

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

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

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

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

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

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

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

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

J.S. McCarthy Company
Augusta, Maine
1997

(3) For all subsequent offenses, a forfeiture of \$500 must be imposed and that forfeiture may not be suspended. The judge, in addition to the forfeiture permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

C. A person who violates subsection 6 commits a civil violation for which a forfeiture of not less than \$50 nor more than \$200 may be adjudged for any one offense.

9. Distribution of fines. Fines and forfeitures collected pursuant to subchapter I and this subchapter must be credited as follows: one half to the General Fund and 1/2 to be deposited in a nonlapsing account to be paid to law enforcement agencies.

10. Affirmative defense. It is an affirmative defense to prosecution for a violation of subsection 1, 2 or 4 that the defendant sold, furnished, gave away or offered to sell, furnish or give away a tobacco product to a person under 18 years of age in reasonable reliance upon a fraudulent proof of age presented by the purchaser.

Sec. 6. 22 MRSA §1556-A, sub-§2, as repealed and replaced by PL 1995, c. 593, §4, is amended to read:

2. Enforcement; jurisdiction. Enforcement of criminal offenses may be carried out by written summons pursuant to Title 17-A filed in the District Court. Enforcement of civil violations set forth in section ~~4555~~ 1555-B, subsection 2 may be carried out by complaint filed in District Court. All other civil violations under this chapter are within the jurisdiction of the Administrative Court pursuant to section 1557, subsection 1.

See title page for effective date.

CHAPTER 306

H.P. 997 - L.D. 1389

An Act to Allow Partially Consumed Bottles of Wine to be Taken from Restaurants

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

Sec. 1. 28-A MRSA §1051, sub-§§4 and 5 are enacted to read:

4. Partially consumed bottles of wine. Notwithstanding subsection 3, any establishment licensed

by the State to sell wine on the premises may permit a person who has purchased a full course meal, and purchased and partially consumed a bottle of table wine with the meal, to remove the partially consumed bottle from the premises upon departure, provided that the person is not visibly intoxicated as provided in section 2503, subsection 7, and the bottle of table wine is removed and transported in a manner consistent with subsection 5.

5. Transporting partially consumed bottles. A partially consumed bottle of table wine that is removed from the premises under subsection 4 must be securely sealed and bagged by the licensee, either to be in conformance with any applicable open container law for those patrons on foot or transported in the trunk of a motor vehicle. If the vehicle is not equipped with a trunk, the securely sealed opened table wine bottle may be transported in that compartment of the vehicle that is the least accessible to the driver.

Sec. 2. 28-A MRSA §2074, sub-§1, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

1. Transportation on-premises or off-premises. Any Except as provided in section 1051, any person who transports liquor onto or off of the premises of an on-premise retail licensee is guilty of a Class E crime.

See title page for effective date.

CHAPTER 307

S.P. 285 - L.D. 893

An Act to Conform the Provisions of the Maine Business Corporation Act Regarding Derivative Proceedings to the Provisions of the Revised Model Business Corporation Act

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

Sec. 1. 13-A MRSA §627, as amended by PL 1973, c. 455, is repealed.

Sec. 2. 13-A MRSA §§628 to 635 are enacted to read:

§628. Definitions

As used in sections 628 to 635, unless the context otherwise indicates, the following terms have the following meanings.

1. Derivative proceeding. "Derivative proceeding" means a civil suit in the right of a domestic

corporation or, to the extent provided in section 635, in the right of a foreign corporation.

2. Shareholder. "Shareholder," in addition to the meaning set forth in section 102, subsection 17, includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

§629. Standing

A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

1. Shareholder; time became. Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

2. Represents corporation. Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

§630. Demand

A shareholder may not commence a derivative proceeding until:

1. Written demand. A written demand has been made upon the corporation to take suitable action; and

2. Expiration period. Ninety days have expired from the date that demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

§631. Stay of proceedings

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for a period the court determines appropriate.

§632. Dismissal

1. Dismissal of proceeding. A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection 2 or 6 has determined in good faith after conducting a reasonable inquiry that the maintenance of the derivative proceeding is not in the best interest of the corporation.

2. Determination. Unless a panel is appointed pursuant to subsection 6, the determination in subsection 1 must be made by:

A. A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

B. A majority vote of a committee consisting of 2 or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constitute a quorum.

3. Director; independent. None of the following by itself cause a director to be considered not independent for purposes of this section:

A. The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

B. The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

C. The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

4. Derivative proceeding. If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or that the requirements of subsection 1 have not been met.

5. Burden of proof. If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection 1 have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff has the burden of proving that the requirements of subsection 1 have not been met.

6. Panel. The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. The plaintiff has the burden of proving that the requirements of subsection 1 have not been met.

§633. Discontinuance or settlement

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement substantially affects the interest of the corpora-

tion's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

§634. Payment of expenses

On termination of a derivative proceeding the court may:

1. Corporation pay plaintiff's expenses. Order the corporation to pay the plaintiff's reasonable expenses, including attorney's fees, incurred in the proceeding if the court finds that the proceeding has resulted in a substantial benefit to the corporation; or

2. Plaintiff pay defendant's expenses. Order the plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if the court finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

§635. Applicability to foreign corporations

In a derivative proceeding in the right of a foreign corporation, the matters covered by this chapter are governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 631, 633 and 634.

See title page for effective date.

CHAPTER 308

H.P. 1043 - L.D. 1460

An Act Requiring the Department of Education to Perform Annual Cost-benefit Analysis of Special Education Programs in the State

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

Sec. 1. 20-A MRSA §7004 is enacted to read:

§7004. Cost-benefit analysis

The department shall perform an annual cost-benefit analysis of special education programs in the State and hold a public hearing annually for members of school units to explain what special education programs are offered in each unit and the cost of these programs.

See title page for effective date.

CHAPTER 309

S.P. 100 - L.D. 379

An Act to Clarify the Reimbursement of Legislators' Expenses

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

Sec. 1. 3 MRSA §2, 3rd ¶, as amended by PL 1989, c. 501, Pt. O, §2; c. 600, Pt. B, §§9 and 10 and c. 878, Pt. D, §§14 and 15, is further amended to read:

~~Each~~ Except as provided in this section, each member of the Senate and House of Representatives shall be is entitled to a meal allowance in the amount of \$32 and a housing allowance in the amount of \$38 for each day in attendance at sessions of the Legislature and for each day the member occupies overnight accommodations away from home either immediately preceding or immediately following attendance at daily sessions of the Legislature. The presiding officers may establish reasonable policies regarding allowances for meals and overnight accommodations for the day immediately preceding the session, which may include policies regarding whether an allowance is paid, whether the full amount or a portion of the statutory allowance is paid and whether receipts are required. In lieu of the meal and housing allowance, each member ~~shall be~~ is entitled to a daily meal allowance in the amount of \$32 and actual daily mileage allowances in an amount up to but not exceeding \$38 per day. Each member of the Senate ~~shall also receive~~ receives an annual allowance for constituent services in the amount of \$1,000, \$650 ~~of which shall be received~~ at the start of each regular session and \$350 ~~of which shall be received~~ in the month following adjournment of the regular session. Each member of the House of Representatives ~~shall also receive~~ receives an annual allowance for constituent services in the amount of \$750, \$500 ~~of which shall be received~~ at the start of each regular session and \$250 ~~of which shall be received~~ in the month following adjournment of the regular session.

See title page for effective date.

CHAPTER 310

S.P. 333 - L.D. 1111

An Act to Protect Loons

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