide efficient and effective services that lead to self-support for Maine's families receiving TANF assistance:

A. The state agency responsible for child care services;


B. The Department of Labor for services including employment and job training partnership services and vocational services;

C. The Department of Behavioral and Developmental Services;

D. The Department of Transportation;

E. The Department of Education and local providers of programs under the federal Adult Education Act, 20 United States Code, Section 1201 et seq. and the federal Carl D. Perkins Vocational and Applied Technology Education Act, 20 United States Code, Section 2301 et seq.;

*38340 F. The Department of Economic and Community Development;



G. Statewide organizations that work with women on self-sufficiency and employment opportunities;

H. The municipalities of the State both individually and collectively;

I. The Maine Technical College System;

J. The University of Maine System; and

K. Local service providers appropriate for TANF participants.

3. Administration. The department may administer and operate a program of aid to needy dependent children, called "Temporary Assistance for Needy Families" or "TANF," who are deprived of support or care due to the death, continued absence, physical or mental incapacity of a parent or the unemployment or underemployment of the principal wage earner in accordance with the United States Social Security Act, as amended by PRWORA, and this Title.

A. The department shall adopt rules as necessary to implement and administer the program. The rules must include eligibility criteria, budgeting process, benefit calculation and confidentiality. The confidentiality rules must ensure that confidentiality is maintained for TANF recipients at least to the same extent that confidentiality was maintained for families in the Aid to Families with Dependent Children program unless otherwise required by federal law or regulation.

B. The department may use funds, insofar as resources permit, provided under and in accordance with the United States Social Security Act or state funds appropriated for this purpose or a combination of state and federal funds to provide assistance to families under this chapter. In addition to assistance for families described in this subsection, funds must be expended for the following purposes:

(1) To continue the pass-through of the first \$50 per month of current child support collections and the exclusion of the \$50 pass-through from the budget tests and benefit calculations;

(2) To provide financial and medical assistance to certain noncitizens legally admitted to the United States. Recipients of assistance under this subparagraph are limited to the categories of noncitizens who would be eligible for the TANF or Medicaid programs but for their status as aliens under PRWORA. Eligibility for the TANF and Medicaid programs for these categories of noncitizens must be determined using the criteria applicable to other recipients of assistance from these programs;

*38341 (3) To provide benefits to certain 2-parent families whose deprivation is

based on physical or mental incapacity;

(4) To provide an assistance program for needy children, 19 to 21 years of age, who are in full-time attendance in secondary school. The program is operated for those individuals who qualify for TANF under the United States Social Security Act, except that they fail to meet the age requirement, and is also operated for the parent or caretaker relative of those individuals. Except for the age requirement, all provisions of TANF, including the standard of need and the amount of assistance, apply to the program established pursuant to this subparagraph;

(5) To provide assistance for a pregnant woman who is otherwise eligible for assistance under this chapter, except that she has no dependents under 19 years of age. An individual is eligible for the monthly benefit for one eligible person if the medically substantiated expected date of the birth of her child is not more than 90 days following the date the benefit is received;

(6) To provide a special housing allowance for TANF families whose shelter expenses for rent, mortgage or similar payments, homeowners insurance and property taxes equal or exceed 75% of their monthly income. The special housing allowance is limited to \$50 per month for each family. For purposes of this subparagraph, "monthly income" means the total of the TANF monthly benefit and all income countable under the TANF program, plus child support received by the family, excluding the \$50 pass-through payment;

(7) In determining benefit levels for TANF recipients who have earnings from employment, the department shall disregard from monthly earnings the following:

(a) One hundred and eight dollars;

(b) Fifty percent of the remaining earnings that are less than the federal poverty level; and

(c) All actual child care costs necessary for work, except that the department may limit the child care disregard to \$175 per month per child or \$200 per month per child under 2 years of age or with special needs;

(8) In cases when the TANF recipient has no child care cost, the monthly TANF benefit is the maximum payment level or the difference between the countable earnings and the standard of need established by rule adopted by the department, whichever is lower;

(9) In cases when the TANF recipient has child care costs, the department shall determine a total benefit package, including TANF cash assistance, determined in accordance with subparagraph (7) and additional child care assistance, as provided by rule, necessary to cover the TANF recipient's actual child care costs up to the maximum amount specified in section 3782-A, subsection 5. The benefit amount must be paid as provided in this subparagraph.

***38342** (a) Before the first month in which child care assistance is available to an ASPIRE-TANF recipient

under this paragraph and periodically thereafter, the department shall notify the recipient of the total benefit package and the following options of the recipient: to receive the total benefit package directly; or to have the department pay the recipient's child care assistance directly to the designated child care provider for the recipient and pay the balance of the total benefit package to the recipient.

(b) If an ASPIRE-TANF recipient notifies the department that the recipient chooses to receive the child care assistance directly, the department shall pay the total benefit package to the recipient.

(c) If an ASPIRE-TANF recipient does not respond or notifies the department of the choice to have the child care assistance paid directly to the child care provider from the total benefit package, the department shall pay the child care assistance directly to the designated child care provider for the recipient. The department shall pay the balance of the total benefit package to the recipient;

(10) Child care assistance under this paragraph must be paid by the department in a prompt manner that permits an ASPIRE-TANF recipient to access child care necessary for work; and

(11) The department shall adopt rules pursuant to Title 5, chapter 375 to implement this subsection. Rules adopted pursuant to this subparagraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

4. Promoting support by both parents. The department shall enforce laws and establish policies to ensure that both parents contribute to the economic support of their child or children and to promote every child's right to economic support from both parents. Applicants for and recipients of assistance may refuse to cooperate in the establishment of paternity or child support enforcement for good cause related to domestic violence, including situations when cooperation may result in harm to the parent or child, or when the child was conceived as a result of incest or rape. Evidence supporting a good cause determination includes, but is not limited to, the evidence specified in section 3785, subsection 13. The department shall notify all applicants and recipients orally and in writing of the availability of this determination. When a determination of good cause is made by the department, the department may not impose sanctions or penalties against the applicant or recipient or engage in any other activity that could subject any member of the family to harm.

5. Move to sustainable employment. The department shall assist parents who receive TANF assistance to move as quickly as possible into employment that will sustain the family.

6. Training; partnerships. The department shall increase the employability of parents who receive TANF assistance through on-the-job training and strengthening the public and private workforce partnership by developing training sites and jobs for those parents.

***38343** 7. Teenage pregnancies; minimization. The department shall provide education and services to minimize teenage pregnancies with special attention paid to the role of the male.

8. Transitional support services. The department shall administer a program of transitional support services in accordance with PRWORA and this subsection.

A. The department shall administer a program of transitional Medicaid to families receiving benefits under Section 1931 of the federal Social Security Act [FN1] in accordance with this paragraph.

(1) The department shall provide transitional Medicaid to families whose

average gross monthly earnings, less costs to the family for child care necessary for employment, do not exceed 185% of the federal poverty guidelines in accordance with PRWORA and this subsection. In order to receive transitional Medicaid as the result of increased earnings or number of hours worked, a family must have received Medicaid assistance for at least 3 of the last 6 months, except as provided in subparagraph (2).

(2) The department shall provide transitional Medicaid for families whose eligibility for Medicaid assistance terminated due to employment obtained through work search activities pursuant to this chapter, in which case the family must have received Medicaid assistance for at least one of the last 3 months.

(3) To continue to receive transitional Medicaid assistance following the first 6 months of coverage, a family entering the transitional Medicaid program with income above 133% of the federal poverty guidelines must pay premiums in accordance with rules adopted by the department.

(4) Deleted. Laws 1999, c. 731, § OO-2.

(5) The department shall provide transitional Medicaid for 4 months to families whose eligibility for Medicaid assistance terminated due to an increase in the amount of child support received by the family.

(6) The department shall require reporting of income or circumstances for the purpose of determining eligibility and premium payments, copayments or other methods of cost sharing for benefits under this paragraph in accordance with rules adopted by the department.

(7) The scope of services provided under this paragraph must be the same as the scope of services provided when a family received Medicaid assistance.

B. The department shall provide limited transitional transportation benefits to meet employment-related costs to ASPIRE-TANF program participants who lose eligibility for TANF assistance due to employment. Benefits must be provided for 90 days following loss of TANF eligibility. The department may adopt rules that impose a weekly limit on available transitional transportation benefits and that require a contribution from each participant toward the cost of transportation.

***38344** C. The department shall make available transitional child care services to families who lose eligibility for TANF as a result of increased earnings or an increase in the number of hours worked and whose gross income is equal to or less than 85% of the State's median income for a family of comparable size. The department may also make transitional child care services available to families in which one or both adults are working and who, although they remain financially eligible for TANF benefits, request that their benefits be terminated. The family shall pay a premium of 2% to 10% of gross income, based on the family's gross income compared to the federal poverty level in accordance with rules adopted by the department. The department shall establish maximum rates for child care that are at least equal to the 75th percentile of local market rates for various categories of child care and higher rates for children with special needs. Parents must have a choice of child care within the rate established by the department.

9. Procedures. The following procedural requirements apply to the program:

A. The department shall make information on the program available to the public in written form understandable at the 6th-grade reading level and orally, as needed.

B. The department shall take written applications for assistance, which must be available on request. The department shall provide the applicant written notice of the granting or denial of assistance within 30 days of application. If the family is granted assistance, the notice must state the amount of the benefit. Assistance must be provided promptly to an eligible family without any delay attributable to the administrative process and must be continued regularly to all eligible individuals until they are found to be ineligible. Applicants and recipients must be provided with timely and adequate notice of any intended action to discontinue, terminate, suspend or reduce assistance or to change the manner of paying cash assistance to a protective payee, vendor or through a 2-party payment. Notices under this paragraph must inform the applicant of the right to a fair hearing before an impartial hearing officer and also inform the applicant how to request a hearing. Hearing requests may be made orally or in writing. Hearings must be conducted pursuant to the Maine Administrative Procedure Act.

C. The department shall establish uniform statewide eligibility criteria and benefit levels under the TANF program except as provided in this chapter or chapter 1054-A. Eligibility criteria and benefit levels may not result in cash assistance levels below those in effect on June 1, 1997.

10. Domestic violence. The following provisions apply with regard to victims of domestic violence.

A. The department shall provide all applicants for assistance under this chapter with information both orally and in writing of the availability of services for victims of domestic violence and of the good cause determination for victims of domestic violence under section 3785, subsection 13. If an applicant requests a good cause determination under section 3785, subsection 13, the department shall promptly determine whether the applicant qualifies for good cause. An individual may not be required to participate in any TANF activity including orientation until the good cause determination is made.

***38345** B. When a determination of good cause is made under section 3785, subsection 13, the ASPIRE-TANF program may contact the individual and offer domestic violence victim services or other appropriate services on a voluntary basis.

11. Treatment of lump sum income. For the purpose of determining eligibility for and the amount of assistance under TANF, the department shall treat any nonrecurring lump sum income received by a family in accordance with this subsection.

A. Nonrecurring lump sum income includes, but is not limited to, personal injury awards, lottery winnings, inheritances and similar nonrecurring forms of income. It does not include income earmarked by the payor for particular expenses such as awards or insurance proceeds earmarked for medical expenses, attorney's fees or the replacement of lost property. Proceeds from the conversion of a nonliquid asset to a liquid asset must be treated as an asset and not as nonrecurring lump sum income.

B. Up to \$10,000 of nonrecurring lump sum income must be disregarded as income and excluded as an asset if used for the following purposes within 30 days of its receipt:

- (1) Deposit in a separate identifiable account, approved by the department. Withdrawals from such an account may only be for the purposes identified in subparagraphs (2) to (6) and paragraph C;
- (2) Expenses for education or job training to attend an accredited or approved postsecondary education or training institution;
- (3) The purchase or repair of a home that is the family's principal residence;
- (4) The purchase or repair of a vehicle used for transportation to work or to attend an education or training program;
- (5) Capital to start a small business for any family member 18 years of age or older; or
- (6) Placement in a family development account authorized by state law, to the extent that the total balance of such an account remains below \$10,000.

C. The department shall disregard from income and exclude as an asset nonrecurring lump sum income used within 30 days of receipt or money withdrawn from an account established pursuant to paragraph B, subparagraph (1) or (6), if it is used for the purposes stated in paragraph B, subparagraphs (2) to (6) or to meet the following needs:

- (1) Health care costs of a household member that are medically necessary and that are not covered by public or private insurance;
- (2) To address an emergency that may cause the loss of shelter, employment or other basic necessities; or
- (3) To address other essential family needs approved by the department.

***38346** D. Nonrecurring lump sum income in excess of the asset limit established in the TANF program that is used for purposes other than those enumerated in paragraphs B or C and nonrecurring lump sum income in excess of \$10,000 plus that asset limit must be counted as income and cause the household to be disqualified from receiving TANF assistance under this chapter. The household is disqualified for a period of months calculated by dividing the income countable under this paragraph by the standard of need established by the department for the household.

12. Information about and application for Parents as Scholars. When there are fewer than 2000 enrollees in the Parents as Scholars Program under chapter 1054-B, the department shall inform all persons applying for TANF assistance and all recipients reviewing or requesting to amend their participation in the program of the Parents as Scholars Program and shall offer them the opportunity to apply for the program.

13. Reports to Legislature. The department shall provide information annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters in order to allow the Legislature to evaluate the TANF program. Such information must include but is not limited to the number of TANF households and family members, a comparison of TANF eligibility levels with the federal poverty level, the number of TANF participants in training, education and work activity components and the rates at which individuals who have found employment through ASPIRE-TANF return to the TANF program.

14. Notification to Legislature. The department shall notify the joint standing committee of the Legislature having jurisdiction over health and human services matters of any request for waivers from the United States Department of Health and Human Services or any other federal agency concerning the implementation of chapters 1053-A, 1054, 1054-A and 1054-B.

15. Conditions of continued assistance. The following provisions apply to families that have received assistance for more than 60 months.

A. A family in which an adult has received benefits for 60 months may continue to receive TANF assistance as long as the adult members of the family comply in all respects with TANF program rules, except that the department may not consider the need of an adult for whom 3 or more sanctions have been imposed under TANF while that person was an adult or minor parent until the adult has served a penalty period equal to the length of the last penalty period imposed. A penalty period under this paragraph may not be imposed on a family that has experienced domestic violence, as defined in PROWRA, Section 408(a)(7)(C)(iii), that has a member with an illness or incapacity, or when the department determines that good cause exists, in accordance with rules adopted by the department.

An adult subject to a penalty period under this subsection must comply with all TANF requirements during the penalty period including participation in ASPIRE-TANF unless exempt or subject to the good cause provisions of section 3785.

***38347** B. If an adult in a family receiving assistance 60 months or longer fails to comply with TANF program rules without good cause, as used in chapters 1053-B and 1054-A and department rule, sanctions may be imposed in accordance with rules uniformly applicable to all families receiving TANF benefits.

C. At the time a family applies for TANF benefits and at least annually thereafter, the department shall notify the applicant or recipient of the requirements for receiving benefits beyond 60 months.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [FN2]

16. Authorization of fund transfer. Notwithstanding any provision of law to the contrary, the department is authorized to transfer to the TANF account any funds available in the ASPIRE-TANF account necessary to meet the purposes of TANF, including the purposes established in subsection 3, paragraph B.

17. Prohibition against denial of assistance based on drug conviction. A person who is otherwise eligible to receive TANF may not be denied assistance because the person has been convicted of a drug-related felony as described in Section 115 of PRWORA.

CREDIT(S)

2002 Electronic Pocket Part Update

1997, c. 530, § A-16, eff. June 12, 1997; 1997, c. 695, § 1; 1997, c. 795, § 7; 1999, c. 383, § 1; 1999, c. 401, § S-3, eff. June 4, 1999; 1999, c. 731, § OO-2; 2001, c. 338, §§ 1 to 4; 2001, c. 354, § 3; 2001, c. 598, § 2.

[FN1] 42 U.S.C.A. § 1396u-1.

[FN2] 5 M.R.S.A. § 8071 et seq.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1997 Legislation

Laws 1997, c. 695, § 1, added subsec. 15.

Laws 1997, c. 795, § 7, in subsec. 8, par. A, subpar. (3), substituted ", copayments or other methods of cost sharing equal to no more than 3%" for "equal to 3%"; in subpar. (6), inserted ", copayments or other methods of cost sharing"; and made nonsubstantive changes.

1999 Legislation

Laws 1999, c. 383, § 1, in subsec. 8, in par. C, inserted the second sentence.

Laws 1999, c. 401, § S-3, in subsec. 3, in par. B, rewrote subpar. (7), which prior thereto read:

"(7) In determining benefit levels for TANF recipients living in Kennebec, Knox, Lincoln, Penobscot, Piscataquis, Sagadahoc, Waldo and York counties who have earnings from employment, the department shall disregard from monthly earnings the following:

"(i) One hundred and fifty dollars;

***38348** "(ii) Fifty percent of the remaining earnings that are less than the federal poverty level; and

"(iii) All actual child care costs necessary for work, except that the department may limit the child care disregard to \$175 per month per child, or \$200 per month per child under 2 years of age or with special needs.

"The monthly benefit is the lower of the maximum payment level or the difference between the countable earnings and the standard of need.

"Assistance provided under this subparagraph may not be paid for with federal funds provided under the United States Social Security Act, Title IV-A, provided that the state funds used for this subparagraph may be counted, without penalty, towards the State's federal maintenance of effort requirement.

"The department shall evaluate the impact of calculating the earned income disregard in accordance with this subparagraph and shall report its findings to the joint standing committee of the Legislature having jurisdiction over health and human services matters by February 15, 2000."

Laws 1999, c. 731, § OO-2, in subsec. 8, par. A, in the first subparagraph, inserted "receiving benefits under Section 1931 of the federal Social Security Act"; in subpar. (1), second sentence, substituted "Medicaid" for "TANF", and "subparagraph (2)" for "subparagraph 2"; in subpar. (2), substituted "Medicaid" for "TANF", in two places; in subpar. (3), first sentence, deleted "prior to federal approval or waiver under subparagraph 4" following "Medicaid program", and deleted the second sentence, which read, "If a family entering the transitional Medicaid program after federal approval or waiver has average gross monthly earnings, less average monthly costs for such child care as is necessary for employment, that are above 100% of the federal poverty guidelines, then that family shall pay, beginning in their 7th month of receiving transitional Medicaid, monthly premiums, copayments or other methods of cost sharing equal to no more than 3% of that family's average gross monthly earnings, less the average monthly costs for such child care as is necessary for employment."; deleted subpar. (4), which read:

"(4) By October 1, 1997, the department shall have taken reasonable steps to seek a federal waiver, approval of a state plan modification under Section 114 of PRWORA or any other appropriate action to secure federal approval to use federal matching funds to extend transitional Medicaid assistance for 2 years beyond the families' initial 1 year period of eligibility. Beginning on February 1, 1998, or at the time that the department receives the federal approval or waiver, whichever is later, the department shall provide extended benefits under this subparagraph to families that qualify under subparagraph (1) or (2) and that meet the requirements of the transitional Medicaid program."

***38349** ; and in subpars. (5) and (7), substituted "Medicaid" for "TANF".

2001 Legislation

Laws 2001, c. 338, § 1, in subsec. 3, par. B, subpar. (6), made nonsubstantive changes.

Laws 2001, c. 338, § 2, in subsec. 3, par. B, rewrote subpar. (7), which prior thereto read:

"(7) In determining benefit levels for TANF recipients who have earnings from employment, the department shall disregard from monthly earnings the following:

"(i) One hundred and eight dollars;

"(ii) Fifty percent of the remaining earnings that are less than the federal poverty level; and

"(iii) All actual child care costs necessary for work, except that the department may limit the child care disregard to \$175 per month per child, or \$200 per month per child under 2 years of age or with special needs.

"The monthly benefit is the lower of the maximum payment level or the difference between the countable earnings and the standard of need."

Laws 2001, c. 338, § 3, in subsec. 3, par. B, added subpars. (8) to (11).

Laws 2001, c. 338, § 4, added subsec. 16.

Laws 2001, c. 338, § 5, provides:

"Sec. 5. Implementation date. The Department of Human Services shall implement direct payment of child care under this Act as soon as reasonably possible, but no later than March 1, 2002."

Laws 2001, c. 354, § 3, in subsec. 2, par. C, substituted "Department of Behavioral and Developmental Services" for "Department of Mental Health, Mental Retardation and Substance Abuse Services".

Laws 2001, c. 354, § 3, provides:

"Sec. 3. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words 'Department of Mental Health, Mental Retardation and Substance Abuse Services' appear or reference is made to those words or that department, they are amended to read and mean 'Department of Behavioral and Developmental Services' or that department, and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes."

Laws 2001, c. 598, § 2, added subsec. 17.

Derivation:

Laws 1993, c. 385, §§ 9, 11, 12.

Laws 1995, c. 418, §§ A-10, A-11.

Laws 1995, c. 692, § 1.

Former 22 M.R.S.A. §§ 3471-G, 3471-I, 3760-B.

Reinsch, Margaret

From: Lanman, Dave [Dave.Lanman@maine.gov]
Sent: Monday, May 12, 2003 3:10 PM
To: Reinsch, Margaret
Cc: Telow, Stephen; Williams, Judy; Augur, Newell
Subject: RE: Errors Bill

BFI no longer contracts for non-traditional services for TANF clients. We did this for many years with one entity, but stopped several years ago as the contracts were not fruitful. Let me know if you need more.

-----Original Message-----

From: Reinsch, Margaret [mailto:Margaret.Reinsch@legislature.maine.gov]
Sent: Monday, May 12, 2003 2:07 PM
To: Lanman, Dave
Cc: Augur, Newell
Subject: Errors Bill
Importance: High

Dave -

I work with the Judiciary Committee, and I'm preparing the "supplemental" sections of the Errors Bill for the Committee's consideration.

I have a question about "nontraditional job training and placement services" provided by DHS.

PL 1997, c. 284 enacted 22 MRSA sec. 3741-M which requires DHS to contract to provide these services for women receiving assistance under TANF.

Also in 1997, PL 1997, c. 530 repealed the whole chapter 1053, which would contain sec. 3741-M, and replaced it with c. 1053-B, but it does not include the substance of sec. 3741-M.

I know you contacted the Revisor's Office with this correction. Can you tell me if DHS is currently contracting for these services under the authority of sec. 3741-M?

Thanks!

Peggy

Margaret J. Reinsch, Esq.
Office of Policy and Legal Analysis
Maine State Legislature
215 Cross State Office Building
13 State House Station
Augusta, Maine 04333
(207) 287-1670
(207) 287-1275 fax
(207) 287-1673 direct and voice-mail
(207) 287-1790 TTY
NOTE NEW E-MAIL ADDRESS: margaret.reinsch@legislature.maine.gov

ERRORS BILL §: SUPP-4

LAW AMENDED: 22 MRSA §4301, sub-§7

Prepared by: MJR

Date: 5/12/03

File name: G:\COMMITTEES\JUD\ERRORS 2003\Supp - 4.DOC (5/12/03 2:25 PM)

Has the error already been fixed in another bill? NO

Has section been amended/repealed in another bill? NO

General Subject: Municipal general assistance

Type of correction (conflict, reference, other): conflict

Category: (technical, substantive) ??

Is a further amendment needed? NO

(If so, explain below)

EXPLANATION

In 2002, the Health and Human Services Committee considered LD 1963, which was enacted as PL 2001, c. 571. The bill amended the definition of "income" under the municipal general assistance laws.

The HHS committee added language dealing with the treatment of lump sum payments. The draft provided by the interested parties proposed the following:

The period of proration is then determined by dividing the remainder of the lump sum payment by the verified actual monthly amounts for all of the household's basic necessities or, alternatively, by 150% of the applicable Federal Poverty guidelines, whichever is greater. ~~aggregate maximum level of assistance designated under section 4035.~~

The period of proration is then determined by dividing the remainder of the lump sum payment by the ~~aggregate maximum level of assistance designated under section 4035~~ greater of the verified actual monthly amounts for all of the household's basic necessities or by 150% of the applicable Federal Poverty guidelines.

The change in language made use of the word "by" before the "150%" unnecessary, and yet it was not deleted.

This section of the Errors Bill deletes the word "by" - could be a substantive change, but it doesn't make sense as written.

OK
GR

2 **Sec. 7. 22 MRSA §4301, sub-§7**, as amended by PL 2001, c. 571, §1,
4 is further amended to read:

6 **7. Income.** "Income" means any form of income in cash or in
8 kind received by the household, including net remuneration for
10 services performed, cash received on either secured or unsecured
12 credit, any payments received as an annuity, retirement or
14 disability benefits, veterans' pensions, workers' compensation,
16 unemployment benefits, benefits under any state or federal
categorical assistance program, supplemental security income,
social security and any other payments from governmental sources,
unless specifically prohibited by any law or regulation, court
ordered support payments, income from pension or trust funds and
household income from any other source, including relatives or
unrelated household members.

18 The following items are not available within the meaning of this
20 subsection and subsection 10:

22 A. Real or personal income-producing property, tools of
24 trade, governmental entitlement specifically treated as
exempt assets by state or federal law;

26 B. Actual work-related expenses, whether itemized or by
28 standard deduction, such as taxes, retirement fund
contributions, union dues, transportation costs to and from
work, special equipment costs and child care expenses; or

30 C. Earned income of children below the age of 18 years who
32 are full-time students and who are not working full time.

34 In determining need, the period of time used as a basis for the
36 calculation is the 30-day period commencing on the date of the
38 application. This prospective calculation does not disqualify an
40 applicant who has exhausted income to purchase basic necessities
42 if that income does not exceed the income standards established
44 by the municipality. Notwithstanding this prospective
46 calculation, if any applicant or recipient receives a lump sum
48 payment prior or subsequent to applying for assistance, that
50 payment must be prorated over future months. The period of
proration is determined by disregarding any portion of the lump
sum payment that the applicant or recipient has spent to purchase
basic necessities, including but not limited to: all basic
necessities provided by general assistance; reasonable payment of
funeral or burial expenses for a family member; reasonable travel
costs related to the illness or death of a family member; repair
or replacement of essentials lost due to fire, flood or other
natural disaster; repair or purchase of a motor vehicle essential
for employment, education, training or other day-to-day living

2 necessities; repayments of loans or credit, the proceeds of which
3 can be verified as having been spent on basic necessities; and
4 payment of bills earmarked for the purpose for which the lump sum
5 is paid. All income received by the household between the
6 receipt of the lump sum payment and the application for
7 assistance is added to the remainder of the lump sum. The period
8 of proration is then determined by dividing the remainder of the
9 lump sum payment by the greater of the verified actual monthly
10 amounts for all of the household's basic necessities or by 150%
11 of the applicable federal poverty guidelines. That dividend
12 represents the period of proration determined by the
13 administrator to commence on the date of receipt of the lump sum
14 payment. The prorated sum for each month must be considered
15 available to the household for 12 months from the date of
16 application or during the period of proration, whichever is less.

18 SUMMARY

20 Section ? removes an extraneous word to clarify the intent
of the section of law.

C. Earned income of children below the age of 18 years who are full-time students and who are not working full time.

In determining need, the period of time used as a basis for the calculation is the 30-day period commencing on the date of the application. This prospective calculation does not disqualify an applicant who has exhausted income to purchase basic necessities if that income does not exceed the income standards established by the municipality. Notwithstanding this prospective calculation, if any applicant or recipient receives a lump sum payment prior or subsequent to applying for assistance, that payment must be prorated over future months. The period of proration is determined by disregarding any portion of the lump sum payment that the applicant or recipient has spent to purchase basic necessities, including but not limited to: all basic necessities provided by general assistance; reasonable payment of funeral or burial expenses for a family member; reasonable travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or other day-to-day living necessities; repayments of loans or credit, the proceeds of which can be verified as having been spent on basic necessities; and payment of bills earmarked for the purpose for which the lump sum is paid. All income received by the household between the receipt of the lump sum payment and the application for assistance is ~~added to the remainder of the lump sum.~~ The period of proration is then determined by dividing the remainder of the lump sum payment by the ~~aggregate-maximum-level-of-assistance designated under section 4305~~ greater of the verified actual monthly amounts for all of the household's basic necessities or by 150% of the applicable federal poverty guidelines. That dividend represents the period of proration determined by the administrator to commence on the date of receipt of the lump sum payment. The prorated sum for each month must be considered ~~available to the household for 12 months from the date of application or during the period of proration, whichever is less.~~

Further amend the bill by inserting after section 1 the following:

'Sec. 3. 22 MRSA §4308, sub-§3 is enacted to read:

3. Initial applicant. Notwithstanding section 4301, subsection 7, the household of an initial applicant that is otherwise eligible for emergency assistance may not be denied emergency assistance to meet an immediate need solely on the basis of the proration of a lump sum payment. Upon subsequent applications, that household's eligibility is subject to all the standards established by this chapter.

diff - interested parties

Amendment to LD 1963

LD 1963, An Act to Amend the Laws Governing Eligibility for General Assistance, is amended to delete all the language of the bill and the summary and replace it with the following:

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

Sec. 1. 22 M.R.S.A. § 4301 (7) is amended to read as follows:

7. Income. "Income" means any form of income in cash or in kind received by the household, including net remuneration for services performed, cash received on either secured or unsecured credit, any payments received as an annuity, retirement or disability benefits, veterans' pensions, workers' compensation, unemployment benefits, benefits under any state or federal categorical assistance program, supplemental security income, social security and any other payments from governmental sources, unless specifically prohibited by any law or regulation, court ordered support payments, income from pension or trust funds and household income from any other source, including relatives or unrelated household members.

The following items are not available within the meaning of this subsection and subsection 10:

- A. Real or personal income-producing property, tools of trade, governmental entitlement specifically treated as exempt assets by state or federal law;
- B. Actual work-related expenses, whether itemized or by standard deduction, such as taxes, retirement fund contributions, union dues, transportation costs to and from work, special equipment costs and child care expenses; or
- C. Earned income of children below the age of 18 years who are full-time students and who are not working full time.

In determining need, the period of time used as a basis for the calculation is the 30-day period commencing on the date of the application. This prospective calculation does not disqualify an applicant who has exhausted income to purchase basic necessities if that income does not exceed the income standards established by the municipality. Notwithstanding this prospective calculation, if any applicant or recipient receives a lump sum payment prior or subsequent to applying for assistance, that payment must be prorated over future months. The period of proration is determined by disregarding any portion of the lump sum payment that the applicant or recipient has spent to purchase basic necessities, including but not limited to: all basic necessities provided by general assistance; reasonable payment of funeral or burial expenses for a family member; reasonable travel costs related to the illness or death of a family member; repair or

replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or other day-to-day living necessities; repayment of loans or credit, the proceeds of which can be verified as having been spent on basic necessities; and payment of bills earmarked for the purpose for which the lump sum is paid. All income received by the household between the receipt of the lump sum payment and the application for assistance is added to the remainder of the lump sum. The period of proration is then determined by dividing the remainder of the lump sum payment by the verified actual monthly amounts for all of the household's basic necessities or, alternately, by 150% of the applicable Federal Poverty guidelines, whichever is greater. ~~aggregate maximum level of assistance designated under section 4305.~~ That dividend represents the period of proration determined by the administrator to commence on the date of receipt of the lump sum payment. The prorated sum for each month must be considered available to the household for 12 months from the date of application or during the period of proration, whichever is less.

Sec. 2. 22 M.R.S.A. § 4301 (8-A) is amended to read as follows:

8-A. Lump sum payment. "Lump sum payment" means a one-time or typically nonrecurring sum of money issued to an applicant or recipient ~~after an initial application~~. Lump sum payment includes, but is not limited to, retroactive or settlement portions of social security benefits, workers' compensation payments, unemployment benefits, disability income, veterans' benefits, severance pay benefits, or money received from inheritances, lottery winnings, personal injury awards, property damage claims or divorce settlements. A lump sum payment includes only the amount of money available to the applicant after payment of required deductions has been made from the gross lump sum payment. A lump sum payment does not include conversion of a nonliquid resource to a liquid resource if the liquid resource has been used or is intended to be used to replace the converted resource or for other necessary expenses.

Sec. 3. 22 M.R.S.A. § 4308 (3) is enacted to read as follows:

(3) Notwithstanding section 4301(7), the household of an initial applicant that is otherwise eligible for emergency assistance may not be denied emergency assistance to cure an immediate need solely on the basis of the proration of a lump sum payment, but upon subsequent application(s) that household's eligibility shall be subject to all the standards established by this chapter.

Sec. 4. Investigation of adequacy of maximum levels of assistance.

The Department of Human Services shall convene a group of interested parties, including a fair representation of municipalities and representatives of low-income persons, to investigate the adequacy of maximum levels of assistance and report its findings to the Joint Standing Committee on Health and Human Services by February 1, 2003.

SUMMARY

This amendment replaces the language in the bill. It modifies the method of prorating lump sum income when determining general assistance eligibility. It also clarifies that lump sum income is prorated even when it is received prior to the initial application and it permits initial applicants to receive general assistance in an emergency if the sole reason they were ineligible was due to the proration of lump sum income. The amendment also directs the Department of Human Services to convene a group of interested parties to investigate the adequacy of the maximum levels of assistance in the general assistance program and report back to the joint standing committee on Health and Human Services.

ERRORS BILL §: SUPP-5

LAW AMENDED: 21~~5~~ MRSA §4301, sub-§7

Prepared by: MJR

Date: 5/12/03

File name: G:\COMMITTEES\JUD\ERRORS 2003\Supp - 5.DOC (5/12/03 3:35 PM)

Has the error already been fixed in another bill? NO

Has section been amended/repealed in another bill? NO

General Subject: Maine Criminal Justice Academy

Type of correction (conflict, reference, other): reference

Category: (technical, substantive) S

Is a further amendment needed? NO
(If so, explain below)

EXPLANATION

Current law requires the Board of Trustees of the Maine Criminal Justice Academy to report annually to the "joint standing committee of the Legislature having jurisdiction over legal affairs on the implementation and the effectiveness of this chapter."

The Maine Criminal Justice Academy is now under the jurisdiction of the Criminal Justice and Public Safety Committee. This section updates the reference to the "joint standing committee having jurisdiction over criminal justice and public safety matters . . ."

Sec. Xxx. 25 MRSA §2809, first ¶ is amended to read:

Beginning January 1, 1991, the board shall report annually to the joint standing committee of the Legislature having jurisdiction over ~~legal affairs~~ criminal justice and public safety matters on the implementation and effectiveness of this chapter. The purpose of the report is to provide the Legislature annual information on the law governing law enforcement training in order to ensure that appropriate and timely training is accomplished. The report must include the following:

SUMMARY

This section of the Errors Bill updates the statutes concerning the legislative jurisdiction over the Maine Criminal Justice Academy. It directs the Board of Trustees of the Maine Criminal Justice Academy to report annually on law enforcement training to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters, instead of the committee having jurisdiction over legal affairs. This change is consistent with the amendment of committee oversight pursuant to the Joint Rules of the 117th Legislature and every Legislature since then.

Prev: [Chapter 341 §2808](#)Next: [Chapter 351 §2901](#)Download Chapter 341
PDF, Word (RTF)Download Section 2809
PDF, Word (RTF)[Statute Search](#)[List of Titles](#)[Maine Law](#)[Disclaimer](#)[Revisor's Office](#)[Maine Legislature](#)**Title 25: INTERNAL SECURITY AND PUBLIC SAFETY****Part 8: MAINE CRIMINAL JUSTICE ACADEMY****Chapter 341: THE MAINE CRIMINAL JUSTICE ACADEMY****§2809. Report to Legislature**

Beginning January 1, 1991, the board shall report annually to the joint standing committee of the Legislature having jurisdiction over legal affairs on the implementation and effectiveness of this chapter. The purpose of the report is to provide the Legislature annual information on the law governing law enforcement training in order to ensure that appropriate and timely training is accomplished. The report must include the following: [1989, c. 521, §§14, 17 (new).]

1. Availability of training. An evaluation of the availability of preservice, basic and in-service training throughout the State. The evaluation must cover whether any municipalities operated without adequate law enforcement officers with the power to make arrests because training was not available in a timely manner; [1989, c. 521, §§14, 17 (new).]

2. In-service training requirements. An explanation of in-service training requirements for law enforcement and corrections officers, including any changes in the requirements and a discussion of the adequacy of the requirements; [1989, c. 521, §§14, 17 (new).]

3. In-service training courses. An evaluation of available board-approved in-service training courses for law enforcement and corrections officers and the participation level in each; [1989, c. 521, §§14, 17 (new).]

4. Training for exempt law enforcement officers. An explanation and evaluation of the training provided by the state agencies for their law enforcement officers who are exempt from the requirements of this chapter under section 2801-B; and [1989, c. 521, §§14, 17 (new).]

5. Other information. Any other information the Legislature may request or the board determines is appropriate. [1989, c. 521, §§14, 17 (new).]

Section History:

PL 1989, Ch. 521, §14,17 (NEW).

The Revisor's Office cannot provide legal advice or interpretation of

Joint Rules of the
117th Legislature

Summary on law enforcement training
This amendment directs the Board of Trustees of the MCJA to report annually to the joint standing committee of the legislature having jurisdiction over criminal justice and public safety matters, instead of to the committee having jurisdiction over legal affairs. This change is consistent with the amendment of committee oversight pursuant to the

criminal justice and public safety

ERRORS BILL §: SUPP-6

LAW AMENDED: 29-A MRSA §1259, sub-§4, ¶A

Prepared by: MJR

Date: 5/12/03

File name: G:\COMMITTEES\JUD\ERRORS 2003\Supp - 6.DOC (5/12/03 4:01 PM)

Has the error already been fixed in another bill? NO

Has section been amended/repealed in another bill? NO

General Subject: Driver's license cancellation for physical, mental or emotional reasons

Type of correction (conflict, reference, other): conjunction/disjunction

Category: (technical, substantive) S

Is a further amendment needed? NO
(If so, explain below)

EXPLANATION

PL 2001, c. 671 added a section of law in Title 29-A to allow a person to request the Secretary of State to cancel that person's license for physical, mental or emotional reasons. The law also provides for the person to request that the license to be reinstated. The Secretary of State may reissue the license of the person demonstrates that the person is physically, mentally OR emotionally competent to operate a motor vehicle.

As proposed to be included in the committee amendment, the person must demonstrate that he or she is physically, mentally AND emotionally competent. In the processing of the committee amendment, the "AND" was changed to "OR" - probably to be consistent with the reasons a license can be cancelled. But "OR" isn't consistent with public safety, and not what the TRA committee originally requested. This correction was suggested by the Secretary of State.

This section of the Errors Bill changes the OR to AND. This is a substantive change.

Sec. ?. 29-A MRSA §1259, sub-§4, ¶A, as enacted by PL 2001, c. 671, §23, is amended to read:

A. Demonstrates that the person is physically, mentally ~~or~~ and emotionally competent to operate a motor vehicle; and

SUMMARY

Section 7 changes a conjunction to reflect the intent of the law, which is that a person whose driver's license has been canceled for physical, mental or emotional reasons must demonstrate that the person is physically, mentally and emotionally competent to operate a motor vehicle before that person's license may be reinstated.

security interest is in dispute. Submission of a false statement to the Secretary of State under this section is a Class E crime.

Further amend the bill by striking section 10 of the bill.

Further amend the bill by inserting the following after section 11 and before section 12 of the bill:

Sec. 29-A MRSA § 952, sub-§ 3 is amended to read:

3. Penalty. A person who fails to comply with subsection 1, paragraph A to ~~E~~ or subsection 4 commits a traffic infraction.

Further amend the bill by inserting the following after section 15 and before section 16 of the bill:

Sec. 29-A MRSA § 1259 is enacted to read:

§1259. Cancellation of license for physical, mental and emotional reasons.

1. Request for cancellation. A person issued a license may request the Secretary of State, in writing, to cancel the license for physical, mental and emotional reasons. The Secretary of State may cancel a license after receipt of the written request from the individual.

2. Notice of cancellation. Upon receiving a request to cancel, the Secretary of State shall designate the license as cancelled and notify the person, in writing, of the cancellation. The cancellation is effective on the date specified by the Secretary of State on the notice, which may not be less than 10 days after the mailing of the notification of cancellation by the Secretary of State.

3. Operating after cancellation. A person commits the offense of operating a motor vehicle without a license as provided in section 1251, subsection 1 if that person operates a motor vehicle after the person's license has been cancelled by the Secretary of State.

4. Reissuance of license. A person whose license is cancelled may petition the Secretary of State, in writing, to reissue a license. The Secretary of State may issue a person a license provided the person:

A. Demonstrates that the person is physically, mentally and emotionally competent to operate a motor vehicle; and

Rep. Mayo

(3)

11/15/02

Amendment to H.P. 1406, L.D. 1844, Bill, "An Act to Amend the Motor Vehicle Laws"

Amend the bill by adding a new section to read:

§1259. Cancellation of License for Physical, Mental and Emotional Reasons.

1. **Request for cancellation.** A person issued a license may request the Secretary of State, in writing, to cancel the license for physical, mental and emotional reasons. The Secretary of State may cancel a license after receipt of the written request from the individual.

2. **Notice of cancellation.** Upon receiving a request to cancel, the Secretary of State shall designate the license as cancelled and notify the person, in writing, of the cancellation. The cancellation is effective on the date specified by the Secretary of State on the notice, which may not be less than 10 days after the mailing of the notification of cancellation by the Secretary of State.

3. **Operating after cancellation.** A person commits the offense of operating a motor vehicle without a license as provided in section 1251 (1) if that person operates a motor vehicle after the person's license has been cancelled by the Secretary of State.

4. **Reissuance of license.** A person whose license is cancelled may petition the Secretary of State, in writing, to reissue a license. The Secretary of State may issue a person a license provided the person:

- A. Demonstrates that the person is physically, mentally and emotionally competent to operate a motor vehicle.

B. Successfully completes the operator's examination including a vision, written
and road test which shall be administered without fee to the person.

5. Suspension. This section does not limit the authority of the Secretary of State to
suspend a license.

SUMMARY

This amendment establishes a process which allows a person voluntarily to request the cancellation of a driver's license when the person is no longer able to operate a motor vehicle safely. The Secretary of State is authorized to cancel, and not necessarily to suspend, the license of a person seeking the cancellation of a license.

Each brand and grade of commercial fertilizer must be registered before being offered for sale, sold or distributed in this State. The application for registration must be submitted to the commissioner on forms furnished by the commissioner and must be accompanied by an annual fee of \$14 per plant food element guaranteed. All registrations expire on December 31st or in a manner consistent with the provisions as to license expiration of the Maine Administrative Procedure Act, Title 5, section 10002, whichever is later. The commissioner may issue a registration for a one-year, 2-year or 3-year period. Registrations for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year registration is 2 times the annual fee. The fee for a 3-year registration is 3 times the annual fee. The commissioner may ~~suspend, cancel or refuse to renew~~, refuse to register or renew or may suspend or cancel registration for failure to comply with this subchapter or with rules adopted pursuant to this subchapter. This refusal, suspension or cancellation is considered rule-making as that term is defined in the Maine Administrative Procedure Act, Title 5, chapter 375 and notice and opportunity for a hearing must be provided in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375. The application must include the following information:

Sec. 2. 7 MRSA §743, sub-§4 is amended to read:

4. Registrant's name and address. The name and address of the registrant; and

Sec. 3. 7 MRSA §743, sub-§5 is enacted to read:

5. Additional information. Additional information as required in rules adopted by the department.

Sec. 4. 7 MRSA §747, sub-§2 is amended to read:

2. Deleterious materials. If it contains any material in sufficient amount to be deleterious to growing plants or any deleterious or harmful substances in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water; or

Sec. 5. Rules. The Commissioner of Agriculture, Food and Rural Resources shall adopt rules that list the additional information that may be required when registering fertilizers under the Maine Revised Statutes, Title 7, section 743, subsection 5 and that list the type and amount of substances that are considered deleterious under Title 7, section 747, subsection 2. In developing those rules, the commissioner shall review standards for metals in fertilizers proposed by the Association of American Plant Food Control Officials

and other applicable risk-based assessments of metals or other deleterious or harmful substances and shall seek input on those standards and assessments from the Director of the Bureau of Health in the Department of Human Services. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Those rules must be adopted no later than 90 days after the effective date of this Act.

Sec. 6. Submission of rules for legislative review. The Commissioner of Agriculture, Food and Rural Resources shall submit 20 copies of the rules adopted under this Act to the joint standing committee of the Legislature having jurisdiction over agricultural matters no later than January 15, 2003. That committee shall review those rules in accordance with the provisions of the Maine Revised Statutes, Title 5, section 8072, subsections 4 and 5 and may report out legislation to the First Regular Session of the 121st Legislature on any matter pertaining to the information that may be requested by the Department of Agriculture, Food and Rural Resources when registering fertilizers or pertaining to adulterated commercial fertilizers.

Sec. 7. Application. Nothing in this Act may be construed to limit the authority of the Department of Environmental Protection to regulate the agronomic utilization of residuals under applicable provisions of the Maine Revised Statutes, Title 38 or under rules adopted by the Board of Environmental Protection regulating the agronomic utilization of residuals.

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

Effective April 11, 2002.

CHAPTER 671

N.P. 1406 - L.D. 1844

An Act to Amend the Motor Vehicle Laws

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

Sec. 1. 29-A MRSA §154-A is enacted to read:

§154-A. Suspension for failure to pay required fees or taxes

When a fee or use tax required to be collected by the Secretary of State is not paid when due, the Secretary of State may notify the person liable for the fee or tax in writing that, if the amount due is not paid within 10 days after the mailing of the notice,

mand for release of the security interest was made and the owner has not been notified by the lienholder that satisfaction of the security interest is in dispute. Submission of a false statement to the Secretary of State under this subsection is a Class E crime.

Sec. 17. 29-A MRSA §852, sub-§1, as amended by PL 1999, c. 97, §1, is further amended to read:

1. Initial application fee. The fee for an initial application for a license under this subchapter is \$150. The fee is not refundable. When a ~~new or used car~~ licensed dealer applies for a ~~motorcycle dealer~~ an additional type of license this application fee is not required.

Sec. 18. 29-A MRSA §952, sub-§3, as amended by PL 1999, c. 771, Pt. C, §3 and affected by Pt. D, §§1 and 2, is further amended to read:

3. Penalty. A person who fails to comply with subsection 1, paragraphs A to ~~E~~ F or subsection 4 commits a traffic infraction.

Sec. 19. 29-A MRSA §954, sub-§5, as amended by PL 1995, c. 645, Pt. B, §13, is further amended to read:

5. Transporter. A garage owner, body shop, finance company, bank, motor vehicle auction business, recycler or repossession company licensed by the Office of Consumer Credit Regulation or any public or nonprofit organization as described in section 951, subsection 4 may be issued transporter plates and a license to transport a vehicle owned by or in the custody of that owner or business.

A. The holder may use this plate only if the vehicle is accompanied by the owner or the owner's employee.

B. A transporter plate may not be:

- (1) Used in lieu of registration plates;
- (2) Loaned to another;
- (3) Used for personal reasons; or
- (4) Used on a towing vehicle.

Sec. 20. 29-A MRSA §1002, sub-§7, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

7. Demonstrating a loaded truck. A dealer must obtain a written permit from the Secretary of State to demonstrate a loaded truck, truck tractor, trailer, semitrailer or combination of vehicles bearing dealer plates.

A permit is not required to demonstrate a vehicle or combination of vehicles without a load.

A permit may be issued to a nonresident dealer when reciprocity has been established.

A permit may not be issued to allow demonstration for a period longer than 7 days. A permit to demonstrate can not be issued to the same individual or company more than once to cause use for a period of more than 7 days.

A permit may not be issued to a vehicle or combination of vehicles that is being rented or leased.

The processing fee for a permit to demonstrate is \$1.

Sec. 21. 29-A MRSA §1256, sub-§1, ¶B, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

B. This license only authorizes the holder to operate a motor vehicle between the holder's residence and school unless accompanied by a licensed driver who meets the requirements of section 1304, subsection 1, paragraph E, subparagraphs (1) to (4).

Sec. 22. 29-A MRSA §1256, sub-§2, ¶B, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

B. This license only authorizes the holder to operate a motor vehicle between the holder's residence, school and place of employment and other places necessary in direct connection with that employment unless accompanied by a licensed driver who meets the requirements of section 1304, subsection 1, paragraph E, subparagraphs (1) to (4).

Sec. 23. 29-A MRSA §1259 is enacted to read:

§1259. Cancellation of license for physical, mental or emotional reasons

1. Request for cancellation. A person issued a license may request the Secretary of State, in writing, to cancel the license for physical, mental or emotional reasons. The Secretary of State may cancel a license after receipt of the written request from the individual.

2. Notice of cancellation. Upon receiving a request to cancel a license, the Secretary of State shall designate the license as canceled and notify the person who requested the cancellation pursuant to subsection 1, in writing, of the cancellation. The cancellation is effective on the date specified by the Secretary of State on the notice, which may not be less than 10 days after the mailing of the notification of cancellation by the Secretary of State.

3. Operating after cancellation. A person commits the offense of operating a motor vehicle without a license as provided in section 1251, subsection 1 if that person operates a motor vehicle after the person's license has been canceled by the Secretary of State pursuant to this section.

4. Reissuance of license. A person whose license is canceled pursuant to this section may petition the Secretary of State, in writing, to reissue the license. The Secretary of State may issue a person a license if the person:

A. Demonstrates that the person is physically, mentally or emotionally competent to operate a motor vehicle; and

B. Successfully completes the operator's examination, including a vision, written and road test, which must be administered without fee to the person.

5. Suspension. This section does not limit the authority of the Secretary of State to suspend a license.

Sec. 24. 29-A MRSA §1301, sub-§5, as amended by PL 1997, c. 437, §30, is further amended to read:

5. Permanent license number. The Secretary of State shall collect, and store and may verify a person's social security number upon application or renewal for a license or nondriver identification card number and may use that number to establish a permanent license number or nondriver identification card number.

Sec. 25. 29-A MRSA §1304, sub-§1, ¶E, as repealed and replaced by PL 1999, c. 127, Pt. A, §43, is amended to read:

E. Unless the permittee is operating a motorcycle or motor-driven cycle, the permit requires the permittee to be accompanied by a licensed operator who:

- (1) Has held a valid license for the immediately preceding 2 consecutive years;
- (2) Is at least 20 years of age;
- (3) Is occupying a seat beside the driver; and
- (4) Is licensed to operate the class vehicle operated by the permittee.

The accompanying operator must adhere to all restrictions applied to the license when functioning as the permittee's accompanying operator. A person whose license was canceled for physical, mental or emotional reasons pursuant to

section 1259 and who meets the requirements of this paragraph may act as an accompanying operator only with the approval of the Secretary of State.

Sec. 26. 29-A MRSA §1352, sub-§6, ¶B, as enacted by PL 1999, c. 470, §21, is amended to read:

B. Road examination for the holder of a valid motor vehicle operator's license on receipt of a certificate demonstrating successful completion of the Motorcycle Rider Course: Riding and Street Skills or other hands-on motorcycle rider course approved by the Secretary of State. An endorsement issued pursuant to this paragraph prohibits the holder from carrying a passenger for a period of 60 days following the date of issuance of the endorsement.

Sec. 27. 29-A MRSA §1410, sub-§2, ¶C, as enacted by PL 1997, c. 437, §40, is amended to read:

C. The applicant's date of birth; and

Sec. 28. 29-A MRSA §1410, sub-§2, ¶D, as enacted by PL 1997, c. 437, §40, is repealed.

Sec. 29. 29-A MRSA §1612, 2nd ¶, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

Notwithstanding this section, a trailer or mobile home dealer, licensed pursuant to section 954, who certifies to the Secretary of State that the dealer does not haul trailers or mobile homes on the public roads and highways of the State is not required to file certification of liability insurance or surety bond. The Secretary of State may not issue ~~temporary plates or~~ dealer plates to a trailer or mobile home dealer exempted from filing certification of liability insurance or surety bond under this paragraph.

Sec. 30. 29-A MRSA §2382, sub-§2, as amended by PL 1999, c. 580, §13, is further amended to read:

2. Permit fee. The Secretary of State, with the advice of the Commissioner of Transportation, may set the fee for single trip permits, at not less than ~~\$3~~ \$6, nor more than ~~\$15~~ \$30, based on weight, height, length and width. The Secretary of State may, by rule, implement fees that have been set by the Commissioner of Transportation for multiple trip, long-term overweight movement permits. Rules established pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

Sec. 31. 29-A MRSA §2506, as amended by PL 1995, c. 368, Pt. AAA, §26, is further amended to read:

ERRORS BILL §: SUPP-7, 8 & 9

LAW AMENDED: 29-A MRSA §2054, sub-§2, ¶D
§2054, sub-§2, ¶F, sub-¶(1)

Prepared by: MJR

Date: 5/12/03

File name: G:\COMMITTEES\JUD\ERRORS 2003\Supp - 7&8&9.DOC (5/12/03 6:22 PM)

Has the error already been fixed in another bill? NO - created in LD 464, now PL 2003, c. 78

Has section been amended/repealed in another bill? NO

General Subject: blue lights!

Type of correction (conflict, reference, other): mistaken repeal

Category: (technical, substantive) S

Is a further amendment needed? NO
(If so, explain below)

EXPLANATION

LD 464, now PL 2003, c. 78, was enacted to allow fire and emergency medical services response vehicles to display one blue light at the rear of the vehicle. The amendment to the statute mistakenly deleted the limitation that only those vehicles listed were permitted to display a blue light, thus resulting in any vehicle being permitted to display a blue light.

Sections Supp 7 and 8 of the Errors Bill amend 29-A MRSA §2054 to carry out the Legislative intent in c. 78, but the language retains the limitation of current law. Section Supp-9 provides that the sections amending 29-A MRSA §2054 are effective 90 days after adjournment, which is when c. 78 takes effect.

Sec. Supp 7. 29-A MRSA §2054, sub-§2, ¶D, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, and amended by PL 2003, c. 78, §1 is further amended to read:

D. Emergency lights used on a police vehicle; a Department of Corrections vehicle as described in subsection 1, paragraph B, subparagraph (6); a vehicle operated by a chief of police, a sheriff or a deputy sheriff; and a vehicle operated by a qualified deputy sheriff or other qualified individual performing court security-related functions and services must emit a blue light or a combination of blue and white light. No other vehicle may be equipped with or display a blue light, except the following. On any vehicle, or replica of a vehicle, manufactured prior to 1952 and registered under section 457, the taillight may contain a blue or purple insert of not more than one inch in diameter.

(1) An emergency medical services vehicle, a hazardous material response vehicle, including a vehicle designed to respond to a weapon of mass destruction, and a fire department vehicle may be equipped by with and display one blue auxiliary light that is visible from the rear of the vehicle only and that may be used only at the scene of an emergency call or fire alarm; and

(2) On any vehicle or replica of a vehicle, manufactured prior to 1952 and registered under section 457, the taillight may contain a blue or purple insert of not more than one inch in diameter

Sec. Supp-8. 29-A MRSA §2054, sub-§2, ¶F, as amended by PL 2003, c. 78, §2, is further amended to read:

F. Only vehicles listed in this paragraph, rural mail vehicles as provided in paragraph C, subparagraph (5) and school buses may be equipped with, display or use a red auxiliary or emergency light.

(1) Emergency lights used on an ambulance, an emergency medical service vehicle, a fire department vehicle, a fire vehicle or a hazardous material response vehicle must emit a red light or a combination of red and white light ~~and may be equipped with one blue light mounted at the rear of the vehicle so that the light is visible to approaching traffic.~~

(2) The municipal officers or a municipal official designated by the municipal officers, with the approval of the fire chief, may authorize an active member of a municipal or volunteer fire department to use a flashing red signal light not more than 5 inches in diameter on a vehicle. The light may be displayed but may be used only while the

member is en route to or at the scene of a fire or other emergency. The light must be mounted as near as practicable above the registration plate on the front of the vehicle or on the dashboard. A light mounted on the dashboard must be shielded so that the emitted light does not interfere with the operator's vision.

(3) Members of an emergency medical service licensed by Maine Emergency Medical Services may display and use on a vehicle a flashing red signal light of the same proportion, in the same location and under the same conditions as those permitted municipal and volunteer firefighters, when authorized by the chief official of the emergency medical service.

Sec. Supp-9. Effective date. Those sections of this Act that amend Title 29-A, section 2054, subsection 2 take effect 90 days after adjournment of the First Regular Session of the 121st Legislature.

SUMMARY

These sections clarify that only an emergency medical services vehicle, a hazardous material response vehicle and a fire department vehicle may be equipped with and display one blue light that is visible to the rear of the vehicle only, and may be used only at the scene of an emergency call or fire alarm. They take effect at the same time that the underlying Act, PL 2003, c. 78, takes effect.

CHAPTER 78

H.P. 356 - L.D. 464

An Act To Allow Fire and Emergency Medical Services Response Vehicles To Display One Blue Light at the Rear of the Vehicle

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

Sec. 1. 29-A MRSA §2054, sub-§2, ¶D, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

D. Emergency lights used on a police vehicle; a Department of Corrections vehicle as described in subsection 1, paragraph B, subparagraph (6); a vehicle operated by a chief of police, a sheriff or a deputy sheriff; and a vehicle operated by a qualified deputy sheriff or other qualified individual performing court security-related functions and services must emit a blue light or a combination of blue and white light. ~~No other vehicle may be equipped with or display a blue light, except that on~~ On any vehicle, or replica of a vehicle, manufactured prior to 1952 and registered under section 457, the taillight may contain a blue or purple insert of not more than one inch in diameter.

Sec. 2. 29-A MRSA §2054, sub-§2, ¶F, as amended by PL 1995, c. 22, §1, is further amended to read:

F. Only vehicles listed in this paragraph, rural mail vehicles as provided in paragraph C, subparagraph (5) and school buses may be equipped with, display or use a red auxiliary or emergency light.

(1) Emergency lights used on an ambulance, an emergency medical service vehicle, a fire department vehicle, a fire vehicle or a hazardous material response vehicle must emit a red light or a combination of red and white light and may be equipped with one blue light mounted at the rear of the vehicle so that the light is visible to approaching traffic.

(2) The municipal officers or a municipal official designated by the municipal officers, with the approval of the fire chief, may authorize an active member of a municipal or volunteer fire department to use a flashing red signal light not more than 5 inches in diameter on a vehicle. The light may be displayed but may be used only while the member is en route to or at the scene of a fire or other emergency. The light must be mounted as near as practicable above the registration plate on the front of the vehicle or on the dashboard. A light mounted on the dashboard must be shielded so that the emitted light does not interfere with the operator's vision.

(3) Members of an emergency medical service licensed by Maine Emergency Medical Services may display and use on a vehicle a flashing red signal light of the same proportion, in the same location and under the same conditions as those permitted municipal and volunteer firefighters, when authorized by the chief official of the emergency medical service.

ERRORS BILL §: SUPP-10

LAW AMENDED: 30-A MRSA §371-B, sub-§4

Prepared by: MJR

Date: 5/12/03

File name: G:\COMMITTEES\JUD\ERRORS 2003\Supp - 10.DOC (5/12/03 6:51 PM)

Has the error already been fixed in another bill? NO

Has section been amended/repealed in another bill? NO

General Subject: Qualifications for sheriffs

Type of correction (conflict, reference, other): effective date

Category: (technical, substantive) S?

Is a further amendment needed? NO
(If so, explain below)

EXPLANATION

PL 1997, c. 37 was enacted during the First Regular Session of the 118th Legislature. It enacted 30-A §371-B that established minimum qualifications for sheriffs, and provided that any person is was serving (or had served) as sheriff as of the effective date of the section was deemed to have met the minimum qualifications. The Legislature adjourned the First regular Session on March 27, 1997, and c. 37, as a non-emergency, took effect June 26, 1997.

PL 1997, c. 87 was enacted during the First Special Session of the 118th Legislature. It dealt with filling a vacancy in the office of sheriff, and enacted the provisions as 30-A §371-B. The effective date of c. 87 was September 19, 1997.

PL 1997, c. 562, the Errors Bill that year, attempted to correct the conflict by repealing 30-A §371-B as enacted by PL 1997, c. 37 and c. 87, and replacing it with language incorporating both chapters. The fact that c.37 had a different effective date was overlooked. The Errors Bill was enacted as an emergency (in the First Special Session), effective June 25, 1997.

This Section of the Errors Bill establishes in statute the effective date of the “grandfathering” of current and former sheriffs from c. 37.

the hearing at their next regularly scheduled meeting; and

Whereas, if this change is effective immediately, it may allow some municipalities to hold public hearings and present zoning ordinance changes at their town meetings this spring; 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. 30-A MRSA §4352, sub-§8, as amended by PL 1991, c. 504, §1, is further amended to read:

8. Conditional and contract rezoning. A zoning ordinance may include provisions for conditional or contract zoning. All rezoning under this subsection must:

A. Be consistent with the local growth management program adopted under this chapter;

B. Establish rezoned areas that are consistent with the existing and permitted uses within the original zones; and

C. Only include conditions and restrictions that relate to the physical development or operation of the property.

The municipal reviewing authority shall conduct a public hearing before any property is rezoned under this subsection. Notice of this hearing must be posted in the municipal office at least 44 13 days before the public hearing. Notice must also be published at least 2 times in a newspaper having general circulation in the municipality. The date of the first publication must be at least 7 days before the hearing. Notice must also be sent to the owner or owners of the property to be rezoned and to the owners of all property abutting the property to be rezoned at the owners' last known addresses. This notice must contain a copy of the proposed conditions and restrictions with a map indicating the property to be rezoned.

Sec. 2. 30-A MRSA §4352, sub-§9, as repealed and replaced by PL 1993, c. 374, §3, is amended to read:

9. Notice; general requirements. Before adopting a new zoning ordinance or map or amending an existing zoning ordinance or map, including ordinances or amendments adopted under the laws

governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B, the municipal reviewing authority must post and publish notice of the public hearing required under subsection 1 in accordance with the following provisions.

A. The notice must be posted in the municipal office at least 44 13 days before the public hearing.

B. The notice must be published at least 2 times in a newspaper that complies with Title 1, section 601 and that has a general circulation in the municipality. The date of the first publication must be at least 44 12 days before the hearing and the date of the 2nd publication must be at least 7 days before the hearing. That notice must be written in plain English, understandable by the average citizen.

Sec. 3. 30-A MRSA §4352, sub-§10, ¶B, as enacted by PL 1993, c. 374, §4, is amended to read:

B. For each parcel within the municipality that is in or abutting the portion of the municipality affected by the proposed amendment, the notice must be mailed by first class mail at least 44 13 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. Notice is not required under this paragraph for any type of zoning ordinance adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B.

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

Effective March 28, 1997.

CHAPTER 37

H.P. 109 - L.D. 133

**An Act Regarding Qualifications for
the Office of Sheriff**

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

Sec. 1. 30-A MRSA §371-B is enacted to read:

§371-B. Selection; qualifications

1. Manner of election or appointment. Sheriffs are elected or appointed and hold their offices according to the Constitution of Maine. Their election must be conducted and determined as is provided for county commissioners. Sheriffs take office on the first day of January following their election.

2. Filling vacancies. Vacancies in the office of sheriff caused by death, resignation, removal from the county, permanent incapacity or any other reason must be filled as provided in the Constitution of Maine.

3. Minimum qualifications for officers. A person may not be appointed to the office of sheriff, be a candidate for election to the office of sheriff or serve as sheriff of any county in the State unless the candidate meets the following qualifications:

A. The candidate swears to or affirms the Law Enforcement Code of Ethics;

B. The candidate has never been convicted of a Class C or higher crime;

C. The candidate applies to the Secretary of State for a criminal background investigation; and

D. The candidate submits written certification from the Maine Criminal Justice Academy that the candidate has acquired the minimum college credits in required courses, training hours and years of experience, or combination thereof, to qualify for an executive certificate under academy standards.

4. Exception. Any person who is serving or who has previously served in the office of sheriff on the effective date of this section is deemed to meet the minimum qualifications of subsection 3.

See title page for effective date.

CHAPTER 38

S.P. 10 - L.D. 2

**An Act to Clarify Municipal Review
and Enforcement of Sludge
Spreading and Storage Permits**

Mandate preamble. This measure requires one or more local units of government to expand or

modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 30-A MRSA §4452, sub-§6, as enacted by PL 1991, c. 732, §4, is amended to read:

6. Septage and sludge permits issued by the Department of Environmental Protection. A municipality, after notifying the Department of Environmental Protection, may enforce the terms and conditions of a septage land disposal or storage site permit or a sludge land application or storage site permit issued by the Department of Environmental Protection pursuant to Title 38, chapter 13, subchapter 1.

Sec. 2. 38 MRSA §1305, sub-§8, as enacted by PL 1991, c. 732, §5, is amended to read:

8. Septage and sludge permits; municipal enforcement. Pursuant to Title 30-A, section 4452, subsection 6, a municipality, after notifying the department, may enforce the terms and conditions of a septage land disposal or storage site permit or a sludge land application or storage site permit issued by the department under this subchapter.

Sec. 3. 38 MRSA §1305, sub-§9 is enacted to read:

9. Coordination between municipality and department. Prior to approving an application for a sludge land application site or storage facility, the department shall consult with the municipal officers or their designees in the municipality in which the site or facility is proposed and provide them with an opportunity to suggest conditions to be imposed on a permit or license. If the department does not impose conditions on a permit or license that have been suggested in writing by the municipal officers, the department shall provide a written explanation to the municipal officers.

Sec. 4. 38 MRSA §1305, as amended by PL 1991, c. 732, §5, is further amended by adding at the end a new paragraph to read:

For purposes of this section, the term "sludge" includes municipal, commercial or industrial wastewater treatment plant sludge.

See title page for effective date.

(1) ~~The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of the facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older persons;~~

(2) That at least 80% of the dwellings are occupied by at least one person 55 years of age or older per unit; and

(3) The publication of, and adherence to, policies and procedures ~~which that~~ demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

See title page for effective date.

CHAPTER 86

H.P. 271 - L.D. 335

An Act to Prohibit Certain Activities by Insurance Adjusters

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

Sec. 1. 24-A MRSA §1858 is enacted to read:

§1858. Activities of insurance adjusters

The following requirements govern the activities of insurance adjusters.

1. Solicitation. An adjuster may not solicit or offer an adjustment services contract to any person not insured by the insurer for which the adjuster is providing services for at least 36 hours after an accident or occurrence as a result of which the person might have a potential claim.

2. Contract provision. Any adjustment services contract between an adjuster and any person not insured by the insurer for which the adjuster is providing services must contain a provision, prominently printed on the first page of the contract, stating that the person contracting with the adjuster has the option to rescind the contract within 2 business days after the contract is signed.

Sec. 2. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1997-98 1998-99

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF

Bureau of Insurance

Positions - Legislative Count	(0.500)	(0.500)
Personal Services	\$6,300	\$8,825
All Other	3,750	5,000
Capital Expenditures	3,000	

Allocates funds for one part-time Market Conduct Examiner and related costs of enforcing certain prohibitions pertaining to insurance adjusters.

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

TOTAL	\$13,050	\$13,825
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See title page for effective date.

CHAPTER 87

S.P. 33 - L.D. 31

An Act to Require That a Vacancy in the Office of Sheriff Be Filled by an Appointee from the Same Political Party

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

Sec. 1. 30-A MRSA §371-B is enacted to read:

§371-B. Vacancies

In the case of a vacancy in the term of a sheriff who was nominated by primary election before the general election, the sheriff appointed by the Governor to fill the vacancy until a successor is chosen at election must be enrolled in the same political party as the sheriff whose term is vacant. In making the appointment, the Governor shall choose from any recommendations submitted to the Governor by the county committee of the political party from which the appointment is made.

See title page for effective date.

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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

J.S. McCarthy Company
Augusta, Maine
1997

Notwithstanding any other provision of law, all meetings, hearings or sessions of the commission shall be open to the general public unless, by an affirmative vote of at least 6 3 members, the commission requires the exclusion of the public.

Sec. D-2. 12 MRSA §7035, sub-§11-B, as amended by PL 1997, c. 432, §5, is further amended to read:

11-B. Free fishing days. The Saturday and Sunday of Father's Day weekend and the Saturday and Sunday immediately preceding President's Day are free fishing days. Notwithstanding sections 7151 and 7371, it is lawful during any free fishing day established under this subsection for any person to fish without a license in inland waters, except that this subsection does not apply to any person whose license to fish is under suspension or revocation. All other provisions of chapters 701 to 721 relating to fishing apply during any free fishing day.

Sec. D-3. 22 MRSA §1555-B, sub-§5, as enacted by PL 1997, c. 305, §5, is amended to read:

5. Possession and use of cigarettes, cigarette papers or tobacco products; use of false identification by minors prohibited. A person under 18 years of age may not purchase, possess or use cigarettes, cigarette paper or any tobacco product or offer false identification in an attempt to purchase any tobacco products or to purchase, possess or use cigarettes, cigarette paper or any other tobacco product.

Sec. D-4. 22 MRSA §1556-A, sub-§2, as amended by PL 1997, c. 305, §6, is further amended to read:

2. Enforcement; jurisdiction. Enforcement of criminal offenses may be carried out by written summons pursuant to Title 17-A filed in the District Court. Enforcement of civil violations set forth in section 1555-B, subsection 2 may be carried out by complaint filed in Administrative Court or District Court. All other civil violations under this chapter involving licenses issued pursuant to section 1551-A are within the jurisdiction of the Administrative Court pursuant to section 1557, subsection 1.

Sec. D-5. 24-A MRSA §6804, sub-§1, as enacted by PL 1997, c. 430, §1 and affected by §2, is amended to read:

1. Superintendent's authority. The superintendent may deny, suspend, revoke or refuse to renew the license of a viatical settlement provider if the superintendent finds just cause to do so, which may include, but is not limited to, a finding that:

A. There was any material misrepresentation in the application for the license or other information submitted to the superintendent;

B. The licensee or any officer, partner or key management personnel of the licensee has been convicted of fraudulent or dishonest practices, is subject to a final administrative action to suspend or revoke a viatical license or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider or viatical settlement broker;

C. The licensee as a viatical settlement provider demonstrates unreasonable payments to viators;

D. The licensee or any officer, partner or key management personnel of the licensee has been convicted of any felony of which criminal fraud is an element; or

E. The licensee has violated any of the provisions of this chapter or any rules adopted pursuant to this chapter.

Sec. D-6. 30-A MRSA §371-B, as enacted by PL 1997, c. 37, §1 and c. 87, §1, is repealed and the following enacted in its place:

§371-B. Selection; qualifications

1. Manner of election or appointment. Sheriffs are elected or appointed and hold their offices according to the Constitution of Maine. Their election must be conducted and determined as is provided for county commissioners. Sheriffs take office on the first day of January following their election.

2. Filling vacancies. Vacancies in the office of sheriff caused by death, resignation, removal from the county, permanent incapacity or any other reason must be filled as provided in the Constitution of Maine. In the case of a vacancy in the term of a sheriff who was nominated by primary election before the general election the sheriff appointed by the Governor to fill the vacancy until a successor is chosen at election must be enrolled in the same political party as the sheriff whose term is vacant. In making the appointment, the Governor shall choose from any recommendations submitted to the Governor by the county committee of the political party from which the appointment is made.

3. Minimum qualifications for officers. A person may not be appointed to the office of sheriff, be a candidate for election to the office of sheriff or serve as sheriff of any county in the State unless the candidate meets the following qualifications:

A. The candidate swears to or affirms the Law Enforcement Code of Ethics;

B. The candidate has never been convicted of a Class C or higher crime;

C. The candidate applies to the Secretary of State for a criminal background investigation; and

D. The candidate submits written certification from the Maine Criminal Justice Academy that the candidate has acquired the minimum college credits in required courses, training hours and years of experience, or combination thereof, to qualify for an executive certificate under academy standards.

4. Exception. Any person who is serving or who has previously served in the office of sheriff on the effective date of this section is deemed to meet the minimum qualifications of subsection 3.

Sec. D-7. PL 1997, c. 347, §1 is repealed.

Sec. D-8. PL 1997, c. 554, §2, sub-§8 is amended to read:

8. Report. The task force shall prepare and submit a report, including any necessary implementing legislation, to the Governor, the Chief Justice of the Supreme Judicial Court, the Executive Director of the Legislative Council and the Joint Standing Committee on State and Local Government by January 1, 1998 to be submitted to the First Second Regular Session of the 119th 118th Legislature.

Sec. D-9. Resolve 1997, c. 74, §2, sub-§5 is amended to read:

5. Two representatives of the Maine School Management Superintendents' Association, one of whom is a member of the ~~cooperative board~~ superintendents' advisory committee of an applied technology region and one who oversees an applied technology center, appointed by the President of the Maine School Management Superintendents' Association;

Sec. D-10. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 24-A, section 6804, subsection 1 takes effect October 1, 1997.

Sec. D-11. Effective date. Except as otherwise provided, this Part takes effect 90 days after adjournment of the First Special Session of the 118th Legislature.

PART E

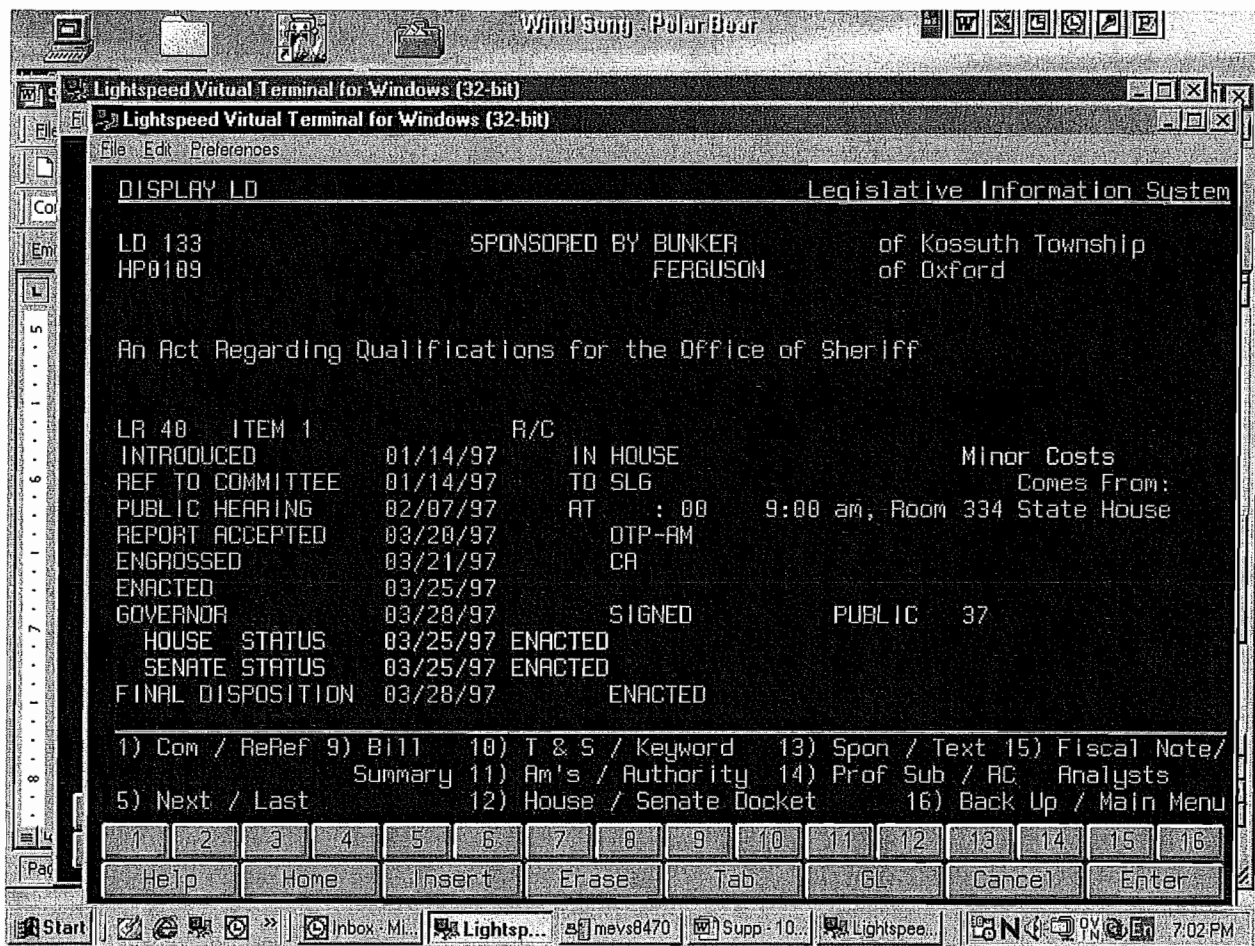
Sec. E-1. 20-A MRSA §8207, as enacted by PL 1995, c. 485, §4, is amended to read:

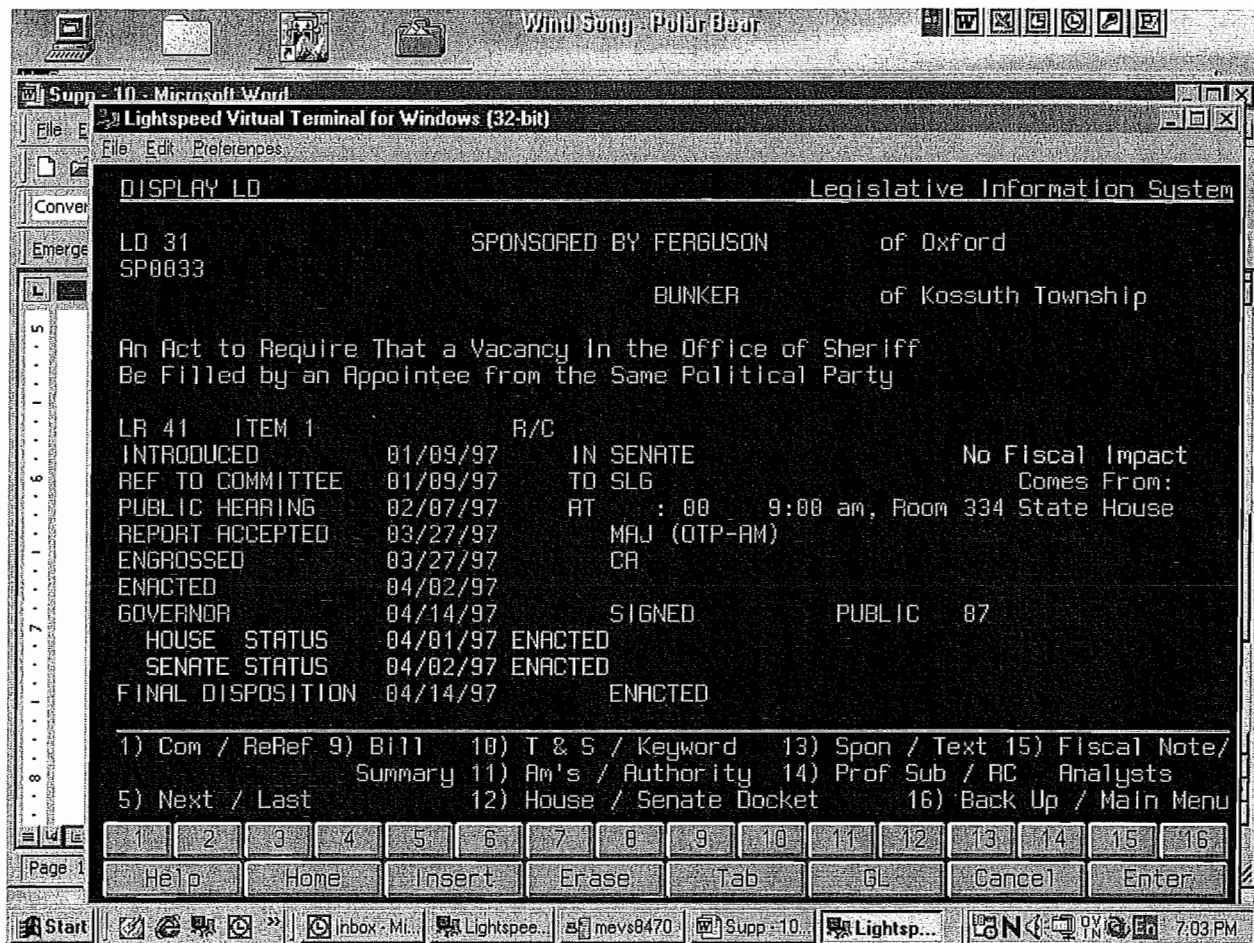
§8207. Financing authority

The board of trustees may borrow funds, issue bonds and negotiate notes and other evidences of indebtedness or obligations of the school for renovation and construction purposes to pay for costs as defined in Title 22, section 2053, subsection 3 and may issue temporary notes and renewal notes to pay for those costs. Bonds, notes or other evidences of indebtedness or obligations of the school are legal obligations of the school payable solely from its revenues and other sources of funds, including funds obtained pursuant to Title 22, section 2053, subsection 4-B, paragraph B, and do not constitute a debt or liability and those bonds and notes are not includable in any debt limitation of the State or any municipality or political subdivision of the State. The board of trustees has the discretion to fix the date, maturities, denomination, interest rate, place of payment, form and other details of the bonds or notes of the school. Unless otherwise provided in the vote authorizing their issuance, bonds or notes of the school are signed by the treasurer and countersigned by the chair of the board of trustees. The aggregate principal amount of outstanding bonds, notes or other evidences of indebtedness of the school may not exceed \$3,000,000 at any one time, excluding temporary notes and renewal notes. The board of trustees may pledge or assign its revenues, including any funds that have been or may be appropriated to the school by the Town of Limestone, and the proceeds of those revenues as security toward its bonds, notes, other evidences of indebtedness or other obligations of the school. The proceeds of bonds, notes or other evidences of indebtedness may be invested in accordance with Title 30-A, sections 5706 and 5712. Bonds, notes and other evidences of indebtedness issued under this section are not debts of the State, nor a pledge of the credit of the State, but are payable solely from the funds of the school. The board of trustees may also borrow funds in anticipation of revenues for current operating expenses for a term not exceeding 13 months.

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

Effective June 25, 1997, unless otherwise indicated.





ERRORS BILL §: SUPP-11 & 12

LAW AMENDED: 36 MRSA §1811, last ¶

Prepared by: MJR

Date: 5/12/03

File name: G:\COMMITTEES\JUD\ERRORS 2003\Supp - 11&12.DOC (5/12/03 7:36 PM)

Has the error already been fixed in another bill? NO

Has section been amended/repealed in another bill? NO

General Subject: Tax on car rentals, leases

Type of correction (conflict, reference, other): conflict

Category: (technical, substantive) S

Is a further amendment needed? NO
(If so, explain below)

EXPLANATION

PL 1999, c. 401, §X-3 amended 36 MRSA §1811, last ¶ reduce the tax rate on car rentals and leases from 6% to 5%. Section X-5 made the change effective July 1, 2000.

Also in 1999, PL 1999, c. 414 amended the same paragraph and set the sales tax at 5½%, effective June 5, 1999.

These sections are in substantive conflict.

Section Supp-11 of the Errors Bill repeals 36 MRSA §1811, last ¶ and replaces it with the 5% (PL 1999, c. 401) version. Section Supp-12 makes the change effective retroactively to July 1, 2000.

Sec. ?. 36 MRSA §1811, last ¶, as amended by PL 1999, c. 401, Pt. x, §3 and affected by §5 and amended by c. 414, §23, is repealed and the following enacted in its place:

Rental or lease of an automobile for one year or more must be taxed at the time of the lease or rental transaction at 5% of the following: the total monthly lease payment multiplied by the number of payments in the lease or rental, the amount of equity involved in any trade-in and the value of any cash down payment. Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee.

Sec. 7. Retroactivity. That section of this Act that repeals and replaces the Maine Revised Statutes, Title 36, section 1811, last paragraph applies retroactively to July 1, 2000.

SUMMARY

Section 7 resolves a conflict created by Public Law 1999, chapters 401 and 414, which both amended the same provision of law. Public Law 1999, chapter 401 provided a 5% tax rate for the rental or lease of an automobile and had an effective date of July 1, 2000. Public law 1999, chapter 414 provided a 5 1/2% tax rate for the rental or lease of an automobile. This section resolves the conflict by repealing the provision of law and replacing it with the Public Law 1999, chapter 401, Part X, section 3 version. Section 7 makes that provision retroactive to July 1, 2000.

Reinsch, Margaret

From: Jones, Julie
Sent: Tuesday, May 13, 2003 9:14 AM
To: Reinsch, Margaret
Subject: RE: 36 MRSA 1811, last para

PL 1999, c. 414, Sec. 23 (the BRS "Technical Changes" bill) changed the rate in section 1811 from 6% to 5 1/2% to reflect the automatic rate reduction that had been accomplished in October of 1998 by former 3rd, 4th and 5th paragraphs of section 1811 which were repealed by PL 1999, c. 401, Sec. X-2. PL1999, c. 401, Sec. X-1 (there should be a movie "The X-Sections") legislatively further reduced the rate to 5%.

(But if you'd like to change it back to 5.5%, there are some members of my Committee who would approve.)
Want me to fill out a Errors bill form, submit copies etc. or something? I think there will be time for that.

-----Original Message-----

From: Reinsch, Margaret
Sent: Monday, May 12, 2003 7:38 PM
To: Jones, Julie
Subject: 36 MRSA 1811, last para

Julie -

Why is 5%, rather than 5.5%, the resolution?

Margaret J. Reinsch, Esq.
Office of Policy and Legal Analysis
Maine State Legislature
215 Cross State Office Building
13 State House Station
Augusta, Maine 04333
(207) 287-1670
(207) 287-1275 fax
(207) 287-1673 direct and voice-mail
(207) 287-1790 TTY
NOTE NEW E-MAIL ADDRESS: margaret.reinsch@legislature.maine.gov

Eff June 4, 1999 - but see EX-5

CHAPTER 401

H.P. 454 - L.D. 617

An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2000 and June 30, 2001

Preamble. The Constitution of Maine, Article Part First, Section 8 provides that certain statutes relating to confirmation procedures for senatorial nominees require a 2/3 vote of the members of each House present and voting.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 90-day period may not terminate after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses in connection with the operation of state departments and institutions will become due and payable immediately on July 1, 1999; and

Whereas, in the judgment of the Legislature, the 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,

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

PART A

Sec. A-1. Supplemental appropriations from the General Fund. There are appropriated from the General Fund for the fiscal years ending June 30, 2000 and June 30, 2001 to the departments listed the following sums.

	1999-00	2000-01
ADMINISTRATIVE AND SPECIAL SERVICES, DEPARTMENT OF		
Department of Accounts and Control		
Positions - Legislative Count	(-3,000)	(-3,000)
Personal Services	(\$154,467)	(\$163,995)
Provides for the deappropriation of funds		

through the transfer of 2 Programmer Analyst positions and one Senior Programmer Analyst position to the Information Services program. This deappropriation is to be offset by an appropriation to the Bureau of Accounts and Control System Project program in order to pay the Bureau of Information Services for the support of the central administrative system.

Bureau of Accounts and Control System Project

All Other	154,467	163,995
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Provides for the appropriation of funds to be used for the payment of data processing charges related to the support of the central administrative system. This appropriation will be offset by a deappropriation of funds in the Bureau of Accounts and Control account through the transfer of 3 positions to the Information Services program.

Buildings and Grounds Operations

All Other	670,000	693,375
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Provides for the appropriation of funds for the maintenance of the East Campus.

Capital Construction - Repairs Improve - Renovate State Facilities

All Other	1,038,662	1,779,852
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Provides for the appropriation of funds for the costs of temporary relocations and moves associated with the reconstruction of the State House and the Tyson, Marquardt and State Office Buildings as well

Touch - use this version - see page next

prepared food sold in establishments that are licensed for on-premises consumption of liquor pursuant to Title 28-A, chapter 43; and 6% 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided.

Sec. X-2. 36 MRSA §1811, 3rd, 4th and 5th ¶¶, as enacted by PL 1993, c. 410, Pt. KKKK, §1, are repealed.

Sec. X-3. 36 MRSA §1811, last ¶, as amended by PL 1995, c. 281, §19, and affected by §42, is further amended to read:

Rental or lease of an automobile for one year or more must be taxed at the time of the lease or rental transaction at 6% 5% of the following: the total monthly lease payment multiplied by the number of payments in the lease or rental, the amount of equity involved in any trade-in and the value of any cash down payment. Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee.

Sec. X-4. 36 MRSA §1812, sub-§1, ¶A-1 is enacted to read:

A-1. If the tax rate is 5%:

<u>Amount of Sale Price</u>	<u>Amount of Tax</u>
<u>\$0.01 to \$0.10, inclusive</u>	<u>0¢</u>
<u>.11 to .20, inclusive</u>	<u>1¢</u>
<u>.21 to .40, inclusive</u>	<u>2¢</u>
<u>.41 to .60, inclusive</u>	<u>3¢</u>
<u>.61 to .80, inclusive</u>	<u>4¢</u>
<u>.81 to 1.00, inclusive</u>	<u>5¢</u>

Sec. X-5. Effective dates. Those sections of this Part that amend the Maine Revised Statutes, Title 36, section 1811, first and last paragraphs, take effect July 1, 2000. That section of this Part that repeals Title 36, section 1811, 3rd, 4th and 5th paragraphs takes effect retroactively to May 15, 1999. In the event that any revenue has been transferred as of the effective date of this Act into the Maine Rainy Day Fund pursuant to Title 36, section 1811, 3rd and 4th paragraphs, that revenue must be transferred on or before December 31, 1999 back into the General Fund and the Local Government Fund as if the transfers to the Maine Rainy Day Fund had never occurred.

PART Y

Sec. Y-1. Legislative intent. It is the intent of the Legislature to increase the number of adoptions

and to reduce the waiting period for children in the State's custody. The Department of Human Services is directed to hire no fewer than 10 new adoption caseworkers from federal funds received due to the federal Adoption and Safe Families Act of 1997. Adoption Incentive Program. The positions established through this program are contingent on meeting the program eligibility requirement for these funds.

The Department of Human Services shall provide a report by November 30th of each year 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 human resources matters clearly informing the committees on the number of adoptions completed in the most recently completed fiscal year and the adoption services provided. The report must also include but is not limited to all relevant information regarding the status of adoptions of children in state custody. Attached to the report must be the Annual Progress and Services Report, APSR, or the Child and Family Services Plan, CFSP, on form SF-269 or successor reports and forms, filed with the federal Division of Formula, Entitlements and Block Grants, Administration for Children and Families in Washington, D.C. or their successor reports.

Sec. Y-2. Allocation. The following funds are allocated from the Federal Expenditures Fund for fiscal years ending June 30, 2000 and June 30, 2001 to carry out the purposes of this Part.

	1999-00	2000-01
HUMAN SERVICES, DEPARTMENT OF		
Bureau of Child and Family Services - Regional		
Positions - Legislative Count	(15,000)	(15,000)
Personal Services	\$524,655	\$546,167

Provides for the allocation of funds to establish 15 Human Services Adoption Caseworker Positions to expand the capacity of the Department of Human Services to complete more adoptions and to reduce the time a child waits to be placed with an adoptive family.

PART Z

Sec. Z-1. 5 MRSA §1513, sub-§§1-M, 1-N and 1-O are enacted to read:

provide coverage and payment under those contracts to a registered nurse first assistant who performs services that are within the scope of a registered nurse first assistant's qualifications. The provisions of this subsection apply only if reimbursement for an assisting physician would be covered and a registered nurse first assistant who performed those services is used as a substitute.

4. Limits; coinsurance; deductibles. Any contract that provides coverage for the services required by this section may contain provisions for maximum benefits and coinsurance and reasonable limitations, deductibles and exclusions to the extent that these provisions are not inconsistent with the requirements of this section.

Sec. 5. Application. The requirements of this Act apply to all policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 2000. For purposes of this Act, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

See title page for effective date.

CHAPTER 413

H.P. 274 - L.D. 382

An Act to Require a Person Who is Suspected of Being the Underlying Cause of a Liquor Violation to Provide Identification to a Law Enforcement Officer

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

Sec. 1. 15 MRSA §3103, sub-§1, ¶C, as amended by PL 1987, c. 45, Pt. B, §3, is further amended to read:

C. Offenses involving intoxicating liquor, as provided in Title 28-A, section 2051 and offenses involving refusal to provide proper identification as provided in Title 28-A, section 2087;

Sec. 2. 28-A MRSA §2087 is enacted to read:

§2087. Refusal to provide proper identification

1. Refusal to provide proper identification prohibited. A person may not intentionally refuse to provide a law enforcement officer proper identification if:

A. The person is present on licensed premises at a time when minors are not permitted to be on the premises;

B. The officer has a reasonable and articulable suspicion that a violation of law has taken place or is taking place because a minor is present on licensed premises;

C. The officer has a reasonable and articulable suspicion that the person is a minor; and

D. The officer has informed the person that the officer is investigating a possible liquor violation involving the presence of minors on the licensed premises and that the officer believes that the person is a minor.

For purposes of this section, "proper identification" means a person's correct name, address and date of birth except that, if a person has in the person's possession an identification card issued under Title 29-A, section 1410, or a motor vehicle operator's license bearing the photograph of the operator and issued under Title 29-A, chapter 11, proper identification means that identification card or motor vehicle operator's license.

2. Penalties. A violation of this section is a civil violation for which a forfeiture of not more than \$500 may be adjudged.

See title page for effective date.

CHAPTER 414

S.P. 440 - L.D. 1277

An Act Concerning Technical Changes to the Tax Laws

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a delay in making technical changes to the tax laws would interfere with administration of those laws; and

Whereas, legislative action is immediately necessary in order to ensure continued and efficient administration of the tax laws; 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,

Effective June 5, 1999

Sec. 20. 36 MRSA §1760, sub-§9-D, as amended by PL 1991, c. 591, Pt. N, §1 and affected by §2, is further amended to read:

9-D. Fuel and electricity used at a manufacturing facility. Ninety-five percent of the sale price of all fuel and electricity purchased for use at a manufacturing facility. ~~The sales or use tax rate applicable to 95% of the sale price of such fuel and electricity must be progressively reduced to 0 according to the following schedule: For purposes of this subsection, "sale price" includes, in the case of electricity, any charge for transmission and distribution.~~

Date of purchase	Sales or use tax rate
July 1, 1987, to June 30, 1988	4%
July 1, 1988, to June 30, 1989	3%
July 1, 1989, to June 30, 1991	2%
July 1, 1991, to June 30, 1993	1%
July 1, 1993, and thereafter	0%

~~Each year prior to the effective date of the next reduction, after the reduction beginning July 1, 1987, the joint standing committee of the Legislature having jurisdiction over taxation shall review the effect of this subsection and report to the Legislature.~~

Sec. 21. 36 MRSA §1760, sub-§61, as enacted by PL 1987, c. 769, Pt. A, §154, is amended to read:

61. Construction contracts with exempt organizations. Sales of tangible personal property, to a construction contractor, ~~which that~~ are to be physically incorporated in, and become a permanent part of, real property for sale to any organization or government agency provided exemption under this section, except as otherwise provided. ~~In order to qualify for this exemption, the contractor must have entered into a construction contract with the exempt organization prior to the purchase of the tangible personal property.~~

Sec. 22. 36 MRSA §1760, sub-§80 is enacted to read:

80. Sales of property delivered outside this State. Sales of tangible personal property when the seller delivers the property to a location outside this State or to the United States Postal Service, a common carrier or a contract carrier hired by the seller for delivery to a location outside this State, regardless of whether the property is purchased F.O.B. shipping point or other point in this State and regardless of whether passage of title occurs in this State.

Sec. 23. 36 MRSA §1811, last ¶, as amended by PL 1995, c. 281, §19 and affected by §42, is further amended to read:

Rental or lease of an automobile for one year or more must be taxed at the time of the lease or rental transaction at 6% ~~5 1/2%~~ of the following: the total monthly lease payment multiplied by the number of payments in the lease or rental, the amount of equity involved in any trade-in and the value of any cash down payment. Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee.

Sec. 24. 36 MRSA §1812, sub-§1, ¶A, as repealed and replaced by PL 1991, c. 591, Pt. XX, §3 and affected by §7 and 8, is repealed.

Sec. 25. 36 MRSA §1812, sub-§1, ¶A-1 is enacted to read:

A-1. If the tax rate is 5 1/2%:

Amount of Sale Price	Amount of Tax
\$0.01 to \$0.09, inclusive	0¢
.10 to .18, inclusive	1¢
.19 to .36, inclusive	2¢
.37 to .54, inclusive	3¢
.55 to .72, inclusive	4¢
.73 to .90, inclusive	5¢
.91 to 1.09, inclusive	6¢
1.10 to 1.27, inclusive	7¢
1.28 to 1.45, inclusive	8¢
1.46 to 1.63, inclusive	9¢
1.64 to 1.81, inclusive	10¢
1.82 to 2.00, inclusive	11¢

Sec. 26. 36 MRSA §2521-A, 3rd ¶, as amended by PL 1997, c. 435, §5, is further amended to read:

Insurance companies, captive insurance companies, associations or attorneys-in-fact of a reciprocal insurer with annual tax liability not exceeding \$500 may with approval of the State Tax Assessor file an annual return with payment on the last day of January each year or before March 15th covering the prior calendar year.

Sec. 27. 36 MRSA §3203, sub-§§5 and 6, as enacted by PL 1997, c. 738, §10, are amended to read:

5. Allowance for certain losses of undyed diesel fuel. An allowance of not more than 1/4 of 1% from the amount of undyed diesel fuel received by the distributor a supplier, plus 1/4 of 1% on all transfers in vessels, tank cars or full tank truck loads by a distributor the supplier in the regular course of business from one of the distributor's supplier's places of business to another of the distributor's supplier's places of business within the State, may be allowed by the assessor to cover the loss through shrinkage, evaporation or handling sustained by the distributor

Suzanne

From: Bauer, David E.
Sent: Monday, August 05, 2002 10:40 AM
To: Gresser, Suzanne
Subject: Conflict question

Greetings, Suzanne, I hope this finds you well. Title 36 section 1811, last paragraph has two conflicting versions. Am I correct in assuming that the Revisor's Office will deal with this problem so that we don't need to worry about it? Obviously the correct version is the one with the 5% tax rate. Thanks. David

REVISOR OF STATUTES
2002 AUG 26 AM 9: 24

*63819 36 M.R.S.A. § 1811

MAINE REVISED STATUTES ANNOTATED
TITLE 36. TAXATION
PART 3. SALES AND USE TAX
CHAPTER 213. SALES TAX

Current through 2001 2nd Reg. Sess. of 120th Legislature

§ 1811. Sales tax

A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43 [FN1]; 7% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile; 7% on the value of prepared food; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided.

The tax imposed upon the sale and distribution of gas, water or electricity, or telecommunications services, by any public utility, the rates for which sale and distribution are established by the Public Utilities Commission, must be added to the rates so established. No tax may be imposed upon the sale or use of electrical energy, or water stored for the purpose of generating electricity, when the sale is to or by a wholly owned subsidiary by or to its parent corporation, except for electrical energy or water purchased for resale to or by such wholly owned subsidiary.

< Text of last par. as amended by Laws 1999, c. 414, § 23,
 eff. June 5, 1999. >

Rental or lease of an automobile for one year or more must be taxed at the time of the lease or rental transaction at 5 1/2% of the following: the total monthly lease payment multiplied by the number of payments in the lease or rental, the amount of equity involved in any trade-in and the value of any cash down payment. Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee.

< Text of last paragraph as amended by Laws 1999, c. 401,
 § X-3, eff. July 1, 2000 >

Rental or lease of an automobile for one year or more must be taxed at the time of the lease or rental transaction at 5% of the following: the total monthly lease payment multiplied by the number of payments in the lease or rental, the amount of equity involved in any trade-in and the value of any cash down payment. Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee.

CREDIT(S)**1990 Main Volume**

R.S.1954, c. 17, § 3; 1957, c. 402, § 1; 1959, c. 350, § 7; 1961, c. 227, § 7; 1963, c. 360, § 1; 1965, c. 362, § 6, eff. May 28, 1965; 1967, c. 71; 1967, c. 191 (P. & S.L.), § D, 1, eff. Nov. 1, 1967; 1967, c. 544, §§ 92, 112; 1969, c. 295, § 2, eff. June 1,

1969; 1973, c. 766, § 2; 1977, c. 198, § 6, eff. May 20, 1977; 1983, c. 859, § M, 7, eff. Dec. 15, 1984; 1985, c. 783, § 5; 1987, c. 497, § 40; 1989, c. 533, § 10, eff. Aug. 1, 1989; 1989, c. 588, § B, 2, eff. Dec. 1, 1989; 1989, c. 871, § 16, eff. April 19, 1990.

2002 Electronic Pocket Part Update

1991, c. 528, §§ XX-1, XX-2, RRR; 1991, c. 591, §§ XX-1, XX-2, XX-8; 1993, c. 410, §§ LLL-1, LLL-4, eff. July 1, 1993; 1993, c. 410, § KKKK-1, eff. June 30, 1993; 1993, c. 471, § 3, eff. July 13, 1993; 1993, c. 701, § 6, eff. Aug. 1, 1994; 1993, c. 701, § 7, eff. Jan. 1, 1995; 1995, c. 5, § F-1, eff. Feb. 17, 1995; 1995, c. 281, §§ 18, 19; 1999, c. 401, §§ X-1 to X-3, eff. June 4, 1999; 1999, c. 414, § 23, eff. June 5, 1999; 1999, c. 488, § 11; 2001, c. 439, § TTTT-2.

[FN1] 28-A M.R.S.A. § 1051 et seq.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1991 Legislation

Laws 1991, c. 528, §§ XX-1, XX-2, approved July 8, 1991, made changes to this section which were repealed by Laws 1991, c. 528, § RRR, eff. July 11, 1991. Laws 1991, c. 591, does not refer to Laws 1991, c. 528, but effects changes virtually identical to those made by Laws 1991, c. 528. For an understanding of the changes made temporarily by Laws 1991, c. 528, §§ XX-1, XX-2, see the note below concerning Laws 1991, c. 591, §§ XX-1, XX-2.

***63820** Laws 1991, c. 591, § XX-1, in the first par. decreased the rate of tax on liquor sold in licensed establishments from 10% to 7%, imposed a tax of 7% on the value of prepared food sold in establishments that are licensed for on-premises consumption of liquor pursuant to chapter 43 of title 28-A, and increased the tax on the value of all other tangible property and personal services from 5% to 6%.

Laws 1991, c. 591, § XX-2, in the first par., reduced the tax on the value of all other tangible personal property and taxable services from 6% to 5%.

Laws 1991, c. 591, § XX-7, as amended by Laws 1993, c. 410, § LLL-3, eff. July 1, 1993, provides:

"Sections 1, 3 and 5 of this Part take effect August 1, 1991."

1993 Legislation

Laws 1993, c. 410, § LLL-1, repealed the first par., as amended by Laws 1991, c. 591, § XX-2, which was to take effect July 1, 1993, and which related to imposition of a tax on the value of all tangible personal property and taxable services sold at retail in this state.

Laws 1993, c. 410, § LLL-4, repealed Laws 1991, c. 591, § XX-8, which provided for the repeal of Laws 1991, c. 591, § XX-1 on July 1, 1993.

Laws 1993, c. 410, § KKKK-1, added three pars. at the end of the section, bringing the total number of pars. to 5, which pars. related to the budget officer's presentation of a final estimate and transfer of an equivalent amount for each month following a fiscal year during which revenues exceed those of the previous fiscal year by 8% or more.

Laws 1993, c. 471, § 3, without reference to the pars. added by Laws 1993, c. 410, § KKKK-1, added a 6th par. to the end which provided that between July 1, 1993, and June 30, 1995, the assessor must transfer each month to the Tourism Marketing and Development Fund all receipts of taxes imposed under this section.

Laws 1993, c. 471, § 4, as amended by Laws 1995, c. 368, § K-6, eff. June 29, 1995, formerly set out as a Transition note, which related to the disposition of balances remaining in the Tourism Marketing and Development Fund on July 30, 1997, was repealed by Laws 1995, c. 665, § I-1, eff. April 11, 1996.

***63821** Laws 1993, c. 701, § 6, in the first par., increased to 10% from 7%, the tax rate on the value of rental for a period of less than one year of an automobile.

Laws 1993, c. 701, § 7, added the last par., relating to time and rate of taxation on the rental or lease of an automobile for more than one year.

The 6th par., which mandated certain transfers each month by the State Tax Assessor to the Tourism Marketing and Development Fund for the period beginning July 1, 1993, and ending June 30, 1995, was repealed July 1, 1995, pursuant to its terms. Prior to repeal, the 6th par. was amended by Laws 1995, c. 5, § F-1, and Laws 1995, c. 281, § 18, to read as follows:

"For the period beginning July 1, 1993 and ending June 30, 1995, the State Tax Assessor shall transfer each month to the Tourism Marketing and Development Fund all receipts of taxes imposed pursuant to this section on the value of liquor sold in licensed establishments, as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43, on the value of rental of living quarters in any hotel, rooming house, tourist or trailer camp and rental for a period of less than one year of an automobile and on the value of food products served on the premises of retailers that are primarily engaged in the restaurant business, less transfers pursuant to Title 30-A, section 5681, subsection 5, in excess of the base General Fund revenue estimates effective July 1, 1993 for the previous month. The State Tax Assessor shall reduce any subsequent transfers to the Tourism Marketing and Development Fund by an amount equal to the amount of General Fund revenues defined in this paragraph that are below the base General Fund estimates effective July 1, 1993 for the previous month. This paragraph is repealed July 1, 1995."

1995 Legislation

Laws 1995, c. 5, § F-1, in the 6th par., substituted "as defined in section 1752, subsection 8-A" for "that are licensed for on premises consumption of liquor pursuant to Title 28-A, chapter 43".

Laws 1995, c. 5, § F-2, provides:

"That section of this Part that amends the Maine Revised Statutes, Title 36, section 1811, 6th paragraph applies retroactively to July 1, 1994."

Laws 1995, c. 281, § 18, in the 6th par., substituted "food products served on the premises of retailers that are primarily engaged in the restaurant business" for "prepared food sold in establishments as defined in section 1752, subsection 8-A".

***63822** Laws 1995, c. 281, § 19, in the last par., relating to rental or lease of an automobile for one year or more, substituted a term of "one year or more" for prior term of "more than one year" and made person negotiating the lease transaction responsible for collection and remittance of the tax.

Laws 1995, c. 281, § 42, provides:

"Those sections of this Act that affect the Maine Revised Statutes, Title 36, sections 1752 and 1811 are effective retroactively to January 1, 1995."


1999 Legislation

Laws 1999, c. 401, § X-1, in the first paragraph, in the first sentence, substituted "6%" for "5%".

Laws 1999, c. 401, § X-2, repealed the third to fifth paragraphs, which prior thereto read:

"On or before May 15th of each year, the State Budget Officer shall present a final estimate of General Fund revenues for the current fiscal year, taking into consideration an estimate of the Revenue Forecasting Committee. If estimated General Fund revenues for the current fiscal year exceed those of the prior fiscal year by 8% or more, on a base-to-base comparison excluding one-time revenue gains and losses, revenue in an amount equivalent to that generated by 0.5% of the tax on the sale of personal property and taxable services taxed at a rate of 6% on the effective date of this paragraph must be transferred by the State Controller to the Maine Rainy Day Fund as described in this section.

"Each month following a fiscal year during which General Fund revenues exceed those of the previous fiscal year by 8% or more, on a base-to-base comparison excluding one-time revenue gains and losses, the State Controller shall transfer an amount equivalent to that generated over the preceding month by 0.5% of the tax on the sale of personal property and taxable services taxed at a rate of 6% of the effective date of this paragraph to the Maine Rainy Day Fund until such time as the tax imposed by this chapter is reduced.

 "If General Fund revenues for any fiscal year, as determined by the State Controller at the close of the fiscal year following the end of that fiscal year, exceed those of the previous fiscal year by 8% or more, on a base-to-base comparison excluding one-time revenue gains and losses, the tax on the sale of those tangible personal property and taxable services taxed at a rate of 6% on the

* effective date of this paragraph shall fall by 0.5% on the subsequent October 1st, unless the Legislature takes action to prevent the reduction."

*63823 Laws 1999, c. 401, § X-3, in the last paragraph, substituted "5%" for "6%".

Laws 1999, c. 401, § X-5, provides:

"Effective dates. Those sections of this Part that amend the Maine Revised Statutes, Title 36, section 1811, first and last paragraphs, take effect July 1, 2000. That section of this Part that repeals Title 36, section 1811, 3rd, 4th and 5th paragraphs takes effect retroactively to May 15, 1999. In the event that any revenue has been transferred as of the effective date of this Act into the Maine Rainy Day Fund pursuant to Title 36, section 1811, 3rd and 4th paragraphs, that revenue must be transferred on or before December 31, 1999 back into the General Fund and the Local Government Fund as if the transfers to the Maine Rainy Day Fund had never occurred."

Laws 1999, c. 414, § 23, in the last par., first sentence, substituted "5 1/2%" for "6%".

Laws 1999, c. 488, § 11, in the second par., in the first sentence, substituted "telecommunications services" for "telephone or telegraph service" and "must be" for "shall be"; and in the second sentence, substituted "may be" for "shall be".

2001 Legislation

Laws 2001, c. 439, § TTTT-2, in the first paragraph, deleted "sold in establishments that are licensed for on premises consumption of liquor pursuant to Title 28-A, chapter 43" following "prepared food"; and made other nonsubstantive changes.

Laws 2001, c. 439, § TTTT-3, provides:

"Sec. TTTT-3. Application. Those sections of this Part that repeal and replace the Maine Revised Statutes, Title 36, section 1752, subsection 8-A and amend Title 36, section 1811 apply to sales occurring on or after October 1, 2001."

Amendments

1965 Amendment. Laws 1965, c. 362, § 6, inserted "and telephone and telegraph service" and deleted "on and after July 1, 1963" following "State" in the first sentence of the first paragraph; and inserted "or telephone or telegraph service" in the first sentence of the second paragraph.

*63824 1967 Amendments. Laws 1967, c. 71, Laws 1967, c. 71, added the exception at the end of the second sentence of the second paragraph.

Laws 1967, c. 191 (P. & S.L.), § D, 1, subsequently repealed by Laws 1967, c. 544, § 112, increased the tax rate from 4% to 4 1/2% in the first sentence of the first paragraph.

Laws 1967, c. 544, §§ 92, 112, repealed Laws 1967 (P. & S.L.) c. 191, § D and replaced the tax rate increase from 4% to 4 1/2% without change, in the first sentence of the first paragraph.

1969 Amendment. Laws 1969, c. 295, § 2, increased the tax rate from 4 1/2% to 5% in the first sentence of the first paragraph.

1973 Amendment. Laws 1973, c. 766, § 2, repealed the former concluding paragraph which prior thereto read:

"No tax shall be imposed upon such property sold at retail for 10¢ or less, provided the retailer is primarily engaged in making such sales and keeps records satisfactory to the State Tax Assessor."

1977 Amendment. Laws 1977, c. 198, § 6, inserted "and the rental charged for automobiles rented on a short-term basis, other than a rental charged to a person engaged in the business of renting automobiles" in the first sentence of the first paragraph.

1983 Amendment. Laws 1983, c. 859, § M, 7, in first sentence of first paragraph, substituted ", on" for "and" following "property" and inserted "and on extended cable television service".

1985 Amendment. Laws 1985, c. 783, § 5, in the first sentence of the first paragraph, inserted "on retail sales", substituted a comma for "and" following "telegraph service", substituted ", and on fabrication services, and at the rate of 7% on the value of" for "sold at retail in this State, and upon", inserted a comma following "camps", and deleted a comma preceding "measured".

1987 Amendment. Laws 1987, c. 497, § 40, repealed and replaced the first paragraph, which prior thereto read:

"A tax is imposed on retail sales at the rate of 5% on the value of all tangible personal property, on telephone and telegraph service, on extended cable television service, and on fabrication services, and at the rate of 7% on the value of the rental charged for living quarters in hotels, rooming houses, tourist or trailer camps, and the rental charged for automobiles rented on a short-term basis, other than a rental charged to a person engaged in the business of renting automobiles measured by the sale price, except as in chapters 211 to 225 provided. Retailers shall pay such tax at the time and in the manner provided, and it shall be in addition to all other taxes."

*63825 1989 Amendments. Laws 1989, c. 533, § 10, in opening par., first sentence, inserted "on rental of video tapes and video equipment, and".

Laws 1989, c. 588, § B, 2, inserted "and at the rate of 10% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, in accordance with Title 28-A, chapter 43."

Laws 1989, c. 871, § 16, repealed and replaced the first par. to consolidate the effect of changes by Laws 1989, c. 533, § 10, and Laws 1989, c. 588, § 2.

Effective Dates

1977 Act. Laws 1977, c. 198, § 8, provided:

"This Act shall apply to automobiles purchased on or after the effective date of this Act."

1985 Act. Laws 1985, c. 819, § A, 48, eff. June 6, 1986, repealed the emergency clause of Laws 1985, c. 783, which, among other things, formerly provided that this section was amended eff. June 1, 1986.

REFERENCES

CROSS REFERENCES

Use tax on interim rental of property purchased for resale, see 36 M.R.S.A. § 1758.

Use tax on purchases subject to tax under this section, see 36 M.R.S.A. § 1861.

LAW REVIEW AND JOURNAL COMMENTARIES

Maine's proposed sales tax on attorneys' services: The tax man meets the constitution. Philip P. Houle, 10 U.Bridgeport L.Rev. 83 (1989).

The New Maine Sales Tax. 40 Me.B.Ass'n Proc. 137 (1951).

LIBRARY REFERENCES

American Digest System

Taxation ☞ 1201 et seq.

Encyclopedias

C.J.S. Taxation § 1231.

UNITED STATES SUPREME COURT

Challenge of sales tax, efficiency of remedy, see *Tully v. Griffin, Inc.*, 1976, 97 S.Ct. 219, 429 U.S. 68, 50 L.Ed.2d 227.

Income taxation, utility deposits as advance payments, complete dominion test, see *C.I.R. v. Indianapolis Power & Light Co.*, U.S.Ind.1990, 110 S.Ct. 589, 493 U.S. 203, 107 L.Ed.2d 591.

Interstate bus tickets, sales tax and apportionment, see *Oklahoma Tax Com'n v. Jefferson Lines, Inc.*, U.S.Minn.1995, 115 S.Ct. 1331, 514 U.S. 175, 131 L.Ed.2d 261, rehearing denied 115 S.Ct. 2018, 514 U.S. 1135, 131 L.Ed.2d 1016, on remand 57 F.3d 1461.

*63826 Sales tax imposed on carriers based upon percentage of gross income of business, see *Complete Auto Transit, Inc. v. Brady*, 1977, 97 S.Ct. 1076, 430 U.S. 274, 51 L.Ed.2d 326, rehearing denied 97 S.Ct. 1669, 430 U.S. 976, 52 L.Ed.2d 371.

State power to tax and regulate transactions and activities on Indian reservations, see *Washington v. Confederated Tribes of Colville Indian Reservation*, U.S.Wash.1980, 100 S.Ct. 2069, 447 U.S. 134, 65 L.Ed.2d 10, rehearing denied 101 S.Ct. 25, 448 U.S. 911, 65 L.Ed.2d 1172.

ANNOTATIONS

NOTES OF DECISIONS

Application of section 2

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1. Constitutionality

Statutes imposing standard Maine sales tax of five percent on retail sale of extended cable television services do not constitute a burden on communication or expression in violation of the First Amendment, nor do they violate the Commerce Clause. *Op.Atty.Gen. No. 85-26*, Nov. 26, 1985.

2. Application of section

There being nothing in the Constitution to prevent, and the law being clear, the sales tax law applies to sales made in Indian reservations. 1951-54 *Atty.Gen.Rep.* 202.

3. Scope of authority

Convenience of taxing authority does not control application of sales and use tax law, and is not the test for decision on tax liability. *Katz v. Johnson* (1966) Me., 220 A.2d 495.

State is without authority to tax sales beyond its territorial limits. *Hanbro, Inc. v. Johnson* (1962) Me., 158 Me. 180, 181 A.2d 249.

4. Rendition of services

Sales and use taxes do not apply if the article sold has no value to the purchaser except as a result of services rendered by the seller and the transfer of the article to the purchaser is an actual and necessary part of the service rendered. *Community Telecasting Service v. Johnson* (1966) Me., 220 A.2d 500.

*63827 The fact that property subject of a sale is custom made and that labor is the principal cost factor does not establish the contract as one for rendition of services rather than sale subject to sales tax. *Community Telecasting Service v. Johnson* (1966) Me., 220 A.2d 500.

5. Sale and distribution of electricity

Where volume of electricity delivered by electric supplier, which was a retailer registered under applicable provisions of sales and use tax law, and charges for extending lines for delivery of electrical services to customers residing off supplier's existing transmission lines were separately stated, extension charge was not taxable under sales and use tax law but in billing in which volume of electricity sold and extension charges were not separately stated, assessor was entitled to view total as a sale of electrical energy and taxable. *Central Maine Power Co. v. Johnson* (1970) Me., 263 A.2d 713.

Where pole line extension charges are added to charge for electricity for poles and service provided outside the service area of the utility company, the sales tax is computed on the total, but where a minimum charge is made for electricity alone and no

electricity is sold there is no tax as the tax is based on the sale. 1963-64 Atty.Gen.Rep. 190.

6. Payment to third party

Taxpayer was liable under statute for state sales taxes properly collected, which were subsequently sent to out-of-state vendor for payment to State, when payment was not made. *Precast Structures, Inc. v. State Tax Assessor* (1990) Me., 568 A.2d 517.

7. Foreign supplier

Foreign supplier's sales of granite to state customers did not occur in state, and were not subject to sales tax, when supplier used common carrier to ship granite, where sales contract provided that title and risk of loss during shipment passed to customer unless granite was transported by supplier. *John Swenson Granite, Inc. v. State Tax Assessor* (1996) Me., 685 A.2d 425.

Foreign supplier's sales of granite to state customers occurred in state, and were subject to sales tax, when supplier transported granite in its own trucks and delivered it to destinations in state, where sales contracts provided that title and risk of loss passed to customer unless supplier transported granite, in which case risk of loss passed at time supplier's truck arrived at nearest accessible location to job site. *John Swenson Granite, Inc. v. State Tax Assessor* (1996) Me., 685 A.2d 425.

***63828 8. Liability for sales tax**

Terminal rental adjustment clause lease allocated the burden of paying sales tax on two refrigerator trucks to lessee, where lease stated that lessee agreed "to pay all taxes, fees, costs and expenses in connection with the use, operation, maintenance, repair, licensing, registration and titling" of each vehicle, and the agreement further provided that "all costs and obligations of any kind" was the responsibility of the lessee. *Trucklease Corp. v. Cozy Harbor Seafoods, Inc.* (2000) Me., 746 A.2d 916.

9. Leases

Terminal rental adjustment clause lease allocated the burden of paying sales tax on two refrigerator trucks to lessee, where lease stated that lessee agreed "to pay all taxes, fees, costs and expenses in connection with the use, operation, maintenance, repair, licensing, registration and titling" of each vehicle, and the agreement further provided that "all costs and obligations of any kind" was the responsibility of the lessee. *Trucklease Corp. v. Cozy Harbor Seafoods, Inc.* (2000) Me., 746 A.2d 916.

ERRORS BILL §: SUPP-13

LAW AMENDED: 37-B MRSA §781

Prepared by: MJR

Date: 5/12/03

File name: G:\COMMITTEES\JUD\ERRORS 2003\Supp - 13.DOC (5/12/03 7:57 PM)

Has the error already been fixed in another bill? NO

Has section been amended/repealed in another bill? NO

General Subject: Emergency preparedness/management - local programs

Type of correction (conflict, reference, other): conflict

Category: (technical, substantive) S?

Is a further amendment needed? NO
(If so, explain below)

EXPLANATION

PL 2001, c. 614 (An Act Regarding Workers' Compensation and Liability Immunity Coverage for Emergency Management Forces) updated terminology from "civil emergency preparedness" to "emergency management."

PL 2001, c. 662 (An Act to Update the Department of Defense, Veterans and Emergency Management Laws) updated the emergency management laws.

C. 614 amended 37-B MRSA §781 to change "civil emergency preparedness" to "emergency management" in this section on local programs. C. 622 made those changes and more:

- It removed the Governor's responsibility to determine which municipalities and counties must establish emergency management agencies and instead requires each municipality to be served by a municipal or interjurisdictional agency, and each county to be served by a county or regional agency; and
- The Governor's approval is not required for the organizational structure of the county and regional agencies.

This section of the Errors Bill repeals and replaces §781 with the c. 662 version as requested by the Maine Emergency Management Agency.

Sec. 7. 37-B MRSA §781, as amended by PL 2001, c. 614, §13 and c. 662, §82, is repealed and the following enacted in its place:

§781. Municipal, county and regional agencies

1. Municipal or interjurisdictional agencies. Each municipality of the State must be served by a municipal or interjurisdictional agency responsible for emergency management.

2. County or regional agencies. Each county shall maintain a county emergency management agency or create regional emergency management agencies that serve the member counties. Each county or regional agency is responsible for coordination of the activities of municipal and interjurisdictional emergency management agencies within the region or county and for emergency management in the unorganized territories within its jurisdiction. A county or regional emergency management agency must receive support from the municipalities within its jurisdiction.

3. Structure of county and regional agencies. The director shall advise upon the organizational structure of county and regional emergency management agencies, including the manner in which the directors of those agencies are appointed by governing bodies of the jurisdictions involved.

4. List of agencies. The agency shall publish and maintain a current list of municipal, interjurisdictional, county and regional emergency management agencies established pursuant to this section.

SUMMARY

Section 7 corrects a conflict that was created by Public Law 2001, chapter 614, section 13 and chapter 662, section 82, which both amended the same provision of law. Chapter 614, section 13 changed the term "civil emergency preparedness" to "emergency management." Chapter 662, section 82 made substantive changes in addition to the term change. This section corrects the conflict by repealing the provision of law and replacing it with the chapter 662, section 82 version.

2. **Cooperation.** In performing his duties required by this chapter, the Governor shall, directly or through the Adjutant General, cooperate with all departments and agencies of the Federal Government, with the offices and agencies of other states and foreign countries and the their political subdivisions thereof, and with private agencies in all matters pertaining to the civil emergency preparedness management of the State and of the Nation.

3. **Authority.** In performing his duties required by this chapter, the Governor may:

A. Make, amend and rescind the necessary orders and rules to carry out this chapter within the limits of the authority conferred upon him the Governor and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized civil emergency preparedness management functions;

B. Prepare a comprehensive plan and program for the civil emergency preparedness management of this State. That plan and program shall must be integrated into and coordinated with the civil emergency preparedness management plans of federal agencies and with the plans of other states and foreign countries, and their political subdivisions, to the fullest possible extent;

C. Coordinate the preparation of plans and programs for civil emergency preparedness management by the political subdivisions of the State. These plans shall must be integrated into and coordinated with the civil emergency preparedness management plan and program of the State to the fullest possible extent;

D. In accordance with the plan and program for the civil emergency preparedness management of the State, and consistent with the civil emergency preparedness management plans, programs and directives of the Federal Government, procure supplies and equipment, institute training programs and public information programs and take all other preparatory steps, including the partial or full mobilization of civil emergency preparedness management organizations in advance of actual disaster or catastrophe, insure ensure the furnishing of adequately trained and equipped forces of civil emergency preparedness management personnel in time of need;

E. Conduct studies and surveys and take inventories of the industries, resources and facilities of the State necessary to ascertain the state's civil State's emergency preparedness management capabilities, and plan for their most efficient emergency use, including emergency economic

controls to insure ensure adequate production and equitable distribution of essential commodities;

F. Whenever a shortage of critical material supplies appears imminent in the State, establish emergency reserves of those products necessary to ensure the health, welfare and safety of the people of the State. To establish those reserves, the Governor may purchase quantities of those materials for resale on a cost plus expenses basis for priority end users within the State;

G. On behalf of the State, enter into mutual aid arrangements with other states and foreign countries, and their political subdivisions, and coordinate mutual aid plans between political subdivisions of the State. If an arrangement is entered into with a jurisdiction that has enacted the Interstate Civil Defense and Disaster Compact, chapter 15, any resulting agreement or agreements may be considered supplemental agreements pursuant to Article VI of that compact. If the other jurisdiction or jurisdictions with which the Governor proposes to cooperate have not enacted that compact, he the Governor may negotiate special agreements with the jurisdiction or jurisdictions. Any agreement, if sufficient authority for the making thereof does not otherwise exist, becomes effective only after approval by the Legislature; and

H. Delegate any authority vested in him the Governor under this chapter and provide for the subdelegation of that authority.

Sec. 12. 37-B MRSA c. 13, sub-c. III is amended by repealing the subchapter headnote and enacting the following in its place:

SUBCHAPTER III

LOCAL EMERGENCY MANAGEMENT PROGRAMS

Sec. 13. 37-B MRSA §781, as amended by PL 1987, c. 370, §16, is further amended to read:

§781. Municipal, county and regional agencies

1. **Municipal or interjurisdictional agencies.** Each municipality of the State shall must be served by a municipal or interjurisdictional agency responsible for disaster preparedness and coordination of disaster response. The Governor, after public hearing, shall determine those municipalities which that shall establish civil emergency preparedness management agencies of their own and those which that shall participate in and provide support for interjurisdictional civil emergency preparedness management agencies. Those determinations shall must be based

on a finding that efficient and effective disaster prevention, preparedness, response and recovery will be promoted by formation of an interjurisdictional agency. The following factors shall must be considered:

- A. Size and density of the affected population;
- B. Financial ability of the separate municipalities to maintain independent disaster assistance agencies; and
- C. Vulnerability of the area to disaster, as evidenced by past disasters, topographical features, drainage characteristics, disaster potential and existence of disaster-prone facilities and operations.

2. **County or regional agencies.** The Governor shall designate the counties or regions ~~he deems~~ the Governor determines necessary for the purposes of establishing county or regional civil emergency preparedness management agencies. Each designated county or regional agency ~~shall be~~ is responsible for coordination of the activities of municipal and interjurisdictional civil emergency preparedness management agencies within the region or county and for civil emergency preparedness management in the unorganized territories within its jurisdiction. A county or regional civil emergency preparedness management agency shall must receive support from the municipalities within its jurisdiction.

3. **Structure of interjurisdictional and regional agencies.** The director, with the approval of the Governor, shall determine the organizational structure of interjurisdictional and regional civil emergency preparedness management agencies, including the manner in which the directors of those agencies ~~shall be~~ are appointed by governing bodies of the municipalities involved.

4. **List of agencies.** The agency shall publish and maintain a current list of municipal, interjurisdictional, county and regional civil emergency preparedness management agencies established pursuant to this section.

Sec. 14. 37-B MRSA §782, as amended by PL 1991, c. 376, §66, is further amended to read:

§782. Agency directors

A director must be appointed for each local civil emergency preparedness management agency. A director of a civil an emergency preparedness management agency may not be at the same time an executive officer or member of the executive body of a municipality or interjurisdictional or regional agency of the State or a county commissioner. Notwithstanding this section or any other law, a town manager or

administrative assistant may also be appointed to serve as the director of a civil an emergency preparedness management agency or as a liaison officer. A director may be removed by the appointing authority for cause.

1. **Municipal agency director; liaison officer.**

The municipal officers shall appoint the director of the municipality's civil emergency preparedness management agency. In each municipality that is not required to establish an agency of its own, the municipal officers shall designate a liaison officer to the appropriate interjurisdictional agency to facilitate cooperation in the work of disaster prevention, preparedness, response and recovery.

2. **County agency director.** The county commissioners shall appoint the director of that county's civil emergency preparedness management agency.

3. **Interjurisdictional and regional agency directors.** The director of an interjurisdictional or regional civil emergency preparedness management agency ~~shall be~~ is appointed in the manner prescribed by the director in accordance with section 781, subsection 3, and shall must be approved by the director.

4. **Annual meeting with Director of Maine Emergency Management Agency.** The director of each local organization for civil emergency preparedness management in the State and the respective appointing authority shall meet each year with the Director of the Maine Emergency Management Agency or the agency's successor, in order to review the performance of the local civil emergency preparedness management organization in carrying out its federal and state mandate and to jointly set new goals for the coming year.

Sec. 15. 37-B MRSA §783, first ¶, as amended by PL 1987, c. 370, §17, is further amended to read:

Each municipal, interjurisdictional, county and regional civil emergency preparedness management agency, in consultation with the agency, shall prepare and keep a current disaster emergency plan for the area subject to its jurisdiction. That plan shall must include without limitation:

Sec. 16. 37-B MRSA §783, last ¶, as enacted by PL 1983, c. 460, §3, is amended to read:

Each municipal, interjurisdictional, county and regional civil emergency preparedness management agency, as part of the development of a disaster emergency plan for the area subject to its jurisdiction, shall consult with hospitals within its jurisdiction to insure ensure that the disaster plans developed by the agency and the hospitals are compatible.

State's emergency preparedness management capabilities, and plan for their most efficient emergency use, including emergency economic controls to insure adequate production and equitable distribution of essential commodities;

F. Whenever a shortage of critical material supplies appears imminent in the State, establish emergency reserves of those products necessary to ensure the health, welfare and safety of the people of the State. To establish those reserves, the Governor may purchase quantities of those materials for resale on a cost plus expenses basis for priority end users within the State;

G. On behalf of the State, enter into mutual aid arrangements with other states and foreign countries, and their political subdivisions, and coordinate mutual aid plans between political subdivisions of the State. If an arrangement is entered into with a jurisdiction that has enacted the Interstate Civil Defense and Disaster Compact, chapter 15, the Emergency Management Assistance Compact, chapter 16, or the International Emergency Management Assistance Compact, chapter 16-A, any resulting agreement or agreements may be considered supplemental agreements pursuant to Article VI of that compact ~~those compacts~~. If the other jurisdiction or jurisdictions with which the Governor proposes to cooperate have not enacted that compact, he the Governor may negotiate special agreements with the jurisdiction or jurisdictions. Any agreement, if sufficient authority for the its making thereof does not otherwise exist, becomes effective only after approval by the Legislature; and

H. Delegate any authority vested in him the Governor under this chapter and provide for the subdelegation of that authority.

Sec. 79. 37-B MRSA §744, sub-§1, ¶C, as enacted by PL 1983, c. 460, §3, is amended to read:

C. Notwithstanding any other provision of law or regulation, make financial grants to meet necessary expenses or serious needs of individuals or families caused by the disaster ~~which that~~ cannot otherwise adequately be met. A grant to an individual or family ~~shall may~~ not exceed \$5,000 in the aggregate for any single major disaster declared by the President ~~the amount established by the Federal Government for the limit on grants to individuals under the individual and family grant program~~.

Sec. 80. 37-B MRSA §744, sub-§5, as enacted by PL 1983, c. 460, §3, is amended to read:

5. Terms. As used in this section, "major disaster," "emergency" and "temporary housing" have the same meaning as in the United States Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, Public Law 93-288, as amended.

Sec. 81. 37-B MRSA c. 13, sub-c. III is amended by repealing the subchapter headnote and enacting the following in its place:

SUBCHAPTER III

LOCAL EMERGENCY MANAGEMENT PROGRAMS

Sec. 82. 37-B MRSA §781, as amended by PL 1987, c. 370, §16, is further amended to read:

§781. Municipal, county and regional agencies

1. Municipal or interjurisdictional agencies. Each municipality of the State ~~shall must~~ be served by a municipal or interjurisdictional agency responsible for disaster preparedness and coordination of disaster response ~~emergency management~~. The Governor, after public hearing, shall determine those municipalities which shall establish civil emergency preparedness agencies of their own and those which shall participate in and provide support for interjurisdictional civil emergency preparedness agencies. Those determinations shall be based on a finding that efficient and effective disaster prevention, preparedness, response and recovery will be promoted by formation of an interjurisdictional agency. The following factors shall be considered:

- A. Size and density of the affected population;
- B. Financial ability of the separate municipalities to maintain independent disaster assistance agencies; and
- C. Vulnerability of the area to disaster, as evidenced by past disasters, topographical features, drainage characteristics, disaster potential and existence of disaster-prone facilities and operations.

2. County or regional agencies. The Governor shall designate the counties or regions he deems necessary for the purposes of establishing county or regional civil emergency preparedness agencies. Each county shall maintain a county emergency management agency or create regional emergency management agencies that serve the member counties. Each designated county or regional agency shall be responsible for coordination of the activities of municipal and interjurisdictional civil emergency preparedness management agencies within the region or county and for civil emergency preparedness management in the unorganized territories within its

jurisdiction. A county or regional civil emergency preparedness management agency shall must receive support from the municipalities within its jurisdiction.

3. Structure of county and regional agencies. The director, with the approval of the Governor, shall determine advise upon the organizational structure of interjurisdictional county and regional civil emergency preparedness management agencies, including the manner in which the directors of those agencies shall be are appointed by governing bodies of the municipalities jurisdictions involved.

4. List of agencies. The agency shall publish and maintain a current list of municipal, interjurisdictional, county and regional civil emergency preparedness management agencies established pursuant to this section.

Sec. 83. 37-B MRSA §782, as amended by PL 1991, c. 376, §66, is further amended to read:

§782. Agency directors

A director must be appointed for each local civil preparedness municipal and county or regional emergency management agency. A director of a civil an emergency preparedness management agency may not be at the same time an executive officer or member of the executive body of a municipality or interjurisdictional or county or regional agency of the State or a county commissioner. Notwithstanding this section or any other law, a town manager or administrative assistant may also be appointed to serve as the director of a civil an emergency preparedness management agency or as a liaison officer. A director may be removed by the appointing authority for cause.

1. Municipal emergency management director. The municipal officers shall appoint the director of the municipality's civil emergency preparedness management agency. In each municipality that is has not required to establish established an agency of its own, the municipal officers shall designate a liaison officer to the appropriate interjurisdictional agency an emergency management director to facilitate cooperation in the work of disaster prevention mitigation, preparedness, response and recovery. The emergency management director shall serve as liaison to the appropriate county or regional agency.

2. County agency director. The county commissioners shall appoint the director of that county's civil emergency preparedness management agency.

3. Interjurisdictional and regional agency directors. The director of an interjurisdictional or regional civil emergency preparedness management agency shall must be appointed in the manner prescribed by the director in accordance with section

781, subsection 3, and shall be approved by the director.

4. Annual meeting with Director of the Maine Emergency Management Agency. The director of each local county or regional organization for civil emergency preparedness management in the State and the respective appointing authority shall meet each year with the Director of the Maine Emergency Management Agency or the agency's successor, in order to review the performance of the local civil county or regional emergency preparedness management organization in carrying out its federal and state mandate and to jointly set new goals for the coming year.

Sec. 84. 37-B MRSA §783, first ¶, as amended by PL 1987, c. 370, §17, is further amended to read:

Each municipal, interjurisdictional, county and regional civil emergency preparedness management agency, in consultation with the agency, shall prepare and keep a current disaster emergency plan for the area subject to its jurisdiction. That plan shall must include without limitation:

Sec. 85. 37-B MRSA §783, last ¶, as enacted by PL 1983, c. 460, §3, is amended to read:

Each municipal, interjurisdictional, county and regional civil emergency preparedness management agency, as part of the development of a disaster emergency plan for the area subject to its jurisdiction, shall consult with hospitals within its jurisdiction to insure that the disaster plans developed by the municipality or agency and the hospitals are compatible.

Sec. 86. 37-B MRSA §784, first ¶, as enacted by PL 1983, c. 460, §3, is amended to read:

The director of each local organization for civil emergency preparedness management shall, in collaboration with other public and private agencies within the State, develop or cause to be developed mutual aid arrangements for reciprocal civil emergency preparedness management aid and assistance in case of a disaster too great to be dealt with unassisted. These arrangements shall must be consistent with the state civil emergency preparedness management program, and in time of emergency it shall be the duty of each local organization for civil emergency preparedness to management shall render assistance in accordance with the mutual aid arrangements. For this purpose, political subdivisions are authorized when geographical locations make mutual aid arrangements desirable to enter into mutual aid arrangements subject to the approval of the director.

ERRORS BILL §: SUPP-14

LAW AMENDED: 37-B MRSA §822

Prepared by: MJR

Date: 5/12/03

File name: G:\COMMITTEES\JUD\ERRORS 2003\Supp - 14.DOC (5/12/03 8:00 PM)

Has the error already been fixed in another bill? NO

Has section been amended/repealed in another bill? NO

General Subject: Emergency preparedness/management - immunity

Type of correction (conflict, reference, other): conflict

Category: (technical, substantive) S?

Is a further amendment needed? NO
(If so, explain below)

EXPLANATION

PL 2001, c. 614 (An Act Regarding Workers' Compensation and Liability Immunity Coverage for Emergency Management Forces) updated terminology from "civil emergency preparedness" to "emergency management."

PL 2001, c. 662 (An Act to Update the Department of Defense, Veterans and Emergency Management Laws) updated the emergency management laws.

C. 614 amended 37-B MRSA §822 to change "civil emergency preparedness" to "emergency management" in this section on immunity. C. 614 also includes "a person called out pursuant to section 784-A" which c. 662 does not include. §784-A was added by c. 614 to allow MEMA and local emergency management organizations to employ any person considered necessary to assist with emergency management activities.

This section of the Errors Bill repeals and replaces §822 with the c. 614 version.

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2 Sec. ?. 37-B MRSA §822, as amended by PL 2001, c. 614, §20 and
4 c. 662, §88, is repealed and the following enacted in its place:

6 **§822. Immunity**

8 Neither the State nor any of its agencies or political
10 subdivisions nor a person called out pursuant to section 784-A,
12 including a voluntary and uncompensated grantor of a permit for
14 the use of the grantor's premises as an emergency management
16 shelter, may, while engaged in any emergency management
18 activities and while complying with or attempting to comply with
20 this chapter or any rule adopted pursuant to this chapter, be
22 liable for the death of or injury to any person, or damage to
24 property, as a result of those activities. This section does not
26 affect the right of any person to receive benefits to which that
 person would otherwise be entitled under this chapter, under the
 Maine Workers' Compensation Act of 1992, under any pension law or
 under any act of Congress.

22 **SUMMARY**

24 Section ? corrects a conflict created by Public Law 2001,
26 chapter 614, section 20 and chapter 662, section 88, which both
 amended the same provision of law, by repealing and replacing it
 with the Public Law 2001, chapter 614, section 20 version.

Sec. 17. 37-B MRSA §784, as enacted by PL 1983, c. 460, §3, is amended to read:

§784. Mutual aid arrangements

58 The director of each local organization for civil emergency preparedness management shall, in collaboration with other public and private agencies within the State, develop or cause to be developed mutual aid arrangements for reciprocal civil emergency preparedness management aid and assistance in case of a disaster too great to be dealt with unassisted. These arrangements shall must be consistent with the state civil emergency preparedness management program, and in time of emergency it shall be is the duty of each local organization for civil emergency preparedness management to render assistance in accordance with the mutual aid arrangements. For this purpose, political subdivisions are authorized when geographical locations make mutual aid arrangements desirable to enter into mutual aid arrangements subject to the approval of the director.

Sec. 18. 37-B MRSA §784-A is enacted to read:

§784-A. Right to call for and employ assistance

The Maine Emergency Management Agency and local organizations for emergency management may employ any person considered necessary to assist with emergency management activities. All persons called and employed for assistance shall proceed as directed by the Maine Emergency Management Agency. Any person called and employed for assistance is deemed to be an employee of the State for purposes of immunity from liability pursuant to section 822 and for purposes of workers' compensation insurance pursuant to section 823, except for persons excluded from the definition of employee pursuant to Title 39-A, section 102, subsection 11.

Sec. 19. 37-B MRSA §785, as amended by PL 1985, c. 785, Pt. B, §176, is further amended to read:

§785. State Civil Service Appeals Board services

Local civil emergency preparedness management agencies organized pursuant to this subchapter may accept the services of the Bureau of Human Resources and adopt board rules for the purpose of qualifying for federal funds. The Bureau of Human Resources may enter into agreements with the civil emergency preparedness management agencies for the purpose of furnishing merit system coverage for civil emergency preparedness management employees or employees of other agencies and departments assigned full time to civil emergency preparedness management duties. The Bureau of Human Resources may charge for services rendered. The fee shall must be consistent

with the cost of coverage per state employee multiplied by the number of local, interjurisdictional, county or regional employees covered. Fees received by the board shall must be credited to the General Fund.

Sec. 20. 37-B MRSA §822, as corrected by RR 1993, c. 1, §110, is amended to read:

§822. Immunity

Neither the State nor any of its agencies or political subdivisions nor a person called out pursuant to section 784-A, including a voluntary and uncompensated grantor of a permit for the use of the grantor's premises as a civil an emergency preparedness management shelter, may, while engaged in any civil emergency preparedness management activities and while complying with or attempting to comply with this chapter or any rule adopted pursuant to this chapter, be liable for the death of or injury to any person, or damage to property, as a result of those activities. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, under the Maine Workers' Compensation Act of 1992, under any pension law or under any act of Congress.

Sec. 21. 37-B MRSA §823, first ¶, as amended by PL 1995, c. 462, Pt. A, §72, is further amended to read:

All members of the civil emergency preparedness management forces are deemed to be employees of the State while on, or training for, civil emergency preparedness management duty. They have all the rights given to state employees under the former Workers' Compensation Act or the Maine Workers' Compensation Act of 1992. All claims must be filed, prosecuted and determined in accordance with the procedure set forth in the former Workers' Compensation Act or the Maine Workers' Compensation Act of 1992.

Sec. 22. 37-B MRSA §823, sub-§2, as amended by PL 1995, c. 462, Pt. A, §72, is further amended to read:

2. Setoff. Any sums payable under any act of Congress or other federal program as compensation for death, disability or injury of civil emergency preparedness management workers must be considered with the determination and settlement of any claim brought under this section. When payments received from the Federal Government are less than an injured member would have been entitled to receive under this section, the injured member is entitled to receive all the benefits to which the injured member would have been entitled under this section, less the benefits actually received from the Federal Government.

Sec. 87. 37-B MRSA §785, first ¶, as amended by PL 1985, c. 785, Pt. B, §176, is further amended to read:

Local civil emergency preparedness management agencies organized pursuant to this subchapter may accept the services of the Bureau of Human Resources and adopt board rules for the purpose of qualifying for federal funds. The Bureau of Human Resources may enter into agreements with the civil emergency preparedness management agencies for the purpose of furnishing merit system coverage for civil emergency preparedness management employees or employees of other agencies and departments assigned full time to civil emergency preparedness management duties. The Bureau of Human Resources may charge for services rendered. The fee shall must be consistent with the cost of coverage per state employee multiplied by the number of local, interjurisdictional, county or regional employees covered. Fees received by the board shall must be credited to the General Fund.

Sec. 88. 37-B MRSA §822, first ¶, as corrected by RR 1993, c. 1, §110, is amended to read:

Neither the State nor any of its agencies or political subdivisions, including a voluntary and uncompensated grantor of a permit for the use of the grantor's premises as a civil an emergency preparedness shelter, may, while engaged in any civil emergency preparedness management activities and while complying with or attempting to comply with this chapter or any rule adopted pursuant to this chapter, be liable for the death of or injury to any person, or damage to property, as a result of those activities. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, under the Maine Workers' Compensation Act of 1992, under any pension law or under any act of Congress.

Sec. 89. 37-B MRSA §823, first ¶, as amended by PL 1995, c. 462, Pt. A, §72, is further amended to read:

All members of the civil emergency preparedness management forces are deemed to be employees of the State while on, or training for, civil emergency preparedness management duty. They have all the rights given to state employees under the ~~former Workers' Compensation Act or the Maine Workers' Compensation Act of 1992~~. All claims must be filed, prosecuted and determined in accordance with the procedure set forth in the ~~former Workers' Compensation Act or the Maine Workers' Compensation Act of 1992~~.

Sec. 90. 37-B MRSA §823, sub-§2, as amended by PL 1995, c. 462, Pt. A, §72, is further amended to read:

2. Setoff. Any sums payable under any act of Congress or other federal program as compensation for death, disability or injury of civil emergency preparedness management workers must be considered with the determination and settlement of any claim brought under this section. When payments received from the Federal Government are less than an injured member would have been entitled to receive under this section, the injured member is entitled to receive all the benefits to which the injured member would have been entitled under this section, less the benefits actually received from the Federal Government.

Sec. 91. 37-B MRSA §824, sub-§2, as enacted by PL 1983, c. 460, §3, is amended to read:

2. For local emergency management expenses. Each political subdivision may make appropriations for the payment of expenses of its local organization for civil emergency preparedness management in the same manner as for its other ordinary expenses. In making those appropriations, the political subdivision shall specify the amounts and purposes for which the money appropriated may be used by the local organizations.

Sec. 92. 37-B MRSA §825, first ¶, as enacted by PL 1983, c. 460, §3, is amended to read:

Whenever the Federal Government or any of its agencies or officers or any person, firm or corporation offers to the State or to any of its political subdivisions services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of civil emergency preparedness management, the State, acting through the Governor, or the political subdivision, acting through its executive officer or governing body, may accept that offer. Upon acceptance, the Governor of the State or the executive officer or governing body of the political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive those services, equipment, supplies, materials or funds on behalf of the State or the political subdivision subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

Sec. 93. 37-B MRSA §825, as enacted by PL 1983, c. 460, §3, is amended by adding at the end a new paragraph to read:

Notwithstanding any other provision of law, the Governor may enter into an agreement with the Federal Emergency Management Agency for debris removal financial assistance and agree on behalf of the State to indemnify the Federal Government against