

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

H.P. 1357 - L.D. 1836

**An Act To Facilitate Rapid Response by Out-of-state Businesses to State
Disasters**

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

Whereas, this legislation allows businesses from outside of Maine to come to Maine's assistance during times of disaster, natural or man-made, without those businesses being subject to certain regulations and taxes; and

Whereas, since it is impossible to predict when the next disaster may occur that requires Maine to seek assistance from outside its borders, this legislation needs to take effect as soon as possible; 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. 10 MRSA Pt. 15 is enacted to read:

PART 15

STATE OF EMERGENCY PROCEDURES

CHAPTER 1201

WAIVERS FOR OUT-OF-STATE BUSINESSES AND EMPLOYEES

§9901. Findings

The Legislature finds that in times of emergency in this State, such as during or after a storm, flood, fire, earthquake, hurricane or other disaster, businesses from other states provide assistance by bringing in resources and personnel to assist the State with the often enormous and overwhelming task of cleaning up, restoring and repairing damaged

buildings, equipment and property. This provision of assistance may require out-of-state businesses, including out-of-state affiliates of businesses based in the State, to bring in resources, property or personnel that previously have had no connection to the State to perform activities in the State, including, but not limited to, repairing, renovating, installing, building, rendering services and engaging in other business activities, some of which may require that personnel from the businesses be located in the State for extended periods of time.

The Legislature further finds that, while these businesses are operating in the State providing assistance on a temporary basis solely for the purpose of helping the State recover from the disaster or emergency, these businesses and their employees should not be burdened by requirements for certain business and employee taxes as a result of such temporary activities.

To ensure that these businesses focus on responding quickly to the needs of the State and its citizens during a declared state disaster or emergency, the Legislature finds that it is appropriate to consider that such activity for a reasonable period of time during and after the disaster or emergency undertaken to repair and restore property and infrastructure in the State does not establish presence or residency in the State or constitute doing business in the State for purposes of subjecting the businesses to certain taxes or licensing and regulatory requirements.

§9902. Definitions

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

1. Declared state disaster or emergency. "Declared state disaster or emergency" means a disaster or emergency event for which a Governor's state of emergency proclamation has been issued pursuant to Title 37-B, section 742 or that the President of the United States has declared to be a major disaster or emergency.

2. Disaster period. "Disaster period" means the period of time that begins no later than 10 days following the Governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or emergency, whichever occurs first, and that extends for a period of 60 calendar days following the end of the declared disaster or emergency as proclaimed by the Governor pursuant to Title 37-B, section 743 or the President of the United States or pursuant to law, whichever occurs first.

3. Infrastructure. "Infrastructure" means:

A. Property and equipment, including related support facilities that provide service to more than one customer or person, owned or used by a public utility as defined in Title 35-A, section 102, subsection 13 or by a communications service provider as defined in Title 35-A, section 9202, subsection 4. "Infrastructure" includes, without limitation, real and personal property such as buildings, offices, power lines, poles, pipes, structures and equipment; and

B. Public roads and bridges.

4. Out-of-state business. "Out-of-state business" means a business entity:

A. That does not have a presence in the State;

B. That does not conduct business in the State; and

C. Whose assistance in performing work in this State, such as repairing, renovating, installing or building infrastructure, rendering services or engaging in other business activities, related to a declared state disaster or emergency is requested by the State, a county, city, town or other political subdivision of the State or a registered business.

"Out-of-state business" includes a business entity that is affiliated with a registered business solely through common ownership as long as that business entity does not have any registrations, tax filings or nexus in the State prior to the declared state disaster or emergency.

5. Out-of-state employee. "Out-of-state employee" means an individual who performs services for an out-of-state business in return for compensation and who, prior to the declared state disaster or emergency, was not a resident of this State.

6. Registered business. "Registered business" means a business entity that is registered or licensed to do business in the State prior to the declared state disaster or emergency.

§9903. Status of out-of-state businesses and employees during disaster period

1. Out-of-state businesses. Notwithstanding any other provision of law to the contrary, during a disaster period an out-of-state business that conducts operations within the State for the purpose of performing work or providing services related to a declared state disaster or emergency is deemed to have not established a level of presence that would require that business or its out-of-state employees to be subject to any of the following state or local employment, licensing or registration requirements:

A. Business licensing or registration requirements;

B. Unemployment insurance, taxes or fees or workers' compensation insurance taxes or fees; and

C. Occupational licensing fees.

2. Status after disaster period. After the termination of a disaster period, an out-of-state business or out-of-state employee that remains in the State is fully subject to the state or local employment, licensing or registration requirements listed in subsection 1 or that were otherwise suspended under this chapter during the disaster period.

§9904. Notification

1. Notification by out-of-state businesses during disaster period. An out-of-state business shall provide notification to the Secretary of State as soon as practicable after entry to the State during a disaster period that the out-of-state business is in the State for purposes of responding to the declared state disaster or emergency. The out-of-state business shall provide to the Secretary of State information related to the out-of-state business including but not limited to the following:

- A. Name;
- B. State of domicile;
- C. Principal business address;
- D. Federal employer identification number;
- E. The date when the out-of-state business entered the State; and
- F. Contact information while the out-of-state business is in this State.

2. Registered businesses. A registered business shall provide the notification required in subsection 1 for an affiliate of the registered business that enters the State as an out-of-state business. The notification under this subsection also must include contact information for the registered business in the State.

3. Notification of intent to remain in the State. An out-of-state business that remains in the State after a disaster period shall notify the Secretary of State and shall meet all registration, licensing and filing requirements resulting from any business presence or activity in the State.

§9905. Rulemaking

The Secretary of State, in consultation with the Department of Professional and Financial Regulation, the Department of Economic and Community Development and the Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency, may adopt routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A, to implement the provisions of this chapter. Notification and registration procedures adopted by rule must allow a person to obtain and complete any required forms using a publicly accessible website on the Internet.

Sec. 2. 36 MRSA §1760, sub-§45, ¶A-3, as amended by PL 2011, c. 380, Pt. GGGG, §2, is further amended to read:

A-3. If the property is an aircraft not exempted under subsection 88 or 88-A and the owner at the time of purchase was a resident of another state or tax jurisdiction and the aircraft is present in this State not more than 20 days during the 12 months following its purchase, exclusive of days during which the aircraft is in this State for the purpose of undergoing "major alterations," "major repairs" or "preventive maintenance" as those terms are described in 14 Code of Federal Regulations, Appendix A to Part 43, as in effect on January 1, 2005. For the purposes of this paragraph, the location of an aircraft on the ground in the State at any time during a day is considered presence in the State for that entire day, and a day must be disregarded if at any time during that day the aircraft is used to provide free emergency or compassionate air transportation arranged by an incorporated nonprofit organization providing free air transportation in private aircraft by volunteer pilots so children and adults may access life-saving medical care; ø

Sec. 3. 36 MRSA §1760, sub-§45, ¶A-4 is enacted to read:

A-4. If the property is brought into this State solely to conduct activities directly related to a declared state disaster or emergency, at the request of the State, a county, city, town or political subdivision of the State or a registered business, the property is owned by a person not otherwise required to register as a seller under section 1754-B and the property is present in this State only during a disaster period. As used in this paragraph, "declared state disaster or emergency" has the same meaning as in Title 10, section 9902, subsection 1 and "disaster period" means the period of 60 days that begins with the date of the Governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or major emergency, whichever occurs first; or

Sec. 4. 36 MRSA §5102, sub-§§6-B and 6-C are enacted to read:

6-B. Declared state disaster or emergency. "Declared state disaster or emergency" has the same meaning as in Title 10, section 9902, subsection 1.

6-C. Disaster period. "Disaster period" means the period of 60 days that begins with the date of the Governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or major emergency, whichever occurs first.

Sec. 5. 36 MRSA §5142, sub-§8-B, as enacted by PL 2011, c. 380, Pt. CCCC, §2 and affected by §4, is amended to read:

8-B. Minimum taxability threshold; exemptions. Minimum taxability thresholds for nonresidents are governed by this subsection.

A. ~~Compensation~~ Except as provided by paragraph D, compensation for personal services performed in the State as an employee is Maine-source income subject to taxation under this Part if the nonresident taxpayer is present in the State performing personal services for more than 12 days during that taxable year and directly earns or derives more than \$3,000 in gross income during the year in the State from all sources.

B. ~~A~~ Except as provided by paragraph D, a nonresident individual who is present for business in the State on other than a systematic or regular basis, either directly or through agents or employees, has Maine-source income derived from or effectively connected with a trade or business in the State and subject to taxation under this Part only if the nonresident individual was present in the State for business more than 12 days during the taxable year and earns or derives more than \$3,000 of gross income during the taxable year from contractual or sales-related activities.

C. Performance of the following personal services for 24 days during a calendar year may not be counted toward the 12-day threshold under paragraph A:

- (1) Personal services performed in connection with presenting or receiving employment-related training or education;
- (2) Personal services performed in connection with a site inspection, review, analysis of management or any other supervision of a facility, affiliate or subsidiary based in the State by a representative from a company, not

headquartered in the State, that owns that facility or is the parent company of the affiliate or subsidiary;

(3) Personal services performed in connection with research and development at a facility based in the State or in connection with the installation of new or upgraded equipment or systems at that facility; or

(4) Personal services performed as part of a project team working on the attraction or implementation of new investment in a facility based in the State.

D. Compensation for personal services performed in the State as an employee and income derived from or effectively connected with a trade or business in the State is not Maine-source income subject to taxation under this Part if the nonresident taxpayer is present in the State during the taxable year solely for the performance of services or the conducting of business during a disaster period and the compensation or income is directly related to a declared state disaster or emergency and the services were requested by the State, a county, city, town or political subdivision of the State or a registered business.

Sec. 6. 36 MRSA §5211, sub-§16-B is enacted to read:

16-B. Sales factor formula for certain disaster period receipts. The sales factor must exclude from the numerator sales receipts of a person whose only business activity in the State during the taxable year is the performance of services during a disaster period that are solely and directly related to a declared state disaster or emergency that were requested by the State, a county, city, town or political subdivision of the State or a registered business.

Sec. 7. Application. Those sections of this Act that enact the Maine Revised Statutes, Title 36, section 5102, subsections 6-B and 6-C and Title 36, section 5211, subsection 16-B and that amend Title 36, section 5142, subsection 8-B apply to tax years beginning on or after January 1, 2013.

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

In House of Representatives, 2012

Read twice and passed to be enacted.

..... Speaker

In Senate, 2012

Read twice and passed to be enacted.

..... President

Approved 2012

..... Governor