

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2004**

**FINANCE AUTHORITY OF MAINE**

**Student Financial Assistance Programs 0653**

Initiative: Allocates funds for the University of Maine System Scholarship Fund.

<b>Other Special Revenue Funds</b>	<b>2003-04</b>	<b>2004-05</b>
All Other	\$0	\$316,979
Other Special Revenue Funds Total	\$0	\$316,979

**FINANCE AUTHORITY OF MAINE**

<b>DEPARTMENT TOTALS</b>	<b>2003-04</b>	<b>2004-05</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$316,979</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$316,979</b>

**PUBLIC SAFETY, DEPARTMENT OF**

**Gambling Control Board**

Initiative: Provides funds for one Director position, one State Police Lieutenant position, one State Police Sergeant position, one State Police Detective position, one Identification Specialist II position, one Auditor II position, 2 Public Safety Inspector I positions, 2 Clerk Typist III positions and general operating expenses, which include the installation and administration of an on-line monitoring system and the costs of conducting necessary background checks.

<b>General Fund</b>	<b>2003-04</b>	<b>2004-05</b>
Positions - Legislative Count	(0.000)	(10.000)
Personal Services	\$0	\$852,963
All Other	0	846,585
Capital Expenditures	0	55,000
General Fund Total	\$0	\$1,754,548

**PUBLIC SAFETY, DEPARTMENT OF DEPARTMENT TOTALS**

<b>GENERAL FUND</b>	<b>\$0</b>	<b>\$1,754,548</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$1,754,548</b>

**MAINE COMMUNITY COLLEGE SYSTEM, BOARD OF TRUSTEES OF THE**

**Maine Community College System - Board of Trustees 0556**

Initiative: Allocates funds for the scholarship program.

<b>Other Special Revenue Funds</b>	<b>2003-04</b>	<b>2004-05</b>
All Other	\$0	\$158,489
Other Special Revenue Funds Total	\$0	\$158,489

**MAINE COMMUNITY COLLEGE SYSTEM, BOARD OF TRUSTEES OF THE DEPARTMENT TOTALS**

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$158,489</b>
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<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$158,489</b>
<b>SECTION TOTALS</b>	<b>2003-04</b>	<b>2004-05</b>
<b>GENERAL FUND</b>	<b>\$0</b>	<b>\$1,825,778</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>0</b>	<b>3,952,506</b>
<b>SECTION TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$5,778,284</b>

**Sec. B-11. Retroactivity.** The Act applies retroactively to January 3, 2004.

See title page for effective date.

**CHAPTER 688**

**H.P. 1418 - L.D. 1916**

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

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

Whereas, Acts of this and previous Legislatures have resulted in certain technical errors and inconsistencies in the laws of Maine; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is vitally necessary that these uncertainties and this confusion be resolved in order to prevent any injustice or hardship to the citizens of Maine; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**PART A**

**Sec. A-1. 5 MRSA §7-B,** as amended by PL 1999, c. 155, Pt. A, §1, is further amended to read:

**§7-B. Use of state vehicles for commuting**

A state-owned or state-leased vehicle may not be used by any employee to commute between home and work, except for those vehicles authorized and

assigned to employees of the Baxter State Park Authority and to law enforcement officials within the following organizational units: Bureau of State Police; Maine Drug Enforcement Agency; Office of the State Fire Marshal; ~~Bureau of Liquor Enforcement~~ the division within the Department of Public Safety designated by the Commissioner of Public Safety to enforce the law relating to the manufacture, importation, storage, transportation and sale of all liquor and to administer those laws relating to licensing and collection of taxes on malt liquor and wine; Bureau of Motor Vehicles; Bureau of Marine Patrol; Bureau of Forestry, Division of Forest Protection; Bureau of Warden Service; and Bureau of Parks and Lands.

**Sec. A-2. 5 MRSA §13083-C, sub-§1, ¶C,** as enacted by PL 2001, c. 568, §1, is amended to read:

C. Exercise all of the general powers of corporations under Title ~~13-A~~ 13-C, section ~~202~~ 302;

**Sec. A-3. 5 MRSA §13120-G, sub-§2,** as enacted by PL 2001, c. 703, §6, is amended to read:

**2. Authority for transfers of interest in land to authority.** Notwithstanding any other provision of law, upon the authority's request, on reasonable and fair terms and conditions and without the necessity for advertisement, order of court or action or formality other than the regular and formal action of the authorities concerned, counties, municipalities, public agencies or instrumentalities of the State, public service corporations and special districts may lease, lend, grant or convey to the authority real or personal property or rights in that property that may be necessary or convenient for the effectuation of the authorized purposes of the authority, including real and personal property or rights in that property already devoted to public use. As used in this subsection, the term "public service corporation" includes a public utility as defined in Title 35-A, section 102, subsection 13 and a corporation as defined in Title ~~13-A~~ 13-C.

**Sec. A-4. 5 MRSA §17001, sub-§40,** as amended by PL 2001, c. 239, §2 and affected by §5 and amended by c. 374, §4 and amended by PL 2003, c. 20, Pt. OO, §2 and affected by §4, is repealed and the following enacted in its place:

**40. State employee.** "State employee" means any regular classified or unclassified officer or employee in a department, any employee of the Maine Community College System except those who make the election provided under Title 20-A, section 12722, any employee of the Governor Baxter School for the Deaf except as provided in Title 20-A, section 7407, subsection 3-A, any employee of the Maine Military Authority, any employee of the Northern New England Passenger Rail Authority and any employee transferred from the Division of Higher Education

Services to the Finance Authority of Maine who elects to be treated as a state employee, but does not include:

A. A judge, as defined in Title 4, section 1201 or 1301, who is now or later may be entitled to retirement benefits under Title 4, chapter 27 or 29;

B. A member of the State Police who is now entitled to retirement benefits under Title 25, chapter 195; or

C. A Legislator who is now or later may be entitled to retirement benefits under Title 3, chapter 29.

**Sec. A-5. 7 MRSA §1333, sub-§1, ¶B,** as enacted by PL 2003, c. 386, §6, is amended to read:

B. "Discrepancy" means an instance in which a holder of a license under subsection ~~3~~ 2 has failed to comply with a requirement under this Part.

**Sec. A-6. 7 MRSA §1333, sub-§§3 to 6,** as enacted by PL 2003, c. 386, §6, are amended to read:

**3. Inspection.** The commissioner or commissioner's designee shall conduct an inspection of an applicant's premises before the initial issuance or renewal of a license under subsection ~~3~~ 2 or at any time during the pendency of a license under subsection ~~3~~ 2 if the department believes the license holder is not in compliance with the provisions of this Part.

**4. Renewal.** If an inspection for a renewal of a license under subsection ~~3~~ 2 reveals a discrepancy, the inspector shall note the discrepancy on an inspection form. The commissioner may issue a temporary license under subsection ~~3~~ 2 and give the license holder a reasonable amount of time to correct the discrepancy. Upon a subsequent inspection of the premises of a temporary license holder under this subsection, the commissioner shall renew the license under subsection ~~3~~ 2 if the license holder has corrected all of the discrepancies noted on the inspection form from the prior inspection.

**5. Penalties.** Any person engaged in the business of propagating, possessing, buying or selling cervids without a license under subsection ~~3~~ 2 commits a civil violation for which a fine not to exceed \$100 per day for each violation may be adjudged, except that the total of the fines may not exceed \$25,000.

**6. Records.** A holder of a license issued pursuant to subsection ~~3~~ 2 shall maintain records that include the date and location of birth and the date of death or departure of each cervid in the license holder's herd.

**Sec. A-7. 7 MRSA §4209**, as amended by PL 2003, c. 283, §4 and repealed by c. 452, Pt. B, §29 and affected by Pt. X, §2, is repealed.

**Sec. A-8. Effective date.** That section of this Act that repeals the Maine Revised Statutes, Title 7, section 4209 takes effect July 1, 2004.

**Sec. A-9. 9 MRSA §2301**, as amended by PL 1987, c. 769, Pt. A, §38, is further amended to read:

**§2301. Industrial loan companies**

All corporations chartered and doing business as "industrial loan companies" pursuant to this section and former sections 2302, 2303, 2341 to 2345 and 2381 and 2382 and ~~which that~~ were not accepting certificates of investment prior to June 1, 1967 are hereby made corporations organized under Title ~~43-A~~ 13-C and such "industrial loan companies" ~~shall be~~ are subject to Title 9-A to the extent that the activities of such companies are within the provisions of Title 9-A.

**Sec. A-10. 9 MRSA §3201**, as amended by PL 1999, c. 127, Pt. A, §17, is further amended to read:

**§3201. Loan companies**

All corporations chartered and doing business as "loan companies" pursuant to sections 3201 to 3210 as repealed on June 2, 1975 are hereby made corporations organized under Title ~~43-A~~ 13-C and such "loan companies" are subject to Title 9-A to the extent that the activities of these companies are within the provisions of Title 9-A.

**Sec. A-11. 15 MRSA §3003, sub-§14-B, ¶B**, as amended by PL 2003, c. 180, §2 and c. 410, §4, is repealed and the following enacted in its place:

B. To provide appropriate services to juveniles committed to a Department of Corrections juvenile correctional facility who are on leave or in the community on community reintegration; and

**Sec. A-12. 15 MRSA §3103, sub-§1, ¶G**, as amended by PL 2003, c. 305, §3 and c. 410, §6, is repealed and the following enacted in its place:

G. A violation of section 393, subsection 1, paragraph C or section 393, subsection 1-A; and

**Sec. A-13. 17-A MRSA c. 49**, as amended, is further amended by repealing the chapter headnote and enacting the following in its place:

**CHAPTER 49**

**PROBATION**

**Sec. A-14. 17-A MRSA §1252, sub-§4-A**, as amended by PL 2003, c. 143, §9 and c. 475, §1, is repealed and the following enacted in its place:

4-A. If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 13 or 27 or section 402-A, subsection 1, paragraph A was committed, the defendant had been convicted of 2 or more crimes violating chapter 9, 11, 13 or 27 or section 402-A, subsection 1, paragraph A or essentially similar crimes in other jurisdictions, the sentencing class for the crime is one class higher than it would otherwise be. In the case of a Class A crime, the sentencing class is not increased, but the prior record must be given serious consideration by the court when imposing a sentence. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this subsection, for violations under chapter 11, the dates of prior convictions may have occurred at any time. This subsection does not apply to section 210-A if the prior convictions have already served to enhance the sentencing class under section 210-A, subsection 1, paragraph C.

**Sec. A-15. 20-A MRSA §10006, sub-§5, ¶A**, as enacted by PL 1999, c. 511, §1 and amended by PL 2003, c. 20, Pt. OO, §2 and affected by §4, is further amended to read:

A. For an appropriated amount of more than \$10,000,000:

- (1) University of Maine System 70%;
- (2) Maine Community College System 25%; and
- (3) Maine Maritime Academy 5%; and

**Sec. A-16. 20-A MRSA §15602, sub-§18, ¶A**, as enacted by PL 2003, c. 20, Pt. C, §2, is amended to read:

A. A school administrative unit is eligible for a prorated share of the tier 1 cushion of \$4,000,000 if the school administrative unit meets the following criteria:

- (1) The school administrative unit's fiscal year 2002-03 mills raised for education as calculated by the department is equal to or greater than 9.97 mills;

(2) The school administrative unit's per pupil fiscal capacity for operating costs in fiscal year 2003-04 is equal to or less than \$837,548; and

(3) The school administrative unit's state share of subsidy for fiscal year 2003-04 for operating costs and program costs, excluding the state share of bus purchases plus minimum subsidy, is less than the state share of subsidy for fiscal year 2002-03 for operating costs and program costs, excluding the state share of bus purchases plus minimum subsidy, and the fiscal year 2002-03 cushion provision under former subsection 16.

**Sec. A-17. 20-A MRSA §15602, sub-§19,** ¶A, as enacted by PL 2003, c. 20, Pt. C, §2, is amended to read:

A. A school administrative unit is eligible for a prorated share of the tier 2 cushion of \$1,000,000 if the school administrative unit meets the following criteria:

(1) The school administrative unit's fiscal year 2002-03 mills raised for education as calculated by the department is equal to or greater than 9.97 mills; and

(2) The school administrative unit's state share of subsidy for fiscal year 2003-04 for operating costs and program costs, excluding the state share of bus purchases plus minimum subsidy and the fiscal year 2003-04 initial cushion set forth in subsection 18, is less than the school administrative unit's state share of subsidy for fiscal year 2002-03 for operating costs and program costs, excluding the state share of bus purchases plus minimum subsidy and the fiscal year 2002-03 cushion provision under former subsection 16.

**Sec. A-18. 20-A MRSA §15604, sub-§1,** ¶C, as amended by PL 1997, c. 326, §3, is further amended to read:

C. Special education tuition and board, excluding medical costs, defined as follows:

(1) Tuition and board for pupils placed by school administrative units;

(2) Tuition and board for pupils placed directly by the State in accordance with rules adopted or amended by the commissioner; and

(3) Special education tuition and other tuition for institutional residents of state-operated institutions attending programs in school administrative units or private schools in accordance with rules adopted or amended by the commissioner; ~~and~~

~~(4) Adjustments under section 15612, subsection 6;~~

**Sec. A-19. 20-A MRSA §15607, sub-§3,** ¶A, as enacted by PL 1999, c. 401, Pt. GG, §3, is amended to read:

A. Adjustments described in ~~section 15602, subsection 13;~~ section 15612; and section 15613, except section 15613, subsection 13, including an appropriation for special education pupils placed directly by the State for:

(1) Tuition and board for pupils placed directly by the State in accordance with rules adopted or amended by the commissioner; and

(2) Special educational tuition and other tuition for residents of state-operated institutions attending programs in school administrative units or private schools in accordance with rules adopted or amended by the commissioner;

**Sec. A-20. 20-A MRSA §15610, sub-§1,** ¶C, as amended by PL 1989, c. 875, Pt. E, §29, is further amended to read:

C. The state share of the foundation allocation for each administrative unit is limited to the same proportion of the maximum allocation as the local administrative unit raises of its maximum local share of the foundation allocation. ~~For the purpose of this subsection only and for fiscal year 1990-91 only, the required local share must be reduced by the same percentage as the percentage reduction in the state subsidy specified in section 15602, subsection 4.~~

**Sec. A-21. 21-A MRSA §1125, sub-§8,** ¶C, as amended by PL 2003, c. 453, §1, is further amended to read:

C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding 2 general elections, as reported in the initial filing period subsequent to the general election, for; the respective offices of State Senate and State House of Representatives.

**Sec. A-22. 21-A MRSA §1125, sub-§9**, as amended by PL 2003, c. 448, §5 and c. 453, §2, is repealed and the following enacted in its place:

**9. Matching funds.** When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable.

**Sec. A-23. 21-A MRSA §1204, sub-§55, ¶A**, as repealed by PL 2003, c. 44, §1 and amended by c. 62, §2 and affected by §§5 and 6, is repealed.

**Sec. A-24. 21-A MRSA §1204-A, sub-§61, ¶A**, as enacted by PL 2003, c. 289, §1, is amended to read:

A. In Lincoln County, the following undefined ocean divisions: Block 0996 and Block 0997 of Tract 000000; and the minor civil divisions of Boothbay, Boothbay Harbor, Southport and Westport Island; and

**Sec. A-25. 25 MRSA §2801-B, sub-§1, ¶H**, as amended by PL 2003, c. 400, §3, is further amended to read:

H. The State Fire Marshal; or

**Sec. A-26. 25 MRSA §2801-B, sub-§1, ¶I**, as amended by PL 2003, c. 400, §3, is repealed.

**Sec. A-27. 26 MRSA §833, sub-§1, ¶D**, as amended by PL 2003, c. 306, §1 and c. 357, §1, is repealed and the following enacted in its place:

D. The employee acting in good faith has refused to carry out a directive to engage in activity that would be a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States or that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the illegal activity or dangerous condition from the employer; or

**Sec. A-28. 27 MRSA c. 2, sub-c. 3**, as amended, is reallocated to 27 MRSA c. 1, sub-c. 4.

**Sec. A-29. 27 MRSA §94**, as enacted by PL 1985, c. 754, §1, is reallocated to 27 MRSA §71.

**Sec. A-30. 27 MRSA §95**, as amended by PL 1989, c. 700, Pt. B, §23, is reallocated to 27 MRSA §72.

**Sec. A-31. 29-A MRSA §525, sub-§9**, as repealed by PL 2003, c. 434, §10 and affected by §37 and repealed and replaced by c. 452, Pt. Q, §7 and affected by Pt. X, §2, is repealed.

**Sec. A-32. 29-A MRSA §525, sub-§9-A**, as enacted by PL 2003, c. 434, §10 and affected by §37, is repealed and the following enacted in its place:

**9-A. Violation.** The following penalties apply to violations of this section.

A. Except as provided in paragraph B, a person who violates this section commits a Class E crime.

B. A person who displays or causes or permits to be displayed a false decal or permit or a decal or permit issued to another person commits a Class D crime.

An owner or operator stopped for violating this section and against whom enforcement action has been taken does not commit a subsequent violation of this section involving the same vehicle until after the close of business on the next business day following the date of the violation.

The court shall impose a fine of at least \$250, which may not be suspended.

Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

**Sec. A-33. Effective date.** Those sections of this Act that repeal the Maine Revised Statutes, Title 29-A, section 525, subsection 9 and repeal and replace Title 29-A, section 525, subsection 9-A take effect July 1, 2004.

**Sec. A-34. 29-A MRSA §1752, sub-§9**, as amended by PL 2003, c. 125, §3 and c. 397, §6, is repealed and the following enacted in its place:

**9. Registered in this State.** A motor vehicle registered in this State displaying a valid certificate of inspection from another state or a federally approved commercial vehicle inspection program until its normal expiration;

**Sec. A-35. 29-A MRSA §2251, sub-§3, ¶A**, as amended by PL 2003, c. 340, §9 and c. 434, §23 and affected by §37, is repealed and the following enacted in its place:

A. Shall prepare and supply forms and approve the format for electronic submission for reports that require sufficiently detailed information to

disclose the cause, conditions, persons and vehicles involved, including information to permit the Secretary of State to determine whether the requirement for proof of financial responsibility is inapplicable;

**Sec. A-36. 29-A MRSA §2251, sub-§4, ¶B**, as amended by PL 2003, c. 340, §10 and c. 434, §24 and affected by §37, is repealed and the following enacted in its place:

B. Within 5 days from the time of notification of the accident, transmit an electronic report or the original written report containing all available information to the Chief of the State Police.

**Sec. A-37. 32 MRSA §3501, sub-§2, ¶B**, as amended by PL 1999, c. 386, Pt. L, §6, is further amended to read:

B. A minimum of 2,000 hours of work in the field of plumbing installations as a journeyman-in-training under the supervision of a licensed master plumber, as long as the work experience is obtained within 4 years of the date upon which the applicant was issued a journeyman-in-training license. A journeyman-in-training license must be issued upon sworn application to any person who has satisfactorily completed one academic year of instruction in plumbing at a board-approved technical college or community college and who has obtained a passing grade, as determined by the board on the journeyman's examination.

**Sec. A-38. 32 MRSA §3501, sub-§2-B**, as amended by PL 2003, c. 250, Pt. B, §2, is further amended to read:

**2-B. Journeyman-in-training.** The board may issue a journeyman-in-training license to a person who provides satisfactory evidence of completion of a plumbing course consisting of one year or 2 semesters at a board-approved technical college or community college and who submits the required fee set under section 3501-B. A journeyman-in-training license is valid for a single nonrenewable period of 4 years and may be issued only once to any individual.

**Sec. A-39. 32 MRSA §13787-A, sub-§3, ¶A**, as enacted by PL 1993, c. 394, §2, is amended to read:

A. A seller described in subsection 1 is "expressly authorized" within the meaning of Title 17-A, section 1110, subsection 4 1-B, paragraph A.

**Sec. A-40. 36 MRSA §5122, sub-§1, ¶S**, as enacted by PL 2003, c. 20, Pt. II, §2, is amended to read:

S. For tax years beginning in 2003, 2004 and 2005, the amount received from the National Health Service Corps Scholarship Program and the Armed Forces Health Professions Scholarship and Financial Assistance program to the extent excluded from federal gross income in accordance with the Code, Section 117; and

**Sec. A-41. 36 MRSA §5122, sub-§1, ¶¶T and U**, as repealed by PL 2003, c. 451, Pt. E, §6 and amended by c. 451, Pt. II, §1, are repealed.

**Sec. A-42. 37-B MRSA §264, sub-§3, ¶I**, as amended by PL 2003, c. 342, §3 and c. 404, §4, is repealed and the following enacted in its place:

I. The Fort Fairfield Armory located at 25 Columbia Street, Fort Fairfield by means of a quit-claim deed, subject to all easements of record, to the inhabitants of the Town of Fort Fairfield for the sum of \$1 as long as the inhabitants of the Town of Fort Fairfield agree to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise from the land or buildings constituting the Fort Fairfield Armory and this transfer is determined to be a transfer for not less than appraised value as specified in subsection 1 in view of the economic conditions of northern Aroostook County, the financial contributions made by the Town of Fort Fairfield to the armory and the environmental conditions existing at the site; and

**Sec. A-43. 38 MRSA §480-F, sub-§1, ¶F**, as repealed and replaced by PL 1997, c. 364, §19, is amended to read:

F. Appointed a code enforcement officer, certified by the ~~Department of Economic and Community Development~~ Executive Department, State Planning Office.

**Sec. A-44. PL 2003, c. 20, Pt. R, §4, amending clause** is amended to read:

**Sec. R-4. 4 MRSA §1057-A**, as amended by PL 2001, c. 617, §3 and c. 698, §3 and affected by §7, is repealed.

**Sec. A-45. PL 2003, c. 182, §1, amending clause** is amended to read:

**Sec. 1. 15 MRSA §1702**, as amended by PL 1987, c. 737, Pt. C, §§29 and 106 and PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed and the following enacted in its place:

**Sec. A-46. PL 2003, c. 288, §2** is amended to read:



**Sec. 2. 30-A MRSA §5953-D, sub-§3, ~~¶¶D and E ¶D~~**, as repealed and replaced by PL 2001, c. 667, Pt. A, §49, is amended to read:

D. In the case of a ~~public service infrastructure~~ grant or loan, the Department of Economic and Community Development affirms that the applicant has met the conditions of this paragraph.

(1) A municipality is eligible to receive a grant or a loan, or a combination of both, if that municipality has adopted a growth management program certified under section 4347-A that includes a capital improvement program composed of the following elements:

(a) An assessment of all public facilities and services, such as, but not limited to, roads and other transportation facilities, sewers, schools, parks and open space, fire and police;

(b) An annually reviewed 5-year plan for the replacement and expansion of existing public facilities or the construction of such new facilities as are required to meet expected growth and economic development. The plan must include projections of when and where those facilities will be required; and

(c) An assessment of the anticipated costs for replacement, expansion or construction of public facilities, an identification of revenue sources available to meet these costs and recommendations for meeting costs required to implement the plan.

(2) A municipality is eligible to receive a loan if that municipality:

(a) Has adopted a comprehensive plan that is determined by the Executive Department, State Planning Office to be consistent with section 4326, subsections 1 to 4.

(3) A municipality is eligible to receive a grant or a loan if that municipality is a service center community.

Subject to the limitations of this subsection, 2 or more municipalities that each meet the requirements of subparagraph (1) ~~or~~ (2) or (3) may jointly apply for assistance under this section; and

**Sec. 2-A. 30-A MRSA §5953-D, sub-§3, ¶E**, as enacted by PL 1999, c. 776, §13, is amended to read:

E. In the case of a downtown improvement grant or loan, the Department of Economic and Community Development affirms that the applicant has met the conditions of this paragraph. A municipality is eligible to receive a downtown improvement grant or loan if that municipality has:

(1) Shown broad-based support for downtown revitalization;

(2) Established a comprehensive downtown revitalization work plan, including a definition and a map of the affected area;

(3) Developed measurable goals and objectives;

(4) Demonstrated an historic preservation ethic;

~~(5) Established an ongoing board of directors, with associated committees;~~

~~(6) Provided an adequate operating budget;~~

~~(7) Hired a professional downtown manager;~~

~~(8) Established an ongoing training program for staff and volunteers;~~

(9) Developed the capacity to report on the progress of the downtown program; and

(10) Established the ability and willingness to support integrated marketing efforts for retailers, services, activities and events.

**Sec. A-47. PL 2003, c. 434, §1, amending clause** is amended to read:

**Sec. 1. 10 MRSA §1171-B, sub-§1, ¶¶A, B and D**, as enacted by PL ~~1987~~ 1997, c. 521, §5, are amended to read:

**Sec. A-48. PL 2003, c. 452, Pt. Q, §70, amending clause** is amended to read:

**Sec. Q-70. 29-A MRSA §2380, sub-§3**, as repealed and replaced by PL ~~1999~~ 1995, c. 78, §1, is amended to read:

**Sec. A-49. P&SL 2003, c. 19, Pt. A, §1, amending clause** is amended to read:

**Sec. A-1. P&SL 1947, c. 77, §2**, as ~~enacted~~ repealed and replaced by P&SL 1981, c. 103, is amended to read:

**Sec. A-50. P&SL 2003, c. 19, Pt. B, §1, amending clause** is amended to read:

**Sec. B-1. P&SL 1947, c. 77, §11**, as enacted ~~repealed and replaced~~ by P&SL 1981, c. 103, is repealed and the following enacted in its place:

**Sec. A-51. Resolve 1999, c. 56, §7-A** is enacted to read:

**Sec. 7-A. Proceeds from sale of Kennebec Arsenal property. Resolved:** That any proceeds from the sale of the Kennebec Arsenal property must be deposited in the Maine State Housing Authority's Housing Opportunities for Maine Fund established in the Maine Revised Statutes, Title 30-A, section 4853; and be it further

**Sec. A-52. Resolve 2003, c. 91, §2** is repealed.

**Sec. A-53. RR 2003, c. 1, §33, amending clause** is amended to read:

**Sec. 33. 32 MRSA §~~1228~~ 12228, sub-§4**, as amended by PL 2003, c. 204, Pt. E, §1, is corrected to read:

## PART B

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

### §1267. Penalties

~~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 362. 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:

(a) Does not meet the age requirements as specified in sections 111, subsection 2 and section 111-A;

(b) Is not a citizen of the United States; or

(c) Is not 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 440 145.

**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 post-

judgment 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 ~~or baitfish shall~~ may not provide or sell the bait ~~or baitfish~~ in containers that are composed of ~~biodegradable paper or 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  $\frac{3}{4}$   $\frac{2}{3}$  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 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, in-

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

G. A pharmacy benefits manager shall disclose to the covered entity all financial terms and arrangements for remuneration of any kind that apply between the pharmacy benefits manager and any prescription drug manufacturer or labeler, including, without limitation, formulary management and drug-switch programs, educational support, claims processing and pharmacy network fees that are charged from retail pharmacies and data sales fees. 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 by the covered entity to any person without the consent of the pharmacy benefits manager, except that disclosure may be ordered by a court of this State for good cause shown or made in a court filing under seal unless or until otherwise ordered by a court. Nothing in this paragraph limits the Attorney General's use of civil investigative demand authority under the Maine Unfair Trade Practices Act to investigate violations of this section.

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

**5. Application.** This section applies to contracts executed or renewed on or after September 13, 2003. For the purposes of this subsection, a contract executed pursuant to a memorandum of agreement executed prior to September 13, 2003 is deemed to

have been executed prior to September 13, 2003 even if the contract was executed after that date.

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

**Sec. C-12. 22 MRSA §7852, sub-§5**, as enacted by PL 2001, c. 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 ~~H-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;
- B. Improve existing employment opportunities;
- C. Improve and broaden the tax base; and
- D. Improve the general economy of the State.

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

- A. To provide impetus for targeted business development;
- B. To increase employment; and
- C. To provide the facilities outlined in the development program adopted by the participating units of local government.

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

**§5250-I. Definitions**

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

**1. Affiliated business.** "Affiliated business" means a member of a group of 2 or more businesses in which more than 50% of the voting stock of each member corporation or more than 50% of the ownership interest in a business other than a corporation is directly or indirectly owned by a common owner or owners, 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.

**14. Pine Tree Development Zone benefits.** "Pine Tree Development Zone benefits" means:

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

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

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

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

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

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

**17. Qualified Pine Tree Development Zone business.** "Qualified Pine Tree Development Zone business" or "qualified business" means any for-profit business in this State engaged in financial services, manufacturing or a targeted technology business that adds qualified Pine Tree Development Zone employees 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:

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

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

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

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

No more than one zone may be established in each of the areas 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.

**2. Requirements for designation.** The commissioner shall adopt rules establishing the minimum requirements for the designation of Pine Tree Development Zones. Additionally, each 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.

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

A. The total area of a zone, including all non-contiguous parcels, may not exceed 5,000 acres;

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

C. Pine Tree Development Zone benefits may not be used to 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;

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

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

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

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

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

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

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

H. The restrictions contained in paragraph G may be waived for property that is contained within a labor market area that has sustained a greater than 5% loss of population or 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

E. A development plan that includes:

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

(2) A description of how the Pine Tree Development Zone will be administered, in-

cluding any related interlocal cooperative agreements;

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

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

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

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

#### **§5250-K. Procedure**

**1. Notice and hearing.** Before designating a Pine Tree Development Zone or adopting a development plan, the municipal officers of each applicant unit of local government or the municipal officers' designee must hold at least one public hearing. Notice of the hearing must be published at least 10 days before the hearing in a newspaper of general circulation 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-O 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 §5219-W, sub-§§1 and 2,** as enacted by PL 2003, c. 451, Pt. NNN, §5 and affected by §8, are amended to read:

**1. Credit allowed.** Except as provided by subsection 2, 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 that would otherwise be due under this Part for each of the first 5 taxable years that the taxpayer is required to file a return pursuant to this Part beginning after the taxpayer commences its qualified business activity, as defined in Title 30-A, section ~~5246~~ 5250-I, subsection 16; and

B. Fifty percent of the tax that would otherwise be due under this Part 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 Part after the taxpayer commences its qualified business activity, as defined in Title 30-A, section ~~5246~~ 5250-I, subsection 16.

**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, 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, including, but not limited to, a qualified Pine Tree Development Zone business that is required to file a combined report pursuant to section 5220, subsections 5 and 6, the Maine income tax liability of the qualified Pine Tree Development Zone business, and the affiliated members of its unitary group, if any, upon which the credit provided for in this section must 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 of its unitary group, 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 of its unitary group, 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 the members of its unitary group.

**Sec. D-6. 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-O, 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.

**PART G**

**Sec. G-1. PL 2003, c. 644, §8** is repealed and the following enacted in its place:

**Sec. 8. 35-A MRSA §3211-B**, as enacted by PL 2003, c. 20, Pt. RR, §10 and affected by §18, is repealed.

**PART H**

**Sec. H-1. 20-A MRSA §5001-A, sub-§2, ¶B**, as repealed and replaced by PL 1989, c. 415, §13, is amended to read:

B. A person who has:

- (1) Reached the age of 15 years or completed the 9th grade;
- (2) Permission to leave school from that person's parent;

(3) Been approved by the principal for a suitable program of work and study or training;

(4) Permission to leave school from the school board or its designee; and

(5) Agreed in writing with that person's parent and the school board or its designee to meet annually until that person's 17th birthday to review that person's educational needs. When the request to be excused from school has been denied pursuant to this paragraph, the student's parent may appeal to the commissioner; or

**Sec. H-2. 20-A MRSA §5001-A, sub-§2, ¶C**, as amended by PL 2003, c. 533, §1, is repealed.

**Sec. H-3. Effective date.** Those sections of this Part that amend the Maine Revised Statutes, Title 20-A, section 5001-A, subsection 2, paragraph B and repeal Title 20-A, section 5001-A, subsection 2, paragraph C take effect 90 days after adjournment of the Second Special Session of the 121st Legislature.

**PART I**

**Sec. I-1. 24-A MRSA §4315, sub-§2**, as enacted by PL 2003, c. 459, §1 and affected by §2, is amended to read:

**2. Required coverage.** A carrier shall provide coverage for prosthetic devices in all health plans that, at a minimum, equals, except as provided in subsection 8, the coverage and payment for prosthetic devices provided under federal laws and regulations for the aged and disabled pursuant to 42 United States Code, Sections 1395k, 1395l and 1395m and 42 Code of Federal Regulations, Sections 414.202, 414.210, 414.228 and 410.100. Covered benefits must be provided for a prosthetic device determined by the enrollee's provider, in accordance with section 4301-A, subsection 10-A, to be the most appropriate model that adequately meets the medical needs of the enrollee.

**Sec. I-2. 24-A MRSA §4315, sub-§8** is enacted to read:

**8. Health savings accounts.** Benefits for prosthetic devices under health plans issued for use in connection with health savings accounts as authorized under Title XII of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 may be subject to the same deductibles and out-of-pocket limits that apply to overall benefits under the contract.



**PART J**

**Sec. J-1. P&SL 1991, c. 26, §5**, as enacted by P&SL 2003, c. 45, §1, is amended to read:

**Sec. 5. Professional qualifications of teacher assistants and teacher associates not recommended for promotion due to error of school administrative unit.** A person employed as a teacher assistant or teacher associate prior to September 1, 1991 whose job function at the time was that of a level II or level III educational technician as described in State Board of Education Rule 115, Part I who is, on the effective date of this section, employed as a level II or level III educational technician in the same school administrative unit with no break in service and who was not recommended to be upgraded to a higher classification due to error on the part of the school administrative unit or a private school approved by the Department of Education need not meet the educational preparation standards for that position set forth in State Board of Education rule and need not meet the September 1, 1991 deadline for reclassification. School administrative units or private schools shall submit requests and appropriate documentation for upgrades under this section to the Department of Education.

**PART K**

**Sec. K-1. 22 MRSA §3192, sub-§14**, as amended by PL 2003, c. 428, Pt. I, §3, is further amended to read:

**14. Rules.** The department shall adopt rules establishing minimum standards for financial solvency, benefit design, enrollee protections, disclosure requirements, conditions for limiting enrollment and procedures for dissolution of a community health plan corporation. The department may also adopt any rules necessary to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The department shall begin preparing the rules required under this subsection no later than January 1, 2007.

**PART L**

**Sec. L-1. 36 MRSA §2891, sub-§2**, as enacted by PL 2003, c. 513, Pt. H, §1, is amended to read:

**2. Net operating revenue.** "Net operating revenue" means gross charges of facilities less any deducted amounts for ~~bad debts~~, charity care and payer discounts.

**Sec. L-2. Effective date.** This Part takes effect April 30, 2004.

**PART M**

**Sec. M-1. 18-A MRSA §5-804, Pt. 1**, as amended by PL 2003, c. 618, Pt. C, §3, is further amended to read:

**PART 1**

**POWER OF ATTORNEY FOR HEALTH CARE**

(1) **DESIGNATION OF AGENT:** I designate the following individual as my agent to make health-care decisions for me:

.....  
(name of individual you choose as agent)

.....  
(address) (city) (state) (zip code)

.....  
(home phone) (work phone)

**OPTIONAL:** If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

.....  
(name of individual you choose as first alternate agent)

.....  
(address) (city) (state) (zip code)

.....  
(home phone) (work phone)

**OPTIONAL:** If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

.....  
(name of individual you choose as second alternate agent)

.....  
(address) (city) (state) (zip code)

.....  
(home phone) (work phone)

(2) **AGENT'S AUTHORITY:** My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

.....  
.....  
.....  
(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box. If I mark this box [  ], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

~~(6) HEALTH INFORMATION AND OTHER MEDICAL RECORDS: In addition to the other powers granted by this document, I grant to my agent the power and authority to serve as my personal representative for all purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., "HIPAA," and its regulations, 45 Code of Federal Regulations 160-164, during any time that my agent is exercising authority under this document. I intend for my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information and other medical records. This release authority applies to any information governed by HIPAA.~~

~~I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health care provider, any insurance company and any health care clearinghouse that has provided treatment or services to me or that has paid for, or is seeking reimbursement from me for, such services to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any~~

~~past, present or future medical or mental health condition, to include all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.~~

~~The authority given to my agent supersedes any prior agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given to my agent has no expiration date and expires only in the event that I revoke the authority in writing and deliver it to my health care providers.~~

**Sec. M-2. Effective date.** This Part takes effect 90 days after adjournment of the Second Special Session of the 121st Legislature.

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

Effective May 6, 2004, unless otherwise indicated.

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**CHAPTER 689**

**H.P. 1414 - L.D. 1913**

**An Act To Establish the Department of Health and Human Services**

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

**Whereas,** the establishment of the new Department of Health and Human Services on July 1, 2004 is necessary for the orderly transition of the Department of Human Services and the Department of Behavioral and Developmental Services to the new department; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**PART A**

**Sec. A-1. 22-A MRSA** is enacted to read: