

# MAINE STATE LEGISLATURE

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**RES.**

L.D. 1916

DATE: 4-14-04

(Filing No. H-907)

## JUDICIARY

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### STATE OF MAINE HOUSE OF REPRESENTATIVES 121ST LEGISLATURE SECOND SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1418, L.D. 1916, Bill, "An Act To Correct Errors and Inconsistencies in the Laws of Maine"

Amend the bill by inserting after the enacting clause the following:

#### 'PART A'

Further amend the bill by striking out all of sections 1 and 3.

Further amend the bill by striking out all of section 15.

Further amend the bill by striking out all of sections 28, 35 and 36.

Further amend the bill by striking out all of sections 43 to 46 and sections 50, 51, 55 and 56.

Further amend the bill by inserting after section 60 the following:

#### 'PART B'

Sec. B-1. 13 MRSA §1267, as enacted by PL 1995, c. 474, §1, is amended to read:

§1267. Penalties

# COMMITTEE AMENDMENT

Any A person who is subject to criminal prosecution under Title 17-A, chapter 15 if the person violates section 1264 or 1265 ~~commits theft according to the classifications set forth in Title 17-A, section 262.~~ Any A person who violates section 1266 commits a civil violation ~~and is subject to~~ for which a fine of not less than \$100 and not more than \$500 may be adjudged.

**Sec. B-2. 15 MRSA §5821, sub-§7,** as amended by PL 1999, c. 349, §1, is further amended to read:

**7. Real property.** Except as provided in paragraph A, all real property, including any right, title or interest in the whole of any lot or tract of land and any appurtenances or improvements, ~~which~~ that is used or intended for use, in any manner or part, to commit or to facilitate the commission of a violation of Title 17-A, section 1103 ~~or 1105, 1105-A, 1105-B or 1105-C,~~ which is a Class A, Class B or Class C crime, with the exception of offenses involving marijuana.

A. Property may not be forfeited under this subsection, to the extent of an interest of an owner, by reason of an act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. When an owner of property that is that person's primary residence proves by a preponderance of the evidence that the owner is the spouse or minor child of the coowner of the primary residence who has used or intended to use the residence, in any manner or part, to commit or facilitate the commission of a violation of Title 17-A, section 1103 ~~or 1105, 1105-A, 1105-B or 1105-C,~~ the State shall bear the burden of proving knowledge or consent of the spouse or minor child by a preponderance of the evidence;

**Sec. B-3. 17-A MRSA §1105-A, sub-§1, ¶¶I and J,** as amended by PL 2003, c. 1, §7 and c. 476, §1, are repealed and the following enacted in their place:

I. At the time of the offense, the person trafficks in 300 or more pills, capsules, tablets, vials, ampules, syringes or units containing any narcotic drug other than heroin, or any quantity of pills, capsules, tablets, units, compounds, mixtures or substances that, in the aggregate, contains 8,000 milligrams or more of oxycodone or 1,000 milligrams or more of hydromorphone. Violation of this paragraph is a Class A crime;

J. At the time of the offense, the person trafficks in a quantity of 300 or more pills, capsules, tablets or units containing 3, 4-methylenedioxymethamphetamine, MDMA, or any

other drug listed in section 1102, subsection 1, paragraph  
O. Violation of this paragraph is a Class A crime;

**Sec. B-4. 20-A MRSA §5201, sub-§3, ¶F,** as enacted by PL 2003,  
c. 116, §1, is amended to read:

F. A person who obtains a waiver from the commissioner  
pursuant to section 5206 may enroll as a public secondary  
school student.

**Sec. B-5. 20-A MRSA §15612, first ¶,** as amended by PL 1989, c.  
697, §1 and affected by §5, is repealed.

**Sec. B-6. 21-A MRSA §673, sub-§1, ¶A,** as amended by PL 2003,  
c. 395, §2 and c. 477, §13, is repealed and the following enacted  
in its place:

A. A voter may challenge another voter only upon personal  
knowledge or a reasonably supported belief that the  
challenged voter is unqualified. Only the following reasons  
for challenges may be accepted by the warden. The  
challenged person:

(1) Is not a registered voter;

(2) Is not enrolled in the proper party, if voting in  
a primary election;

(3) Is not qualified to be a registered voter because  
the challenged person is not:

(a) At least 18 years of age;

(b) A citizen of the United States; or

(c) A resident of the municipality or appropriate  
electoral district within the municipality;

(4) Registered to vote during the closed period or on  
election day and did not provide satisfactory proof of  
identity and residency to the registrar pursuant to  
section 121, subsection 1-A;

(5) Did not properly apply for an absentee ballot;

(6) Did not properly complete the affidavit on the  
absentee return envelope;

(7) Did not cast the ballot or complete the affidavit  
before the appropriate witness;

(8) Communicated with someone as prohibited by section 754-A, subsection 1, paragraph B or subsection 3, paragraph B or D;

(9) Did not have the ballot returned to the clerk by the time prescribed;

(10) Voted using the name of another;

(11) Committed any other specified violation of this Title; or

(12) Voted using the wrong ballot for the appropriate electoral district or political party, if applicable.

**Sec. B-7. 26 MRSA §628, last ¶**, as enacted by PL 2001, c. 304, §2, is amended to read:

The Department of Labor shall annually report to the joint standing committee of the Legislature having jurisdiction over labor matters on progress made in the State to comply with this section. The report must be issued annually on Equal Pay Day as designated pursuant to Title 1, section 140 145.

**Sec. B-8. 29-A MRSA §101, sub-§32-A**, as amended by PL 2003, c. 397, §1 and c. 414, Pt. B, §41 and affected by Pt. D, §7, is repealed and the following enacted in its place:

**32-A. Low-speed vehicle.** "Low-speed vehicle" means a 4-wheeled automobile that is able to attain a speed of at least 20 miles per hour but not more than 25 miles per hour and does not exceed 1,800 pounds in unloaded weight. "Low-speed vehicle" does not include an ATV as defined in Title 12, section 13001. A low-speed vehicle must be originally manufactured and maintained in accordance with the Federal Motor Vehicle Safety Standards as a low-speed vehicle pursuant to 49 Code of Federal Regulations, Section 571.500, as amended.

**Sec. B-9. Effective date.** That section of this Part that repeals and replaces the Maine Revised Statutes, Title 29-A, section 101, subsection 32-A takes effect August 31, 2004.

**Sec. B-10. 29-A MRSA §2251, sub-§11**, as amended by PL 2003, c. 414, Pt. B, §46 and affected by Pt. D, §7 and amended by c. 434, §28 and affected by §37, is repealed and the following enacted in its place:

**11. Exemption.** The operator of a snowmobile or an all-terrain vehicle as defined by Title 12, section 13001, unless

the all-terrain vehicle is registered for highway use by the Secretary of State under this Title, is exempt from the reporting requirements of subsection 2.

**Sec. B-11. Effective date.** That section of this Part that repeals and replaces the Maine Revised Statutes, Title 29-A, section 2251, subsection 11 takes effect August 31, 2004.

**Sec. B-12. 36 MRSA §1760, sub-§23-C, ¶A,** as amended by PL 2003, c. 390, §10 and c. 414, Pt. B, §61 and affected by Pt. D, §7, is repealed and the following enacted in its place:

A. Motor vehicles, except automobiles rented for a period of less than one year, all-terrain vehicles and snowmobiles as defined in Title 12, section 13001;

**Sec. B-13. Effective date.** That section of this Part that repeals and replaces the Maine Revised Statutes, Title 36, section 1760, subsection 23-C, paragraph A takes effect August 31, 2004.

**Sec. B-14. 38 MRSA §423,** as amended by PL 2003, c. 277, §3 and c. 414, Pt. B, §70 and affected by Pt. D, §7 and repealed and replaced by c. 452, Pt. W, §6 and affected by Pt. X, §2, is repealed and the following enacted in its place:

**§423. Discharge of waste from watercraft**

1. Discharge from watercraft prohibited. A person, firm, corporation or other legal entity may not discharge, spill or permit to be discharged sewage, septic fluids, garbage or other pollutants from watercraft:

A. Into inland waters of the State;

B. On the ice of inland waters of the State; or

C. On the banks of inland waters of the State in a manner that the pollutants may fall or be washed into the waters or in a manner in which the drainage from the banks may flow into the waters.

2. Holding tank required. A person, firm, corporation or other legal entity may not operate upon the inland waters of the State a watercraft that has a permanently installed sanitary waste disposal system if it does not have securely affixed to the interior discharge opening of the sanitary waste disposal system a holding tank or suitable container for holding sanitary waste material so as to prevent its discharge or drainage into the inland waters of the State.

3. Watercraft defined. For the purposes of this section, "watercraft" has the same meaning as provided in Title 12, section 7791, subsection 14, except that "watercraft" includes houseboats. This subsection is repealed August 31, 2004.

4. Watercraft defined. For the purposes of this section, "watercraft" has the same meaning as provided in Title 12, section 13001, subsection 28, except that "watercraft" includes houseboats. This subsection takes effect August 31, 2004.

Sec. B-15. Effective date. That section of this Part that repeals and replaces the Maine Revised Statutes, Title 38, section 423 takes effect July 1, 2004.

## PART C

Sec. C-1. 4 MRSA §183, sub-§1, ¶D, as amended by PL 2003, c. 39, §1 and c. 84, §1, is repealed and the following enacted in its place:

D. Family case management officers shall employ appropriate case management techniques and have jurisdiction to hear and dispose of the following matters:

(1) Interim orders in actions involving the establishment, modification or enforcement of child support;

(2) Interim orders in actions involving divorce, legal separation, paternity or parental rights, including interim orders in postjudgment proceedings arising out of these actions, except that a contested motion concerning interim parental rights and responsibilities, excluding interim child support orders, may be determined by the family case management officer only if both parties consent to determination of the issue or issues in dispute by the family case management officer;

(2-A) Parental rights and responsibilities and parent-child contact orders entered pursuant to Title 19-A, section 4006, subsection 5 and section 4007, subsection 1, paragraph G to make such orders consistent with subsequently entered orders in matters included in subparagraphs (1), (2) and (3);

(3) Final orders in any of the matters included in subparagraphs (1) and (2) when the proceeding is uncontested;

(4) Final orders in a contested proceeding when child support is the only contested issue;

(4-A) Applications for writs of habeas corpus to facilitate the attendance of proceedings by and return of a party who is incarcerated;

(4-B) Requests for access to confidential Department of Human Services child protective records in accordance with Title 22, section 4008. The family case management officer may review records in camera to determine whether to grant access; and

(5) Other actions assigned by the Chief Judge of the District Court.

**Sec. C-2. 12 MRSA §685-E, 2nd ¶,** as enacted by PL 2003, c. 451, Pt. SS, §1, is amended to read:

Beginning with fiscal year 2003-04, a town or a plantation in the commission's jurisdiction that elects not to administer land use controls at the local level but receives commission services, including planning, permitting and ensuring compliance, must be assessed a fee equal to .01% of the most recent equalized state valuation established by the State Tax Assessor for that town or plantation. The State Tax Assessor shall issue a warrant to each such town or plantation no later than March 1st of each year. The warrant is payable on demand. Interest charges on unpaid fees begin on ~~May-1st~~ June 30th of each year and are compounded monthly at the interest rate for unpaid property tax as established by the State Tax Assessor for the unorganized territory. For any assessment that remains unpaid as of September 1st of the year in which it is due, state revenue sharing to that town or plantation must be reduced by an amount equal to any unpaid warrant amount plus any accrued interest, until the amount is paid. These fees must be deposited to the General Fund.

**Sec. C-3. 12 MRSA §7606, sub-§1-A,** as amended by PL 2003, c. 403, §26, is further amended to read:

**1-A. Sale of bait in polystyrene foam containers.** A person who sells bait ~~ex-baitfish-shall~~ may not provide or sell the bait ~~ex--baitfish~~ in containers that are composed ~~ef--biodegradable paper--ex--cardboard~~ in whole or in part of polystyrene foam plastic. This subsection does not apply to baitfish.

**Sec. C-4. 14 MRSA §1354,** as repealed and replaced by PL 1975, c. 41, §2, is amended to read:



§1354. Less than unanimous verdict or finding

In the trial of all civil suits in the Superior Court of this State, if a number of jurors equal to at least  $\frac{2}{3}$  of the total number of jurors serving on a jury agree on a verdict or finding, they shall return it into court as the verdict or finding of that jury and the trial judge shall so instruct the jury; provided, however, that the parties to a civil suit may stipulate that a verdict or finding of a stated majority of the jurors shall must be taken as the verdict or finding of the jury.

Sec. C-5. 20-A MRSA §15603, sub-§8, ¶B, as amended by PL 2003, c. 314, §1 and c. 477, §12, is repealed and the following enacted in its place:

B. Lease costs for school buildings when the leases, including leases under which the school administrative unit may apply the lease payments to the purchase of portable, temporary classroom space beginning January 1, 1988, have been approved by the commissioner for the year prior to the year of allocation. Beginning July 1, 1998 lease cost includes:

(1) Administrative space. A school administrative unit may lease administrative space with state support until July 1, 2003. A school administrative unit engaged in a lease-purchase agreement for administrative space is eligible for state support until July 1, 2008:

(2) Temporary interim nonadministrative space.

(a) A school administrative unit with state-approved need for nonadministrative space may lease temporary interim space, with state support, for a maximum of 5 years. A school administrative unit may appeal to the state board if this limitation presents an undue burden. When making a determination on a school administrative unit's request for relief based on undue burden, the state board may consider, but not be limited to, the following:

(i) Fiscal capacity;

(ii) Enrollment demographics; and

(iii) Unforeseen circumstances not within the control of the appealing school administrative unit.

The state board's decision is final.

(b) A school administrative unit engaged in a lease-purchase agreement for temporary interim nonadministrative space is eligible for state support for a maximum of 10 years; and

(3) Permanent small nonadministrative space that replaces or is converted from existing approved leased portable space. The existing leased portable space will be eligible for state support until July 1, 2003. Once an existing leased portable space has been converted into a permanent nonadministrative space through an approved lease-purchase agreement, the space is eligible for state support for a maximum of 10 years.

The department shall adopt rules necessary to implement this paragraph. Rules adopted by the department to implement this paragraph are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A;

**Sec. C-6. 22 MRSA §13, sub-§6, ¶¶A and B,** as amended by PL 2003, c. 613, §1, are further amended to read:

A. The department may impose a sanction or withhold payment when the department has obtained an order from Superior Court allowing interim sanctions upon showing a substantial likelihood that overpayment and or fraud has occurred ~~or~~ and that substantial harm to the department will result from further delay or when the department has taken final agency action and the provider has waived or exhausted its right to judicial review.

B. Notwithstanding paragraph A, the department may terminate or suspend the participation of a provider in the MaineCare program ~~in--lieu--of--recoupment--pending--final determination--regarding--an--overpayment--as--long--as--30--days--notice--is--given~~ pursuant to federal regulation and state rule.

**Sec. C-7. 22 MRSA §42, sub-§7, ¶H,** as amended by PL 2003, c. 613, §2, is further amended to read:

H. In an administrative appeal of an informal review decision under this subsection, the department bears the burden of proving a violation of law or rule by a

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preponderance of the evidence. If the department proves that existing and available records of goods or services are defective, the department may impose a fee penalty or sanction, including total recoupment. Total recoupment for defective records is warranted only when the provider has failed to demonstrate by a preponderance of the evidence that the disputed goods or services were medically necessary, MaineCare-covered goods or services and were actually provided to eligible MaineCare members.

**Sec. C-8. 22 MRSA §2698-A, sub-§§3, 4 and 6**, as reallocated by RR 2003, c. 1, §17 and affected by §18, are amended to read:

**3. Manner of reporting.** By-July-1st Beginning in 2006, by July 1st each year, a manufacturer or labeler of prescription drugs that directly or indirectly distributes prescription drugs for dispensation to residents of this State shall file a report with the department in the form and manner provided by the department. The report must be accompanied by payment of a fee, as set by the department in rule, to support the work of the department under this section.

**4. Content of annual report by manufacturer or labeler.** The annual report filed under subsection 3 must include the following information for each calendar year, beginning with calendar year 2005, as it pertains to marketing activities conducted within this State in a form that provides the value, nature, purpose and recipient of the expense:

A. All expenses associated with advertising, marketing and direct promotion of prescription drugs through radio, television, magazines, newspapers, direct mail and telephone communications as they pertain to residents of this State, except for expenses associated with advertising purchased for a regional or national market that includes advertising within the State;

B. With regard to all persons and entities licensed to provide health care in this State, including health care professionals and persons employed by them in this State, carriers licensed under Title 24 or Title 24-A, health plans and benefits managers, pharmacies, hospitals, nursing facilities, clinics and other entities licensed to provide health care under this Title, the following information:

(1) All expenses associated with educational or informational programs, materials and seminars and remuneration for promoting or participating in educational or informational sessions, regardless of

whether the manufacturer or labeler provides the educational or informational sessions or materials;

(2) All expenses associated with food, entertainment, gifts valued at more than \$25 and anything provided to a health care professional for less than market value;

(3) All expenses associated with trips and travel; and

(4) All expenses associated with product samples, except for samples that will be distributed free of charge to patients; and

C. The aggregate cost of all employees or contractors of the manufacturer or labeler who directly or indirectly engage in the advertising or promotional activities listed in paragraphs A and B, including all forms of payment to those employees. The cost reported under this paragraph must reflect only that portion of payment to employees or contractors that pertains to activities within this State or to recipients of the advertising or promotional activities who are residents of or are employed in this State.

6. Department reports. By Beginning in 2006, by November 30th each year, the department shall provide an annual report, providing information in aggregate form, on prescription drug marketing expenses to the Legislature and the Attorney General. By January 1, 2005 2007 and every 2 years after that date, the department shall provide a report to the Legislature and the Attorney General, providing information in aggregate form, containing an analysis of the data submitted to the department, including the scope of prescription drug marketing activities and expenses and their effect on the cost, utilization and delivery of health care services and any recommendations with regard to marketing activities of prescription drug manufacturers and labelers.

**Sec. C-9. 22 MRSA §2699, sub-§2, ¶¶D and G,** as enacted by PL 2003, c. 456, §1, are amended to read:

D. A pharmacy benefits manager shall provide to a covered entity all financial and utilization information requested by the covered entity relating to the provision of benefits to covered individuals through that covered entity and all financial and utilization information relating to services to that covered entity. A pharmacy benefits manager providing information under this paragraph may designate that material as confidential. Information designated as confidential by a pharmacy benefits manager and provided to a covered entity under this paragraph may not be disclosed

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2 by the covered entity to any person without the consent of  
the pharmacy benefits manager, except that disclosure may be  
4 ~~made in a court filing under the Maine Unfair Trade~~  
~~Practices Act or when authorized by that Act or~~ ordered by a  
6 court of this State for good cause shown or made in a court  
filing under seal unless or until otherwise ordered by a  
8 court. Nothing in this paragraph limits the Attorney  
General's use of civil investigative demand authority under  
10 the Maine Unfair Trade Practices Act to investigate  
violations of this section.

12 G. A pharmacy benefits manager shall disclose to the  
covered entity all financial terms and arrangements for  
14 remuneration of any kind that apply between the pharmacy  
benefits manager and any prescription drug manufacturer or  
16 labeler, including, without limitation, formulary management  
and drug-switch programs, educational support, claims  
18 processing and pharmacy network fees that are charged from  
retail pharmacies and data sales fees. A pharmacy benefits  
20 manager providing information under this paragraph may  
designate that material as confidential. Information  
22 designated as confidential by a pharmacy benefits manager  
and provided to a covered entity under this paragraph may  
24 not be disclosed by the covered entity to any person without  
the consent of the pharmacy benefits manager, except that  
26 disclosure may be ordered by a court of this State for good  
cause shown or made in a court filing under seal unless or  
28 until otherwise ordered by a court. Nothing in this  
paragraph limits the Attorney General's use of civil  
30 investigative demand authority under the Maine Unfair Trade  
Practices Act to investigate violations of this section.

32 **Sec. C-10. 22 MRSA §2699, sub-§5 is enacted to read:**

34 **5. Application.** This section applies to contracts executed  
36 or renewed on or after September 13, 2003. For the purposes of  
this subsection, a contract executed pursuant to a memorandum of  
38 agreement executed prior to September 13, 2003 is deemed to have  
been executed prior to September 13, 2003 even if the contract  
40 was executed after that date.

42 **Sec. C-11. Retroactivity.** Those sections of this Part that  
amend the Maine Revised Statutes, Title 22, section 2699,  
44 subsection 2, paragraphs D and G and enact Title 22, section  
2699, subsection 5 apply retroactively to September 13, 2003.

46 **Sec. C-12. 22 MRSA §7852, sub-§5, as enacted by PL 2001, c.**  
48 **596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:**

5. **Assisted living services.** "Assisted living services" means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services.

**Sec. C-13. 29-A MRSA §1768, sub-§5,** as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is repealed and the following enacted in its place:

5. Operation of defective vehicle. A person may not operate a vehicle on a public way with equipment on the vehicle that does not conform to the standards set forth in rules adopted by the Chief of the State Police pursuant to section 1769.

A. Except as provided in paragraphs B and C, a person who violates this subsection commits a traffic infraction.

B. A person who violates this subsection commits a Class E crime if the vehicle is unsafe for operation because it poses an immediate hazard to an occupant of the vehicle or the general public.

C. A person who violates this subsection and is involved in a motor vehicle accident caused by nonconformance with the rules adopted by the Chief of the State Police pursuant to section 1769 commits a Class E crime.

**Sec. C-14. 30-A MRSA §1802, sub-§3,** as enacted by PL 2003, c. 228, §1, is amended to read:

**3. Consent of county.** "Consent of county" means a vote taken pursuant to section 122 or a vote taken at an election at which a majority of the legal votes of the voters of a county voting at the election are cast in favor of a question seeking approval of funding construction of a jail facility through the issuance of bonds or the guarantee by the counties of bonds issued by the jail authority.

**Sec. C-15. 30-A MRSA §1802, sub-§3-A** is enacted to read:

**3-A. County; counties.** "County" means either Lincoln County or Sagadahoc County, and "counties" means both Lincoln County and Sagadahoc County.

**Sec. C-16. Retroactivity.** Those sections of this Part that amend the Maine Revised Statutes, Title 30-A, section 1802,

subsection 3 and that enact Title 30-A, section 1802, subsection 3-A apply retroactively to May 21, 2003.

**Sec. C-17. 30-A MRSA §1952, first ¶,** as enacted by PL 2003, c. 228, §1, is amended to read:

All persons, firms and corporations, whether public or private, and each county shall pay to the treasurer of the jail authority formed under this chapter the rates, tolls, assessments, rents, transportation charges and other charges established by the directors for services provided by the jail authority. In this subchapter, the words "other charges" include, but are not limited to, interest on delinquent accounts at a rate not to exceed the highest lawful rate set by the Treasurer of State for municipal taxes. The jail authority may submit periodic bills directly to individual users or to the counties as determined by the directors.

**Sec. C-18. 30-A MRSA §1954,** as enacted by PL 2003, c. 228, §1, is amended by adding at the end a new paragraph to read:

If the issuance of guaranteed notes and bonds of the jail authority is authorized pursuant to this section, then a county is authorized to guarantee the payment of the principal of and premiums, if any, and interest on notes and bonds issued by the jail authority and to pledge the full faith and credit of the county to the payment of the principal of and premiums, if any, and interest on notes and bonds issued by the jail authority. Any amount that is payable pursuant to a guarantee authorized pursuant to this section is payable from sums annually apportioned by a county among the towns and other places within the territorial limits of the county and assessed upon the taxable property in the county and the sums so apportioned and assessed are payable from ad valorem taxes that may be levied without limit as to rate or amount upon all the property within the territorial limits of each town or place taxable by the town or place, except as otherwise provided by law.

**Sec. C-19. 30-A MRSA §4352, sub-§2,** as amended by PL 2003, c. 595, §4, is further amended to read:

**2. Relation to comprehensive plan.** A zoning ordinance, ~~other than an adult entertainment establishment ordinance,~~ must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body, except that adoption of an adult entertainment establishment ordinance does not necessitate adoption of a comprehensive plan by a municipality that has no such comprehensive plan. As used in this section, "adult entertainment establishment ordinance" means an ordinance that regulates the operation of adult amusement stores, adult video

stores, adult bookstores, adult novelty stores, adult motion picture theaters, on-site video screening establishments, adult arcades, adult entertainment nightclubs or bars, adult spas, establishments featuring strippers or erotic dancers, escort agencies or other sexually oriented businesses.

**Sec. C-20. 30-A MRSA §4352, sub-§6**, as amended by PL 2003, c. 595, §5, is further amended to read:

**6. Effect on State.** A zoning ordinance, ~~other than an adult entertainment establishment ordinance~~, that is not consistent with a comprehensive plan that is consistent with the provisions of section 4326 is advisory with respect to the State. Except as provided in this section, a state agency shall comply with a zoning ordinance consistent with a comprehensive plan that is consistent with the provisions of section 4326 in seeking to develop any building, parking facility or other publicly owned structure. The Governor or the Governor's designee may, after public notice and opportunity for public comment, including written notice to the municipal officers, waive any use restrictions in those ordinances upon finding that:

A. The proposed use is not allowed anywhere in the municipality;

B. There are no reasonable alternative sites for or configurations of the project within the municipality that would achieve the necessary public purposes;

C. There are no reasonable alternatives to the project, including sites in other municipalities, that would achieve the necessary public purposes;

D. The project will result in public benefits beyond the limits of the municipality, including without limitation, access to public waters or publicly owned lands; and

E. The project is necessary to protect the public health, welfare or environment.

A decision to waive a restriction under this section may be appealed by the municipality or any aggrieved party to Superior Court.

**Sec. C-21. 32 MRSA §12228, sub-§10**, as amended by PL 1999, c. 224, §1, is further amended to read:

**10. Experience.** During the 5-year period immediately following October 1, 1997, the applicant shall show that the applicant has had 2 years of experience in the practice of public



accountancy or its equivalent, meeting requirements prescribed by the board by rule; or, if the applicant's educational qualifications include, a masters degree conferred by a college or university approved by the board, then only one year of experience in that practice or its equivalent is required. After October 1, 2002, for initial issuance of a certificate under this subsection, an applicant shall demonstrate 2 years of experience ~~that was under the direction of a licensee under this subchapter~~ licensed by any state or territory of the United States and shall meet the other requirements prescribed by the board by rule. The applicant's experience must include the use of accounting or auditing skills, including the issuance of reports on financial statements, and at least one of the following: the provision of management advisory, financial advisory or consulting services; the preparation of tax returns; the furnishing of advice on tax matters; or equivalent activities defined by the board by rule. Board rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A 2-A. To the extent the applicant's experience is as a revenue agent or in a similar position engaged in the examination of personal and corporate income tax returns for the Bureau of Revenue Services, the applicant receives credit at the rate of 50% toward the experience required by this subsection. To the extent the applicant's experience is as an examiner engaged in financial examinations for the Bureau of Insurance, the applicant receives credit under this subsection if that experience meets the following standards:

A. Examinations are performed in conformity with the Examiners' Handbook published by the National Association of Insurance Commissioners;

B. Working papers prepared by the examiners are in conformity with generally accepted auditing standards and are subject to a review by a supervisor who must be a certified public accountant;

C. Written reports of examination are prepared in conformity with the Examiners' Handbook published by the National Association of Insurance Commissioners. All examiners working on the examinations must participate in the preparation of the report;

D. Reports of examination are prepared in accordance with statutory accounting principles. All examiners working on the examinations must participate in the preparation of the financial statements and corresponding note disclosures; and

E. All examiners assigned to an examination must participate in the planning of the examination and the

planning phase conforms to the Examiners' Handbook and generally accepted auditing standards.

**Sec. C-22. PL 2003, c. 430, §2 is amended to read:**

**Sec. 2. Report.** The Department of Human Services shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on or before ~~January~~ July 1, 2005 and on or before ~~July--1--2005~~ January 1, 2006 on the assessment of fees on manufacturers and labelers of prescription drugs pursuant to the Maine Revised Statutes, Title 22, section ~~2699~~ 2698-A and the use of those fees to support the work of the department with regard to the provisions of Title 22, section ~~2699~~ 2698-A.

**Sec. C-23. P&SL 1907, c. 84, §1 is amended to read:**

**Sec. 1. Corporators; corporate names.** Louis S. Walsh of Portland, Maine, Albert A. Burleigh and John B. Madigan of Houlton, Joseph Marcoux and Joseph A. Michaud of Eagle Lake, all in the state of Maine, their associates and successors are hereby incorporated and made a body politic by the name of the Northern Maine General Hospital, and by that name may sue and be sued, have a common seal and have all the immunities and privileges of like corporations. Said corporators and their associates shall have the power to vote in associate corporations, but no personal liability shall attach to said corporators by reason of any acts of said corporation.

## PART D

**Sec. D-1. 30-A MRSA c. 206, sub-c. 3, as enacted by PL 2003, c. 451, Pt. NNN, §2 and as amended by PL 2003, c. 610, §1, is repealed.**

**Sec. D-2. 30-A MRSA c. 206, sub-c. 4 is enacted to read:**

### SUBCHAPTER 4

#### PINE TREE DEVELOPMENT ZONES

#### §5250-H. Findings and declaration of necessity

**1. Legislative finding.** The Legislature finds that there is a need to encourage development in economically distressed areas of the State in order to:

A. Provide new employment opportunities;

2        B. Improve existing employment opportunities;

4        C. Improve and broaden the tax base; and

6        D. Improve the general economy of the State.

8        2. Authorization. For the reasons set out in subsection  
10 1, a unit of local government, or 2 or more cooperating units of  
12 local government, may develop a program for improving a district  
14 within its collective boundaries:

16        A. To provide impetus for targeted business development;

18        B. To increase employment; and

20        C. To provide the facilities outlined in the development  
22 program adopted by the participating units of local  
24 government.

26        3. Declaration of public purpose. The Legislature declares  
28 that the actions required to assist the implementation of these  
30 development programs are a public purpose and that the execution  
32 and financing of these programs are a public purpose.

34        **§5250-I. Definitions**

36        As used in this subchapter, unless the context otherwise  
38 indicates, the following terms have the following meanings.

40        1. Affiliated business. "Affiliated business" means a  
42 member of a group of 2 or more businesses in which more than 50%  
44 of the voting stock of each member corporation or more than 50%  
46 of the ownership interest in a business other than a corporation  
48 is directly or indirectly owned by a common owner or owners,  
50 either corporate or noncorporate, or by one or more of the member  
businesses.

2. Applicant. "Applicant" means any unit of local  
government and any group of cooperating units of local government  
in the State that apply for designation as a Pine Tree  
Development Zone under section 5250-J.

3. Average employment during base period. "Average  
employment during base period" for a business means the total  
number of qualified employees of that business on each of 6  
consecutive measurement days in each of the 3 calendar years in  
the base period as chosen by the business divided by 18.

4. Base level of employment. "Base level of employment"  
means the greater of either the total employment in the State of

a business and its affiliated businesses as of the December 31st immediately preceding its certification as a qualified Pine Tree Development Zone business or its average employment during the base period.

5. Base period. "Base period" means the 3 calendar years prior to the year in which a business is certified as a qualified Pine Tree Development Zone business.

6. Commissioner. "Commissioner" means the Commissioner of Economic and Community Development.

7. Department. "Department" means the Department of Economic and Community Development.

8. Financial services. "Financial services" means services provided by an insurance company subject to taxation under Title 36, chapter 357; a financial institution subject to taxation under Title 36, chapter 819; or a mutual fund service provider as defined in Title 36, section 5212, subsection 1, paragraph E.

9. Labor market average weekly wage. "Labor market average weekly wage" means the average weekly wage as published by the Department of Labor for the labor market or markets in which potential qualified Pine Tree Development Zone employees are located for the 12 most recently reported months preceding the date of application for zone designation.

10. Labor market unemployment rate. "Labor market unemployment rate" means the average unemployment rate as published by the Department of Labor for the labor market or markets in which potential qualified Pine Tree Development Zone employees are located for the 12 most recently reported months preceding the date of application for zone designation.

11. Manufacturing. "Manufacturing" means the production of tangible personal property intended to be sold or leased ultimately for final use or consumption or the production of tangible personal property pursuant to a contract with the Federal Government or any agency thereof.

12. Person. "Person" has the same meaning as defined in Title 36, section 111, subsection 3.

13. Pine Tree Development Zone. "Pine Tree Development Zone" or "zone" means a specified area within the boundaries of a unit of local government, or within the boundaries of cooperating units of local government in a multijurisdictional application, that has been designated by the commissioner as a Pine Tree Development Zone in accordance with section 5250-J.

2        14. Pine Tree Development Zone benefits. "Pine Tree  
4        Development Zone benefits" means:

6            A. The exclusion from the limitations established under  
8            section 5223, subsection 3 of tax increment financing  
10           districts included within a Pine Tree Development Zone;

12           B. Expanded employment tax increment financing benefits  
14           under Title 36, chapter 917;

16           C. The sales tax exemptions under Title 36, section 1760,  
18           subsections 86 and 87; and

20           D. The Pine Tree Development Zone tax credits provided by  
22           Title 36, sections 2529 and 5219-W.

24        15. Production. "Production" has the same meaning as  
26        defined in Title 36, section 1752, subsection 9-B.

28        16. Qualified business activity. "Qualified business  
30        activity" means a business activity that is conducted within a  
32        Pine Tree Development Zone and is directly related to financial  
34        services, manufacturing or a targeted technology business for  
36        which the business receives a certificate from the commissioner  
38        pursuant to section 5250-O.

40        17. Qualified Pine Tree Development Zone business.  
42        "Qualified Pine Tree Development Zone business" or "qualified  
44        business" means any for-profit business in this State engaged in  
46        financial services, manufacturing or a targeted technology  
48        business that adds qualified Pine Tree Development Zone employees  
50        above its base level of employment in this State and that meets  
      the following criteria:

A. It demonstrates that the establishment or expansion of  
      operations within the Pine Tree Development Zone would not  
      occur within the State absent the availability of the Pine  
      Tree Development Zone benefits. The department shall  
      investigate whether the business has met the requirements of  
      this paragraph and provide an advisory opinion to the  
      Executive Director of the Bureau of Revenue Services in the  
      Department of Administrative and Financial Services, who  
      shall make the final determination; and

B. It has received a certificate as a qualified business  
      pursuant to section 5250-O.

18. Qualified Pine Tree Development Zone employees.  
      "Qualified Pine Tree Development Zone employees" means new,

full-time employees hired in this State by a qualified Pine Tree Development Zone business for work directly in one or more qualified business activities for whom a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 101 to 1461 (2003) and group health insurance are provided and whose wages derived from employment within the Pine Tree Development Zone are greater than the average annual per capita wages in the local labor market area in the county in which the qualified employee is employed. Qualified Pine Tree Development Zone employees must be residents of this State.

19. State average weekly wage. "State average weekly wage" means the average weekly wage as published by the Department of Labor for the State as a whole for the 12 most recently reported months preceding the date of application for zone designation.

20. State unemployment rate. "State unemployment rate" means the average unemployment rate published by the Department of Labor for the State as a whole for the 12 most recently reported months preceding the date of application for zone designation.

21. Targeted technology business. "Targeted technology business" means a business primarily involved in a targeted technology as defined in Title 5, section 15301.

22. Unit of local government. "Unit of local government" means a municipality, county, plantation, unorganized territory or Indian tribe.

#### **§5250-J. Pine Tree Development Zones**

1. Creation. One or more units of local government, or an organization representing one or more units of local government, may apply to the commissioner for the designation of a Pine Tree Development Zone within the boundaries of the unit or units of local government in accordance with the requirements of this subchapter. County governments may apply on behalf of unorganized territories. Groups of units of local government may apply for multijurisdictional or joint projects. Multijurisdictional applications require designation of one unit of local government as the lead applicant and consent for that designation by each participating unit of local government. Counties may also apply on behalf of a consortium of units of local government. The designation of a Pine Tree Development Zone may not conflict with the provisions of a municipal or other unit of local government charter. Zones that meet the requirements of subsection 2 are authorized for designation as follows:

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2       A. Aroostook County, including up to 100 acres of land  
4       reserved for the Aroostook Band of Micmacs and the Houlton  
      Band of Maliseet Indians;

6       B. The Androscoggin Valley region, including the Lewiston  
8       Enterprise Community Zone as designated by the federal  
10      Agriculture, Rural Development, Food and Drug  
      Administration, and Related Agencies, Appropriations Act,  
      Public Law 105-277 (1999);

12      C. The Penobscot Valley region, including up to 500 acres  
      of land reserved for the Penobscot Nation; and

14      D. Washington County and the Downeast region, including up  
16      to 500 acres of land reserved for the Passamaquoddy Tribe.

18      No more than one zone may be established in each of the areas  
20      specified in paragraphs A to D, except that the commissioner may  
      designate up to 4 additional zones through the process  
      established in section 5250-L.

22      2. Requirements for designation. The commissioner shall  
24      adopt rules establishing the minimum requirements for the  
26      designation of Pine Tree Development Zones. Additionally, each  
28      participating unit of local government must agree to maintain at  
      least one prepermitted construction or development site available  
      within the zone on a continual basis throughout the term of the  
      zone.

30      3. Limitations. The designation of Pine Tree Development  
32      Zones is subject to the following limitations:

34      A. The total area of a zone, including all noncontiguous  
      parcels, may not exceed 5,000 acres;

36      B. A zone located in Aroostook County as described in  
38      subsection 1, paragraph A may include property that is also  
40      included within the Aroostook County Empowerment Zone as  
      designated by the federal Community Renewal Tax Relief Act  
      of 2000, Public Law 106-554;

42      C. Pine Tree Development Zone benefits may not be used to  
44      encourage or facilitate the transfer of existing positions  
      or property of a qualified business or affiliated businesses  
      into a zone from a location elsewhere in the State;

46      D. Pine Tree Development Zone benefits may not be provided  
48      based upon any employees or positions transferred by the  
50      business or affiliated businesses into a Pine Tree  
      Development Zone from a location elsewhere in the State;

2 E. A Pine Tree Development Zone may not consist of more  
4 than 20 noncontiguous parcels of property;

6 F. All property included within the boundaries of a Pine  
8 Tree Development Zone must be suitable for one or more  
10 qualified Pine Tree Development Zone business activities;

12 G. All property included within a Pine Tree Development  
14 Zone must meet one of the following:

16 (1) The property is located within a market area for  
18 which the labor market unemployment rate is greater  
20 than the state unemployment rate at the time of the  
22 application; or

24 (2) The property is included within a county in which  
26 the average weekly wage is below the state average  
28 weekly wage at the time of the application.

30 In the case of a multijurisdictional or joint application,  
32 the requirements of this paragraph are met if the combined  
34 unemployment rate of the cooperating units of local  
36 government meets the requirements of subparagraph (1) or the  
38 average weekly wage of the cooperating units of local  
40 government, on a per-employed-worker basis, meets the  
42 requirements of subparagraph (2); and

44 H. The restrictions contained in paragraph G may be waived  
46 for property that is contained within a labor market area  
48 that has sustained a greater than 5% loss of population or  
50 employed workers during the 3-year period immediately  
preceding the time of application if the loss was caused by  
business closings.

4. Application. An application for designation of a Pine  
Tree Development Zone must include, but is not necessarily  
limited to, the following:

A. A narrative description of the Pine Tree Development  
Zone to be designated;

B. Maps and any other information necessary to clearly  
identify the geographic boundaries of the Pine Tree  
Development Zone and any subzones it may include;

C. Evidence that the Pine Tree Development Zone meets the  
requirements of subsection 3;

D. Any information evidencing economic distress; and



2           E. A development plan that includes:

4                   (1) Documentation of all municipal commitments required  
6                   under subsection 2;

8                   (2) A description of how the Pine Tree Development Zone  
10                   will be administered, including any related interlocal  
12                   cooperative agreements;

14                   (3) A description of the goals and objectives to be  
16                   accomplished through the Pine Tree Development Zone;

18                   (4) A description of the resources to be committed to  
20                   the Pine Tree Development Zone by the applicant or  
22                   applicants; and

24                   (5) Plans for accomplishing the goals and objectives,  
26                   including a marketing plan and related time line and  
28                   milestones.

30           5. Termination. All Pine Tree Development Zone  
32           designations approved under this subchapter and all Pine Tree  
34           Development Zone benefits are terminated on December 31, 2018.

36           §5250-K. Procedure

38                   1. Notice and hearing. Before designating a Pine Tree  
40                   Development Zone or adopting a development plan, the municipal  
42                   officers of each applicant unit of local government or the  
44                   municipal officers' designee must hold at least one public  
46                   hearing. Notice of the hearing must be published at least 10  
48                   days before the hearing in a newspaper of general circulation  
50                   serving the area of the State in which the local government is  
                  located.

2. Vote of municipal officers or legislative body. Each  
                  applicant unit of local government must designate that portion of  
                  the Pine Tree Development Zone contained within its boundaries  
                  and take all actions required to satisfy the requirements of  
                  section 5250-J, subsection 2 by majority vote of its municipal  
                  officers or legislative body.

3. Effective date. The establishment of a Pine Tree  
                  Development Zone is effective upon designation by the  
                  commissioner.

4. Administration of zone. The participating units of  
                  local government may contract or otherwise arrange with  
                  a public or private organization, including a regional council as

described in section 2302, to administer activities authorized under this subchapter. The organization may act as the lead entity for the purpose of applying for and administering the Pine Tree Development Zone.

**5. Amendments.** The designation, size, location, number and configuration of the parcels in a Pine Tree Development Zone or the terms of a development plan may be amended by an affirmative vote of all the participating units of local government as evidenced by a majority vote of the municipal officers or legislative body of each unit of local government. An amendment may not result in the zone's being out of compliance with any of the requirements in section 5250-J.

**§5250-L. Selection criteria**

**1. Review and selection.** The commissioner shall review applications and select zones for designation based upon the following criteria:

A. Severity of economic distress within the region affected by the Pine Tree Development Zone;

B. Viability of a development plan described under section 5250-J, subsection 4, paragraph E;

C. Commitment of local and regional financial resources;

D. Partnerships with public and private organizations; and

E. Impact on surrounding regions of the Pine Tree Development Zone.

**§5250-M. Program administration; rules**

The commissioner shall administer this subchapter. The commissioner shall adopt rules pursuant to the Maine Administrative Procedure Act for implementation of Pine Tree Development Zones, including, but not limited to, rules for determining and certifying eligibility, selecting zones for designation and evaluating on a periodic basis the progress and success of each zone in achieving its goals. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§5250-N. Unorganized territory**

For the purposes of this subchapter, a county may act as a municipality for the unorganized territory within the county and may designate development districts within the unorganized

territory. When a county acts under this section, the county commissioners act as the municipality and as the municipal legislative body, the State Tax Assessor acts as the municipal assessor and the unorganized territory education and services fund receives the funds designated for the municipal general fund.

**§5250-O. Certification of qualified business**

A business may apply to the commissioner for certification as a qualified Pine Tree Development Zone business. Upon review and determination by the commissioner that a business is a qualified Pine Tree Development Zone business, the commissioner shall issue a certificate of qualification to the business that includes a description of the qualified business activity for which the certificate is being issued.

**§5250-P. Report**

By January 15, 2004, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over economic development matters regarding rulemaking and progress in implementing Pine Tree Development Zones. Not later than April 1, 2005 and April 1st of each odd-numbered year thereafter, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over economic development matters on the status of the Pine Tree Development Zones.

**Sec. D-3. 36 MRSA §1760, sub-§§86 and 87, as enacted by PL 2003, c. 451, Pt. NNN, §3, are amended to read:**

**86. Construction contracts with qualified development zone businesses.** Beginning July 1, 2005, sales to a construction contractor of tangible personal property that is to be physically incorporated in, and become a permanent part of, real property that is owned by or for sale to a qualified Pine Tree Development Zone business, as defined in Title 30-A, section 5246 5250-I, subsection 17, which real property will be used in the qualified business activity, as defined in Title 30-A, section 5246 5250-I, subsection 16, of the qualified Pine Tree Development Zone business in a Pine Tree Development Zone, as defined in Title 30-A, section 5246 5250-I, subsection 13. The exemption provided by this subsection is limited to sales to a construction contractor occurring within a period of 10 years from the date the qualified Pine Tree Development Zone business receiving the property is certified pursuant to Title 30-A, section 5250-B 5250-Q or until December 31, 2018, whichever occurs first.

**87. Sales of tangible personal property to qualified development zone businesses.** Beginning July 1, 2005, sales of

tangible personal property to a qualified Pine Tree Development Zone business, as defined in Title 30-A, section 5246 5250-I, subsection 17, for use directly and primarily in one or more qualified business activities, as defined in Title 30-A, section 5246 5250-I, subsection 16. The exemption provided by this subsection is limited for each qualified Pine Tree Development Zone business to sales occurring within a period of 10 years from the date the business is certified pursuant to Title 30-A, section 5250-B 5250-O or until December 31, 2018, whichever occurs first.

**Sec. D-4. 36 MRSA §2529, sub-§§1 and 2**, as enacted by PL 2003, c. 451, Pt. NNN, §4 and affected by §8, are amended to read:

**1. Credit allowed.** A taxpayer that is a qualified Pine Tree Development Zone business as defined in Title 30-A, section 5246 5250-I, subsection 17 is allowed a credit in the amount of:

A. One hundred percent of the tax associated with premiums sold by a qualified business located in a Pine Tree Development Zone that would otherwise be due under this chapter for each of the first 5 taxable years that the taxpayer is required to file a return pursuant to this chapter beginning after the taxpayer commences its qualified business activity, as defined in Title 30-A, section 5246 5250-I, subsection 16, and that are directly attributable to a qualified business activity; and

B. Fifty percent of the tax associated with premiums sold by a qualified business in a Pine Tree Development Zone that would otherwise be due under this chapter for each of the taxable years beginning with the 6th taxable year and ending with the 10th taxable year that the taxpayer is required to file a return pursuant to this chapter after the taxpayer commences its qualified business activity, as defined in Title 30-A, section 5246 5250-I, subsection 16, and that are attributable to a qualified business activity.

**2. Apportioned credit in certain circumstances.** In the case of a qualified Pine Tree Development Zone business as defined in Title 30-A, section 5246 5250-I, subsection 17, including any affiliated members of the qualified business, that has a business presence in the State other than that conducted within a Pine Tree Development Zone, as defined by Title 30-A, section 5246 5250-I, subsection 13, the credit provided for in this section is to be calculated based upon a pro forma determination. The pro forma determination must be based on the assumptions that all of the business activities conducted by the qualified Pine Tree Development Zone business and the affiliated members, if any, within this State constitute a unitary business

and that only the qualified business activity conducted in the Pine Tree Development Zone is subject to tax imposed by this chapter. The portion of the tax liability of the qualified Pine Tree Development Zone business and the affiliated members, if any, related to the business activity conducted in the Pine Tree Development Zone must be determined by use of a percentage, the numerator of which is the property value and the payroll for the taxable year directly attributed to the qualified business activity of the business and the denominator of which is the statewide property value and payroll for the taxable year of the qualified business and its affiliated members.

**Sec. D-5. 36 MRSA §6754, sub-§1, ¶D,** as enacted by PL 2003, c. 451, Pt. NNN, §6 and affected by §8, is amended to read:

D. For qualified Pine Tree Development Zone employees, as defined in Title 30-A, section 5246 5250-I, subsection 18, employed directly in the qualified business activity of a qualified Pine Tree Development Zone business, as defined in Title 30-A, section 5246 5250-I, subsection 17, for whom a certificate of qualification has been issued in accordance with Title 30-A, section 5250-B 5250-Q, the reimbursement under this subsection is equal to 80% of the withholding taxes withheld each year for which reimbursement is requested and attributed to those qualified employees for a period of no more than 10 years. In no event may reimbursement under this subsection be paid for years beginning after December 31, 2018.

## PART E

**Sec. E-1. 32 MRSA §1866, sub-§4, ¶D,** as enacted by PL 2003, c. 499, §6, is amended to read:

D. Paragraphs A, B and C of this subsection do not apply to a brewer or vintner who annually produces no more than 50,000 gallons of its product or a bottler of water who annually sells no more than 250,000 containers each containing no more than one gallon of its product. In addition to the payment of the refund value, an initiator of deposit under section 1863-A, subsections 1 to 4 who is also a brewer or vintner who annually produces no more than 50,000 gallons of its product or a bottler of water who annually sells no more than 250,000 containers each containing no more than one gallon of its product shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 1863-A in an amount that equals at least 3¢ per returned container.

**Sec. E-2. Routine technical rule.** Any rule change necessary to implement the inclusion of vintners within the exemption for small brewers described in that section of this Part that amends the Maine Revised Statutes, Title 32, section 1866, subsection 4, paragraph D is a routine technical rule as defined in Title 5, chapter 375, subchapter 2-A.

## PART F

**Sec. F-1. 12 MRSA §7903,** as enacted by PL 1979, c. 420, §1, is amended to read:

### **§7903. Jurisdiction**

The District Court shall--have has concurrent jurisdiction with the Superior Court in all criminal prosecutions under chapters 701 to 721. The District Court has jurisdiction in all civil prosecutions under chapters 701 to 721. Any person arrested or summonsed as a violator of this Part must with reasonable diligence be taken before the District Court in the division nearest to where the offense is alleged to have been committed for prosecution, and in such case jurisdiction is granted to the District Court in adjoining divisions to be exercised in the same manner as if the offense had been committed in that division.

**Sec. F-2. 12 MRSA §10553,** as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is amended to read:

### **§10553. Jurisdiction**

The District Court has concurrent jurisdiction with the Superior Court in all criminal prosecutions under this Part. The District Court has jurisdiction in all civil prosecutions under this Part. Any person arrested or summonsed as a violator of this Part must with reasonable diligence be taken before the District Court in the division nearest to where the offense is alleged to have been committed for prosecution, and in such case jurisdiction is granted to the District Court in adjoining divisions to be exercised in the same manner as if the offense had been committed in that division.

**Sec. F-3. Effective date.** That section of this Part that amends the Maine Revised Statutes, Title 12, section 10553 takes effect August 31, 2004.'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

2

## SUMMARY

4

This amendment labels the sections of the bill as Part A. Part B consists of technical changes and includes revised sections from the bill and additional technical corrections. Part C consists of changes that are or may be considered substantive. Part D corrects a conflict involving the Pine Tree Development Zones. Part E amends the bottle redemption law to refer to vintners. Part F amends the law governing prosecution of civil and criminal inland fisheries and wildlife violations.

12

14

### PART A

16

Section 1 of the bill is deleted and added in Part C with an additional change.

18

20

Section 3 of the bill is deleted because the error is corrected in another bill.

22

Section 15 of the bill is deleted and added in Part B with a correction.

24

26

Section 28 of the bill is deleted because the correction can be made without legislation.

28

Sections 35 and 36 of the bill are deleted and added in Part B with a date change.

30

32

Sections 43 and 44 of the bill are deleted and added in Part B with a date change.

34

Sections 45 and 46 of the bill are deleted and added as Part D.

36

38

Sections 50 and 51 of the bill are deleted and added in Part B with a date change.

40

Sections 55 and 56 of the bill are deleted and added in Part B with a cross-reference update and a date change.

42

44

### PART B

46

Section 1 provides that violations of provisions of the chapter concerning cemetery and crematory trust funds and other property already fall under the definition of theft crimes contained in the Maine Criminal Code, Title 17-A, chapter 15.

50

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Section 2 corrects cross-references to drug trafficking statutes contained in the civil forfeiture statutes.

Section 3 makes a grammatical correction and corrects a conflict in the drug trafficking laws.

Section 4 corrects an error by adding language to make a complete sentence and reflect the intent of the Legislature in the education laws.

Section 5 repeals an obsolete provision of law in the education laws.

Section 6 corrects a conflict created by Public Law 2003, chapters 395 and 447, which affected the same provision of law concerning challenges of voters by other voters, by incorporating the changes made by both laws.

Section 7 corrects the cross-reference to the statutory designation of Equal Pay Day.

Section 8 corrects a conflict concerning low-speed vehicles. Section 9 provides an effective date of August 31, 2004.

Section 10 corrects a conflict concerning accident reports. Section 11 provides an effective date of August 31, 2004.

Section 12 corrects a conflict concerning sales tax. Section 13 provides an effective date of August 31, 2004.

Section 14 corrects a conflict created when 3 public law chapters amended the same section concerning discharging waste from watercraft on inland waters. Section 15 provides an effective date of July 1, 2004.

PART C

Section 1 corrects a conflict created by Public Law 2003, chapters 39 and 84, which affected the same provision of law, by incorporating the changes made by both laws. This section also expands the authority of family case management officers to amend the parental rights and responsibilities portions of temporary protection from abuse orders.

Section 2 amends the current law governing assessments to be paid by certain towns and plantations to the General Fund to support the work of the Maine Land Use Regulation Commission. Current law provides that interest charges for unpaid assessments



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begin on May 1st and are compounded monthly at the rate established for unpaid property tax for the unorganized territory. This section changes that date to June 30th.

Section 3 amends current law in Title 12 to immediately pick up the changes that Public Law 2003, chapter 614 made to the recodified inland fisheries and wildlife laws.

Section 4 amends a provision of the laws pertaining to civil jury verdicts to be consistent with recent changes. Public Law 2003, chapter 525 changed the law governing the number of civil jurors, requiring a minimum of 2/3 of the jurors to agree on a verdict. This section amends Title 14, section 1354 to also require the agreement of a minimum of 2/3 of the total number of jurors on a verdict or finding.

Section 5 corrects a conflict created by Public Law 2003, chapters 314 and 477, which affected the same provision of law. This section repeals the provision and replaces it with the chapter 477 version with minor revisions.

Sections 6 and 7 correct 3 errors in MaineCare law that were enacted in Public Law 2003, chapter 613. The first corrects a reference to the occurrence of "overpayment or fraud," which was inadvertently changed to "overpayment and fraud" when the intention was to make a similar change of the word "or" to "and" later on the same line of the bill. The second involves failure to delete descriptive language on termination or suspension from the MaineCare program when compliance with federal regulation and state rule were substituted for that descriptive language. The third corrects the use of the word "fee" when proper reference to the department's remedy is "penalty."

Section 8 clarifies the law governing reporting of prescription drug marketing costs by changing the reporting period and the reporting date.

Sections 9 and 10 clarify that documents that pharmacy benefits managers are routinely required to provide to covered entities may be designated confidential by the pharmacy benefits managers and must be treated as such by the covered entity. These reporting requirements are routine reporting requirements and are not intended to displace the rules of discovery in the context of litigation. It is made expressly clear that the confidentiality of these documents as between the pharmacy benefits managers and the covered entities does not affect the Attorney General's ability to investigate under the Maine Unfair Trade Practices Act. The confidentiality of the Attorney General's investigations is governed by the Maine Revised Statutes, Title 5, section 211. The new pharmacy benefits

COMMITTEE AMENDMENT "A" to H.P. 1418, L.D. 1916

management law was enacted by Public Law 2003, chapter 456. It took effect as nonemergency legislation on September 13, 2003. This amendment clarifies that the new law applies to contracts executed or renewed on or after September 13, 2003. A contract executed pursuant to a memorandum of agreement that was executed prior to September 13, 2003 is deemed a contract executed prior to September 13, 2003 even if the contract itself was executed at a later date. Section 11 adds a retroactive effective date of September 13, 2003.

Section 12 amends the definition of "assisted living services" to clarify that it applies to the provision of assisted housing services, assisted housing services with medication administration and assisted housing services with medication administration and nursing services.

Section 13 amends the subchapter in the traffic laws regarding violations of the inspection standards to clarify that a violation of the inspection rules adopted by the Chief of the State Police is a traffic infraction and that operation of a motor vehicle that is in violation of the rules and causes an immediate hazard is a Class E crime. The amendment also makes it a Class E crime if the operator of a vehicle is involved in a motor vehicle accident caused by nonconformance with the rules.

Section 14 amends the laws pertaining to the Lincoln and Sagadahoc multicounty jail authority to revise the definition of "consent of county" to specifically include the vote taken in November 2003 in Lincoln and Sagadahoc counties concerning the authorization of a jail facility.

Section 15 adds the definitions of "county" and "counties" to clarify that the specific counties referred to throughout the chapter are Lincoln and Sagadahoc counties.

Section 16 makes the changes to the definitions in Title 30-A, section 1802 apply retroactively to May 21, 2003, the effective date of the enacting law.

Section 17 amends Title 30-A, section 1952 to clarify that Lincoln and Sagadahoc counties are included in the listing of entities, which include public corporations, obligated to pay to the treasurer of the jail authority the charges that are established.

Section 18 amends Title 30-A, section 1954 to provide expressly that Lincoln and Sagadahoc counties are authorized to guarantee the payment of the principal of, premiums and interest on notes and bonds and to pledge the full faith and credit of the counties for such payment. Such authority is alluded to and other language is based on that authority.

Sections 19 and 20 remove and replace confusing language enacted by Public Law 2003, chapter 595 that inadvertently implies that municipalities with existing comprehensive plans need not make adult entertainment establishment ordinances consistent with these comprehensive plans. The intent of the law is to allow a municipality that has no comprehensive plan to enact an adult entertainment establishment ordinance without triggering the requirement of adoption of a comprehensive plan.

Section 21 corrects an error in the Maine Revised Statutes, Title 32, section 12228, subsection 10. The provision at issue is a requirement that took effect on October 1, 2002. The provision required an applicant to demonstrate 2 years of experience under the supervision of a licensed certified public accountant. The provision limited the experience that will satisfy the requirement of experience under the supervision of a Maine-licensed CPA. The intent of the provision was to permit applicants to work under the supervision of a CPA licensed in any state or territory of the United States, not just in Maine. The current statutory language is unnecessarily limiting.

Section 22 amends the law governing reporting of prescription drug marketing costs to change the reporting period and the reporting date.

Section 23 amends Private and Special Law 1907, chapter 84, which is the corporate charter of the Northern Maine General Hospital. This section changes the name of the corporation to "Northern Maine General."

#### PART D

Sections 1 and 2 correct an error that was created when Public Law 2003, chapters 426 and 451 both enacted a new Title 30-A, chapter 206, subchapter 3 with similar section numbers. These sections correct that error by repealing subchapter 3 as enacted by Public Law 2003, chapter 451, Part NNN, section 2, which enacted the Pine Tree Development Zones laws, and enacting it as subchapter 4 with new section numbers. In addition, changes to the Pine Tree Development Zones enacted by Public Law 2003, chapter 610 are incorporated.

Sections 3 to 5 correct cross-references to the Pine Tree Development Zones sections relocated by this Part.

PART E

2           Section 1 corrects an error in the Maine Revised Statutes,  
4 Title 32, section 1866, subsection 4, paragraph D. The amendment  
6 includes vintners within the exemption to commingling  
8 requirements and handling fee increases, as was originally  
intended and incorrectly understood to be accomplished by use of  
the term "brewer." Section 2 specifies that any rule change  
necessary to implement the amendment is a routine technical rule.

PART F

14           Sections 1 and 2 provide flexibility to the District Court  
16 to handle civil and criminal prosecutions of inland fisheries and  
wildlife violations by authorizing prosecutions in the District  
Court division nearest the location of the alleged violation.

FISCAL NOTE REQUIRED  
(See attached)



**121st Maine Legislature  
Office of Fiscal and Program Review**

**LD 1916  
An Act To Correct Errors and Inconsistencies in the Laws of Maine**

**LR 2678(02)  
Fiscal Note for Bill as Amended by Committee Amendment " "  
Committee: Judiciary  
Fiscal Note Required: Yes**

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**Fiscal Note**

Minor revenue decrease - General Fund