

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-THIRD LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 6, 2006 to June 21, 2007**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
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**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**  
**2007**

**CHAPTER 466**  
**H.P. 1338 - L.D. 1904**

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

**Emergency preamble.** Whereas, acts and resolves 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 A-1. 2 MRSA §6-B,** as enacted by PL 1983, c. 579, §1, is repealed.

**Sec. A-2. 4 MRSA §183, sub-§4,** as enacted by PL 2005, c. 385, §1, is amended to read:

**4. Pilot project.** Notwithstanding the jurisdictional limitations of subsection 1, the Chief Justice of the Supreme Judicial Court may establish a pilot project in which one or more family ~~ease management officers~~ law magistrates have jurisdiction to hear and dispose of all elements of a divorce action when both parties consent. Orders of the family ~~ease management officer~~ law magistrate are subject to appellate review in the same manner as any final order of the District Court.

**Sec. A-3. 4 MRSA §1614,** as enacted by PL 1987, c. 438, §1, is amended to read:

**§1614. Securities as legal investment**

The securities of the authority ~~shall be~~ are legal investments in which all public officers and public bodies of the State, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking

associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest funds, including capital, in their control or belonging to them. The securities are also, by this Act, made securities ~~which that~~ which that may properly and legally be deposited with and received by all public officers and bodies of the State or any agency or political subdivision of the State and all municipalities and public corporations for any purpose for which the deposit of securities of bonds or other obligations of the State may be authorized by law.

**Sec. A-4. 5 MRSA §207, sub-§1,** as enacted by PL 1969, c. 577, §1, is amended to read:

**1. Intent.** It is the intent of the Legislature that in construing this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to ~~section 5(a)(1)~~ Section 45(a)(1) of the Federal Trade Commission Act (15 U.S.C. United States Code 45(a)(1)), as from time to time amended.

**Sec. A-5. 5 MRSA §282, sub-§4,** as amended by PL 1987, c. 402, Pt. A, §12, is further amended to read:

**4. Direct bureaus.** To supervise and direct the activities of the bureaus ~~which that~~ which that may by statute be designated as being under the Department of ~~Finance~~ Administrative and Financial Services;

**Sec. A-6. 5 MRSA §307,** as amended by PL 1985, c. 785, Pt. A, §34, is further amended to read:

**§307. Interest in contracts prohibited**

In addition to the limitations of section 18, ~~no an~~ an employee of the Department of ~~Administration~~ Administrative and Financial Services or member of the commission ~~shall~~ may not be interested directly or indirectly in any contract or contracts calling for the construction or improvements of facilities, buildings and grounds in the Capitol Area in the City of Augusta as described in Title 1, section 814.

**Sec. A-7. 5 MRSA §471,** as enacted by PL 2005, c. 656, §1, is amended to read:

**§471. Creation**

~~There is established the~~ The County and Local Government Internship Program, ~~administered by the Margaret Chase Smith Center for Public Policy within the University of Maine System~~ referred to in this chapter as "the program," for attracting and placing is established to attract and place qualified undergraduate

and graduate college students temporarily within county and local governments.

**Sec. A-8. 5 MRSA §474, first ¶**, as enacted by PL 2005, c. 656, §1, is repealed and the following enacted in its place:

The Margaret Chase Smith Center for Public Policy within the University of Maine System, referred to in this chapter as "the center," shall administer the program. The center's duties include the following.

**Sec. A-9. 5 MRSA §931, sub-§1, ¶L**, as amended by PL 1997, c. 459, §2, is repealed.

**Sec. A-10. 5 MRSA §1541, sub-§6**, as amended by PL 1987, c. 402, Pt. A, §38, is further amended to read:

**6. Forms.** To prescribe the forms of receipts, vouchers, bills or claims to be filed by ~~any and all~~ departments and agencies with the Department of ~~Finance~~ Administrative and Financial Services;

**Sec. A-11. 5 MRSA §1742-C, first ¶**, as enacted by PL 1989, c. 483, Pt. A, §16, is amended to read:

The Department of ~~Administration~~ Administrative and Financial Services, through the Bureau of ~~Public Improvements~~ General Services, shall provide the following services to institutions of higher education.

**Sec. A-12. 5 MRSA §1825-C**, as enacted by PL 1989, c. 785, §2, is amended to read:

**§1825-C. Rulemaking**

The State Purchasing Agent shall adopt rules under this subchapter governing the purchase of services, the awarding of grants or contracts; and the procedure by which aggrieved persons may appeal contract award decisions made by ~~any~~ a department or agency of State Government. These rules must be adopted in accordance with the Maine Administrative Procedure Act and apply to all departments and agencies of State Government subject to the authority of the Department of ~~Administration~~ Administrative and Financial Services as set forth in this chapter.

**Sec. A-13. 5 MRSA §7036, sub-§2, ¶B**, as enacted by PL 1989, c. 501, Pt. P, §19 and amended by c. 702, Pt. E, §3, is further amended to read:

B. Charges may be made to state agencies for programs and services provided. Any rate schedule recommended by the director ~~must be reviewed by the Policy Review Board and be~~ is subject to the approval of the commissioner.

**Sec. A-14. 5 MRSA §7036, sub-§7**, as enacted by PL 1985, c. 785, Pt. B, §38, is amended to read:

**7. Work closely with state agencies.** Work closely and cooperate with state agencies with respect

to personnel matters and personnel needs of state agencies and state employees. Personnel matters and personnel needs include, but are not limited to, the following:

A. Requests of state agencies' lists of eligible persons to fill vacant or new positions;

B. Requests of state agencies for reclassifications and reallocations of positions;

C. Requests of state employees for information about job opportunities in State Government; and

D. Requests of state employees for job reclassifications and reallocations.

The director shall, at least once a year, meet with the commissioners and directors of other state agencies to discuss, individually, the personnel needs and problems of each state agency and proposed solutions that may be offered by the various agencies. The director shall also discuss with each agency any future changes to the civil service system that the director ~~or the Policy Review Board intend~~ intends to propose;

**Sec. A-15. 5 MRSA §7051, sub-§6**, as amended by PL 1999, c. 668, §15, is further amended to read:

**6. Temporary and provisional appointments.** Whenever it is impossible to certify eligible persons for appointment to a vacancy in the classified service, the appointing authority may nominate a person to be the director. If the nominee is found by the director to have had experience and training ~~which that~~ appear to qualify him the nominee for the position, ~~he the nominee~~ may be temporarily appointed to fill the vacancy in accordance with policies and procedures developed by the director ~~and the Policy Review Board~~.

A. The director may make a provisional appointment to fill a technical or professional position ~~which that~~ requires a specialized knowledge or training to carry out the duties of the position; and which that cannot be filled from the eligible register.

B. The director shall establish a policy to protect persons in temporary positions from remaining in a temporary position for an unreasonable period of time, not to exceed one year, ~~as determined by the board~~.

C. The director may authorize, without requiring competitive tests, the appointment of unskilled laborers or persons engaged in custodial and domestic work in state institutions or departments.

**Sec. A-16. 5 MRSA §7063, 2nd ¶**, as enacted by PL 1985, c. 785, Pt. B, §38, is amended to read:

The director, ~~with the advice of the board~~, shall determine the character, type and content of examination for admission to the classified service; the time

and place for holding examinations; the form of application blanks for admission to the examination to be filed by applicants; the minimum requirements for admission to the examination; and the value of each phase of the tests used in determining the average rating of the applicant. The director may adjust initial test results only to eliminate questions that are proven not relevant to the purposes of the test or ~~which that~~ have a bias that is prohibited by state or federal law. Once a minimum final earned rating is established for a particular test, it ~~shall~~ may not be changed.

**Sec. A-17. 5 MRSA §7064, first ¶,** as amended by PL 2003, c. 177, §1, is further amended to read:

Positions in the classified service must be filled by original appointment, promotion, transfer, reinstatement or demotion in accordance with policies and procedures developed by the director, ~~with advice from the board.~~ These policies and procedures must provide for the direct hire of positions in the classified service where appropriate.

**Sec. A-18. 5 MRSA §7064, sub-§1,** as amended by PL 2003, c. 177, §1, is further amended to read:

**1. Objective.** In developing policies and procedures for filling positions, the director ~~and board~~ must be guided by the principle of filling each position as efficiently and expeditiously as possible. The director shall strive to fill each position in 30 days and no later than 45 days from the date a request to fill a position has been received from a state agency.

**Sec. A-19. 5 MRSA §7065, first ¶,** as enacted by PL 1985, c. 785, Pt. B, §38, is amended to read:

The director shall, as soon as practicable after the adoption of the classification plan, submit to the Legislature a proposed plan of compensation developed by the director, ~~with the advice of the board,~~ showing for each class or position in the classified service minimum and maximum salary rates and such intermediate rates as ~~he deems~~ the director considers desirable.

**Sec. A-20. 5 MRSA §7065, sub-§4,** as enacted by PL 1985, c. 785, Pt. B, §38, is amended to read:

**4. Compensation above the minimum step.** In hiring any employee, the director or appointing authority may employ a person who is new to a state job classification above the minimum level established for that classification in order to compensate that person for the experience or outstanding qualifications that the person may possess. The director, ~~with the advice of the board,~~ shall establish a policy to reflect the intent of this subsection.

**Sec. A-21. 5 MRSA §7070, 2nd ¶,** as enacted by PL 1985, c. 785, Pt. B, §38, is amended to read:

The director shall maintain a perpetual roster of all officers and employees in the classified and unclassified services, showing for each person such data ~~as he and the board deem~~ that the director considers pertinent.

**Sec. A-22. 5 MRSA §12004-I, sub-§24-A,** as enacted by PL 1999, c. 779, §1, is repealed.

**Sec. A-23. 5 MRSA §13069,** as repealed by PL 1995, c. 560, Pt. B, §5 and amended by c. 688, §8, is repealed.

**Sec. A-24. 5 MRSA §13075,** as amended by PL 1989, c. 700, Pt. A, §20 and repealed by PL 1989, c. 702, Pt. E, §4, is repealed.

**Sec. A-25. 7 MRSA §607, sub-§6,** as amended by PL 2005, c. 585, §1 and c. 620, §6, is repealed and the following enacted in its place:

**6. Registration fee; validity.** The applicant desiring to register a pesticide must pay an annual registration fee of \$150 for each pesticide registered for that applicant. Annual registration periods expire on December 31st or in a manner consistent with Title 5, section 10002, whichever is later.

**Sec. A-26. 8 MRSA §271, sub-§2, ¶A,** as amended by PL 2005, c. 563, §4, is further amended to read:

A. The revenues to be generated, consistent with the profitability and financial health of the licensee, for the General Fund pursuant to section ~~275-H 287;~~ the purse supplements pursuant to section ~~275-I 286;~~ the Sire Stakes Fund pursuant to section 281; and the Stipend Fund pursuant to Title 7, section 86;

**Sec. A-27. 8 MRSA §275-I,** as amended by PL 1997, c. 474, §4 and affected by §6 and repealed by PL 1997, c. 528, §28, is repealed.

**Sec. A-28. 8 MRSA §372, sub-§2, ¶G,** as enacted by PL 1987, c. 505, §2, is amended to read:

G. Subject to the approval of the commission and to any applicable laws relating to public contracts, enter into contracts for the operation of the lotteries, or any part of the lotteries, and into contracts for the promotion of the lotteries. All contracts ~~shall~~ must be awarded in accordance with rules adopted by the Department of ~~Administration~~ Administrative and Financial Services pursuant to Title 5, chapters 141 to 145; and Title 5, sections 1812 and 1813. ~~No A~~ A contract awarded or entered into by the director may not be assigned by the holder of the contract, except by specific approval of the commission.

**Sec. A-29. 8 MRSA §1036, sub-§2, ¶D,** as amended by PL 2005, c. 563, §10 and c. 663, §12, is repealed and the following enacted in its place:

D. Three percent of the net slot machine income must be forwarded by the board to the Treasurer of State, who shall credit the money to the Agricultural Fair Support Fund established in Title 7, section 91;

**Sec. A-30. 12 MRSA §602**, as amended by PL 1997, c. 641, §1 and repealed by c. 678, §9, is repealed.

**Sec. A-31. 12 MRSA §908, sub-§1**, as enacted by PL 1989, c. 68, Pt. C, §2 and amended by PL 2003, c. 600, §4, is further amended to read:

**1. Certain approval unnecessary; payments.** Notwithstanding any other provision of law, the Baxter State Park Authority ~~shall~~ does not need the approval of the Department of ~~Finance~~ Administrative and Financial Services through the Office of the State Controller for the payment of any bills, invoices, accounts, payrolls or any other evidences of claims, demands or charges.

**Sec. A-32. 12 MRSA §908, sub-§2**, as enacted by PL 1989, c. 68, Pt. C, §2, is amended to read:

**2. Certain approval unnecessary; purchases.** Notwithstanding any other provision of law, purchases of materials or services by the Baxter State Park Authority ~~shall do~~ do not need the approval of the Department of ~~Administration~~ Administrative and Financial Services through the Bureau of ~~Purchases~~ General Services.

**Sec. A-33. 12 MRSA §4818**, as repealed by PL 1989, c. 403, §2 and amended by c. 502, Pt. B, §9, is repealed.

**Sec. A-34. 12 MRSA §6601, sub-§5**, as amended by PL 2005, c. 233, §1 and c. 434, §4, is repealed and the following enacted in its place:

**5. Fee.** Except as provided in subsection 5-A, the fee for a commercial shellfish license is \$115.

**Sec. A-35. 12 MRSA §6601, sub-§5-A**, as enacted by PL 2005, c. 233, §2, is amended to read:

**5-A. Exception.** The fee for a commercial shellfish license for applicants 70 years of age or older is \$57.50.

**Sec. A-36. 12 MRSA §8861**, as amended by PL 1989, c. 502, Pt. B, §14 and repealed by c. 555, §9, is repealed.

**Sec. A-37. 14 MRSA §8116, last ¶**, as amended by PL 1987, c. 740, §17, is further amended to read:

Any insurance purchased by the State under this section ~~shall~~ must be purchased through the Department of ~~Administration~~ Administrative and Financial Services, Risk Management Division.

**Sec. A-38. 20-A MRSA §13506, sub-§2**, as amended by PL 1985, c. 785, Pt. A, §92, is further amended to read:

**2. Transmittal of information.** The commissioner shall transmit the necessary filing data to the Department of ~~Finance~~ Administrative and Financial Services in sufficient time to allow the issuance of payments on February 15th and August 15th of each year.

**Sec. A-39. 20-A MRSA §13507-A, sub-§2**, as amended by PL 1987, c. 524, is further amended to read:

**2. Minimums.** Notwithstanding any other provision of law, the State and the bargaining agent for state teachers in state-operated schools and related classifications shall at a minimum, in accordance with bargaining procedures set forth in Title 26, chapter 9-B, negotiate as to the impact of implementation of sections ~~13403~~ 13405 and ~~13404~~ 13406. The negotiations ~~shall~~ must be limited to salaries. Minimum salaries established by those negotiations ~~shall~~ must be based upon a 180-day school year and ~~shall~~ must be proportionately higher for positions whose incumbents work for longer terms. Negotiations ~~shall~~ must establish pay schedules ~~which~~ that enable the State to be competitive with local school administrative units in recruitment and retention with regard to teachers and related classifications. The term "teachers and related classifications" includes any classification in State Government ~~which~~ that is a teaching classification, requires professional work in or around the classroom setting or is within the career ladder of the classifications by virtue of its relationship to educational supervision or programming.

**Sec. A-40. 22 MRSA §1471-B, sub-§7**, as amended by PL 1985, c. 785, Pt. A, §95, is repealed and the following enacted in its place:

**7. State contracts.** Notwithstanding any other provisions of law, members of the board are eligible to contract with the State when the contracts are awarded in accordance with normal bidding procedures of the Department of Administrative and Financial Services. Members also are eligible to receive grants when grants are awarded in accordance with normal state procedures. A member may not vote on the award of a contract or grant for which that member has submitted a bid or proposal.

**Sec. A-41. 22 MRSA §1713**, as enacted by PL 1983, c. 824, Pt. X, §2, is repealed.

**Sec. A-42. 22 MRSA §1714-A, sub-§1, ¶B**, as enacted by PL 1991, c. 9, Pt. G, §4, is amended to read:

B. "Debt" means any amount of money that is owed to the department as a result of:

(1) Overpayments that have been determined by a department audit pursuant to the applicable principles of reimbursement, overpayments as reported by a provider in an unaudited cost report or overpayments that have been discovered in any other manner;

(2) The department's authority to recapture depreciation;

(3) The assessment of fines and sanctions;

(4) Projected overpayments reported in an interim cost report. If an interim report is not filed at least 30 days prior to the transfer, "debt" also includes 5% of Medicaid reimbursement or cost reimbursement for the last fiscal year or \$50,000, whichever is less; or

(5) A final reconciliation decision and order by the former Maine Health Care Finance Commission.

**Sec. A-43. 22 MRSA §7904-A**, as amended by PL 2001, c. 531, §§1 to 3 and repealed by c. 596, Pt. A, §2 and affected by Pt. B, §25, is repealed.

**Sec. A-44. 22 MRSA §8707, sub-§4**, as amended by PL 1999, c. 353, §13, is further amended to read:

**4. Confidential or privileged designation.** The rules must determine to be confidential or privileged information all data designated or treated as confidential or privileged by the former Maine Health Care Finance Commission. Information regarding discounts off charges, including capitation and other similar agreements, negotiated between a payor or purchaser and a provider of health care that was designated as confidential only for a limited time under the rules of the former Maine Health Care Finance Commission is confidential to the organization, notwithstanding the termination date for that designation specified under the prior rules. The board may determine financial data submitted to the organization under section 8709 to be confidential information if the public disclosure of the data will directly result in the provider of the data being placed in a competitive economic disadvantage. This section may not be construed to relieve the provider of the data of the requirement to disclose such information to the organization in accordance with this chapter and rules adopted by the board.

**Sec. A-45. 24-A MRSA §1531**, as amended by PL 1997, c. 315, §20 and repealed by c. 457, §27 and affected by §55, is repealed.

**Sec. A-46. 28-A MRSA §61**, as repealed by PL 1997, c. 373, §27 and amended by c. 424, Pt. B, §3, is repealed.

**Sec. A-47. 29-A MRSA §651, sub-§6**, as enacted by PL 2005, c. 678, §6 and affected by §13, is amended to read:

**6. Manufactured housing.** Beginning ~~January~~ October 1, 2007, the Secretary of State shall issue certificates of title for new single-unit manufactured housing beginning with model year 2007. Beginning ~~January~~ October 1, 2007, the Secretary of State shall issue a certificate of title for used manufactured housing that was previously issued a State of Maine certificate of title.

**Sec. A-48. 29-A MRSA §652, sub-§9, ¶A**, as enacted by PL 2005, c. 678, §7 and affected by §13, is amended to read:

A. Sold before ~~January~~ October 1, 2007;

**Sec. A-49. Retroactivity.** Those sections of this Act that amend Title 29-A, section 651, subsection 6 and section 652, subsection 9, paragraph A apply retroactively to January 1, 2007.

**Sec. A-50. 30-A MRSA §4722, sub-§1, ¶AA**, as amended by PL 2007, c. 326, §2, is further amended to read:

AA. Certify transfers of multifamily affordable housing property that qualify for the deduction under Title 36, section 5122, subsection 2, paragraph ~~W~~ Z or Title 36, section 5200-A, subsection 2, paragraph Q. The affordability restrictions that apply under this paragraph must be contained in a declaration signed by the transferee and recorded in the appropriate registry of deeds at the time of the sale or transfer.

(1) For the purposes of this paragraph, "multifamily affordable housing property" means a decent, safe and sanitary dwelling, apartment building or other living accommodation that includes at least 6 units, that meets at least one of the following affordability restrictions and for which those affordability restrictions, as applicable, expire in 10 years or less from the date of the sale or transfer of the property:

(a) At least 20% of the units have restricted rents affordable to households earning no more than 80% of the area median income as determined by the United States Department of Housing and Urban Development;

(b) The property is assisted by the United States Department of Housing and Urban Development, the United States Department of Agriculture or the Maine State Housing Authority; or

(c) The property qualifies for low-income housing credits under the United

States Internal Revenue Code of 1986, Section 42.

(2) For the purposes of this paragraph, property does not qualify as multifamily affordable housing property unless:

(a) The transferee agrees to maintain the property as multifamily affordable housing property for an additional 30 years from the scheduled expiration;

(b) If the existing federal, state or other assistance is not available to maintain the property as multifamily affordable housing property, the transferee agrees to ensure that 1/2 of the units are affordable to persons at 60% of the area median income as determined by the United States Department of Housing and Urban Development for 30 years from the expiration of the then-existing affordability restrictions; or

(c) The transferee agrees to an alternative affordability agreement approved by the Maine State Housing Authority; and

**Sec. A-51. 30-A MRSA §4952, first ¶**, as enacted by PL 1989, c. 48, §§11 and 31, is amended to read:

The Maine State Housing Authority and the Department of ~~Administration~~ Administrative and Financial Services shall develop a procedure by which state-owned land and structures determined to be surplus and useable or needed for the furtherance of the development of affordable housing for low-income and moderate-income households ~~shall~~ must be held in trust for this purpose and may not be sold or used for other purposes, except with the approval of the Commissioner of ~~Administration~~ Administrative and Financial Services and the Director of the Maine State Housing Authority.

**Sec. A-52. 30-A MRSA §5250-I, sub-§7-A**, as enacted by PL 2005, c. 637, §1, is amended to read:

**7-A. Experiential tourism.** "Experiential tourism" means tourism that allows individuals to be active participants in outdoor recreational activities including but not limited to: hiking, camping, birding and other wildlife viewing, nature photography, visits to historical and cultural ~~sights~~ sites and museums, nature tourism, adventure tourism and ecotourism.

**Sec. A-53. 30-A MRSA §5250-J, sub-§1, ¶D**, as repealed and replaced by PL 2005, c. 637, §2 and amended by c. 650, §2, is repealed and the following enacted in its place:

D. Washington County and the Downeast region including 2 pilot projects to be established by the commissioner:

(1) A pilot project for the property of the former Cutler naval computer and telecommunications station, which may be excluded from the qualified business definitions established under section 5250-I, subsections 16 and 17 if a for-profit business is engaged in, or will engage in, tourism development including recreational tourism, experiential tourism, hotel development and resort facility development; and

(2) A pilot project that allows seasonal employees in seasonal industries based on natural resources to be considered qualified Pine Tree Development Zone employees for the purposes of section 5250-I, subsection 18;

**Sec. A-54. 32 MRSA §1866-A**, as repealed by PL 1995, c. 395, Pt. P, §3 and affected by §11 and amended by c. 465, Pt. A, §10 and affected by Pt. C, §2, is repealed.

**Sec. A-55. 33 MRSA §595, sub-§1, ¶B**, as enacted by PL 2005, c. 572, §2, is amended to read:

B. If, after expiration of the 30-day period under paragraph A, the time-share owner has not cured the default in the manner prescribed, the person seeking to foreclose shall conduct a public auction under the conditions described in this paragraph.

(1) Notice under this paragraph must be given as follows.

(a) Notice of the sale must be published once in each of 3 successive weeks in a newspaper with a general circulation in the town in which the time-share property is situated. The first publication must be not later than 30 days before the date of the sale, calculated by excluding the date of publication of the first notice and the date of sale.

(b) A written notice of the time, date and place of the auction must be mailed to the last known address of the time-share owner of record by certified mail, return receipt requested, and by first class mail at least 30 days prior to the date of sale. The notice to the time-share owner must include the following language: "You are hereby notified that you have a right to petition the Superior Court or District Court for the county or district in which the time-share estate is located, with service on the foreclosing person, and upon such bond as the court may require, to enjoin the scheduled foreclosure sale." The notice of sale also must be sent by certified mail, return receipt requested, to all persons having a lien on the time-



share estate at least 30 days prior to the date of the foreclosure sale.

- (c) The notice must contain:
  - (i) The name of the time-share owner;
  - (ii) The date, time and place of the foreclosure sale;
  - (iii) A general description of the time-share estate; and
  - (iv) The terms of the sale.

If more than one time-share estate is to be included in the foreclosure sale, all such time-share estates may be combined into one notice of sale, with one property description, as described in division (d) or (e).

(d) The notice of foreclosure for foreclosing on the lien of a time-share estate must be printed in substantially the following form:

NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER TITLE 33, SECTION 595 OF THE MAINE REVISED STATUTES ANNOTATED

By virtue of the project instrument of the .....(name and address of time-share property) and Title 33, section 594 establishing a lien for failure to pay assessments on the time-share estate (or estates, if more than one) held by the time-share owner (or owners, if more than one) listed below, the time-share estate (or estates, if more than one) will be sold at Public Auction commencing at ..... on ..... , 20.. at ....., Maine. (For each time-share estate, list the name and address of the time-share owner, a general description of the time-share estate and the book and page number of the deed.)

TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of the sale and the times for payment of the balance or the whole, as the case may be. The time-share estates, if more than one, must be sold in individual lots unless there are no individual bidders, in which case they may be sold as a group.)

Other terms to be announced at the sale.

Signed.....

Lienholder or authorized agent.

(e) For foreclosure of a mortgage lien containing a power of sale on a time-share estate, a notice of sale must be printed in substantially the following form:

NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER TITLE 33, SECTION 595 OF THE MAINE REVISED STATUTES ANNOTATED

By virtue of Title 33, section 595 and in execution of the power of sale contained in a certain mortgage (or mortgages, if more than one) on the time-share estate (or estates, if more than one) given by the time-share owner (or owners, if more than one) set forth below for breach of the conditions of said mortgage (or mortgages, if more than one) and for the purpose of foreclosing, the same will be sold at Public Auction commencing at .... on ....., 20.. at ....., Maine, being all and singular the premises described in said mortgage (or mortgages, if more than one). (For each mortgage, list the name and address of the time-share owner, a general description of the time-share estate and the book and page number of the mortgage.)

TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of the sale and the times for payment of the balance or the whole, as the case may be. The time-share estates, if more than one, must be sold in individual lots unless there are no individual bidders, in which case they may be sold as a group.)

Other terms to be announced at the sale.

Signed .....

Holder of Mortgage or authorized agent.

(f) The notice of sale in the forms described in divisions (d) and (e), published in accordance with the provisions of this section, together with such other or further notice, if any, constitutes sufficient notice of the sale.

(2) The foreclosure sale must be conducted pursuant to this subparagraph.

(a) The foreclosure sale must take place on the time-share property or some other location within the same town as the time-share property.

(b) The foreclosure sale must be by public auction, conducted by an auction-

eer or attorney licensed to practice in the State. At the discretion of the auctioneer or attorney, the reading of the names of the time-share owners, if more than one, the description of time-share estates, if more than one, and the recording information, if more than one instrument, may be dispensed with.

(c) All rights of redemption of the time-share owner are extinguished upon sale of a time-share estate.

(d) The managing entity, the foreclosing person or any time-share owner may bid at the foreclosure sale. The successful buyer at the foreclosure sale takes title to the time-share estate free and clear of any outstanding assessments owed by the prior time-share owner to the managing entity. A purchaser at a sale is not required to complete the purchase if there are liens and encumbrances, other than those included in the notice of sale, that are not stated at the sale and included in the foreclosing person's contract with the purchaser.

(e) Upon closing, the foreclosing person shall provide the buyer with a foreclosure deed or other appropriate instrument transferring the rights to the time-share estate and an affidavit attesting that all requirements of the foreclosure pursuant to this section have been met. The time-share estate is deemed to have been sold, and the instrument conveying the time-share estate must transfer the time-share estate, subject to municipal or other public taxes and to any liens and encumbrances recorded prior to the recording of the mortgage or the lien for assessments.

(f) The buyer shall record the foreclosure deed or other instrument with the appropriate registry of deeds no more than 30 days after the foreclosure sale date.

(g) Within 30 days after the closing and transfer of the foreclosure deed or other instrument and affidavit, the foreclosing person shall mail a notice detailing the results of the foreclosure sale to the last known address of the former time-share owner and all parties that held a junior interest to that of the foreclosing person.

**Sec. A-56. 34-B MRSA §1207, sub-§1, ¶B-2**, as enacted by PL 1995, c. 497, §5, is repealed.

**Sec. A-57. 36 MRSA §271, sub-§2, ¶A**, as amended by PL 2005, c. 609, §1, is further amended to read:

A. Hear and determine appeals according to the following provisions of law:

- (1) The tree growth tax law, chapter 105, subchapter 2-A;
- (2) The farm and open space law, chapter 105, subchapter 10;
- (3) As provided in section 843;
- (4) As provided in section 844;
- (5) Section 272;
- (6) Section 2865; and
- (7) The current use valuation of certain working waterfront land law, chapter 105, subchapter ~~10~~ 10-A;

**Sec. A-58. 36 MRSA c. 105, sub-c. 10-A** is enacted to read:

#### SUBCHAPTER 10-A

#### CURRENT USE VALUATION OF CERTAIN WORKING WATERFRONT LAND

##### §1131. Purpose

It is declared that it is in the public interest to encourage the preservation of working waterfront land and to prevent the conversion of working waterfront land to other uses as the result of economic pressures caused by the assessment of that land, for purposes of property taxation, at values incompatible with its use as working waterfront land and that the necessity in the public interest of the enactment of this subchapter in accordance with the Constitution of Maine, Article IX, Section 8 is a matter of legislative determination.

##### §1132. Definitions

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

**1. Commercial aquaculture production.** "Commercial aquaculture production" has the same meaning as in section 2013, subsection 1, paragraph A-1.

**2. Commercial fishing.** "Commercial fishing" means harvesting or processing, or both, of wild marine organisms with the intent of disposing of them for profit or trade in commercial channels.

**3. Commercial fishing activities.** "Commercial fishing activities" means commercial aquaculture production and commercial fishing. "Commercial fishing activities" does not include retail sale to the general public of marine organisms or their byproducts, or

other products or byproducts of commercial aquaculture production or commercial fishing.

**4. Excess valuation factor.** "Excess valuation factor" means a market-based influence on the determination of the just value of working waterfront land that would result in a valuation that is in excess of that land's current use value. "Excess valuation factor" includes, but is not limited to, aesthetic factors, recreational water-use factors, residential housing factors and nonresidential development factors unrelated to working waterfront uses.

**5. Head of tide.** "Head of tide" means the inland or upstream limit of water affected by the tide.

**6. Intertidal zone.** "Intertidal zone" means all land affected by the tides between the mean high-water mark and the mean low-water mark.

**7. Marine organism.** "Marine organism" means an animal or plant that inhabits intertidal zones or waters below head of tide.

**8. Support the conduct of commercial fishing activities.** "Support the conduct of commercial fishing activities" means:

A. To provide access to the water or the intertidal zone over waterfront property to persons directly engaged in commercial fishing activities; or

B. To conduct commercial business activities that provide goods or services that directly support commercial fishing activities.

**9. Used predominantly.** "Used predominantly" means used more than 90% for commercial fishing activity, allowing for limited uses for noncommercial or nonfishing activities if those activities are minor and purely incidental to a property's predominant use.

**10. Used primarily.** "Used primarily" means used more than 50% for commercial fishing activity.

**11. Working waterfront land.** "Working waterfront land" means a parcel of land, or a portion thereof, abutting water to the head of tide or land located in the intertidal zone that is used primarily or used predominantly to provide access to or support the conduct of commercial fishing activities. For purposes of this subchapter, a parcel is deemed to include a unit of real estate notwithstanding the fact that it is divided by a road, way, railroad or pipeline.

#### **§1133. Owner's application**

An owner or owners of land may elect to apply for taxation under this subchapter for the tax year beginning April 1, 2007 and for subsequent tax years by filing with the assessor the schedule provided for in section 1137, subsection 1.

#### **§1134. Administration; rules**

The State Tax Assessor may adopt rules necessary to carry out this subchapter. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

#### **§1135. Current use valuation of working waterfront land**

The municipal assessor, chief assessor or State Tax Assessor for the unorganized territory shall establish the current use value per parcel for property classified as working waterfront land. The current use value of working waterfront land is the sale price that the parcel would command in the marketplace if it were required to remain in the use currently being made of the parcel as working waterfront land. The assessor may use one of the following methods to determine current use value.

**1. Comparative valuation.** The assessor may determine the current use value of working waterfront land by considering:

A. All excess valuation factors that affect the land's just value;

B. The comparative valuation of inland commercial enterprises that are being assessed on the basis of a use that is similar to the use of the working waterfront land with respect to function, access and level of activity; and

C. Any other factor that results in a determination of the current use value of the working waterfront land.

**2. Alternative valuation.** If there is insufficient data to determine the current use value of working waterfront land under subsection 1, the assessor may reduce the ordinary assessed valuation of the land, without regard to permanent protection restrictions and as reduced by the certified ratio, by applying the percentage reductions for which the land is eligible according to the following categories.

A. Working waterfront land used predominantly as working waterfront land is eligible for a reduction of 20%.

B. Working waterfront land used primarily as working waterfront land is eligible for a reduction of 10%.

C. Working waterfront land that is permanently protected from a change in use through deeded restrictions is eligible for the reduction described in paragraph A or B and an additional reduction of 30%.

#### **§1136. Assessment of tax**

An assessment of working waterfront land for purposes of property taxation must be based on the value determined in accordance with this subchapter.

**§1137. Schedule; qualification**

**1. Schedule.** The owner or owners of waterfront land may apply for taxation under this subchapter by submitting a signed schedule in duplicate, on or before April 1st of the year in which the owner or owners wish to first subject such land to taxation under this subchapter, to the assessor upon a form to be prescribed by the State Tax Assessor that must contain a description of the parcel, together with a map identifying the location and boundaries of the working waterfront land, a description of the manner in which the land is used primarily for commercial fishing activities and other information the assessor may require to aid in the determination of what portion of the land qualifies for classification as working waterfront land. The schedule must be signed and consented to by each person with an ownership interest in the land. Classification of the land as working waterfront land may not be inconsistent with the use prescribed in the comprehensive plan, growth management program or zoning ordinance of the municipality.

In defining the working waterfront land area contained within a parcel, land used primarily for commercial fishing activities must be included, together with any remaining portion of the parcel that is not used for purposes inconsistent with commercial fishing activities as long as the remaining portion is not sufficient in dimension to meet the requirements for a minimum lot as provided by either the state minimum lot requirements as prescribed by Title 12, section 4807-A or Title 38, chapter 3, subchapter 1, article 2-B, as applicable, or the minimum lot size provided by the zoning ordinance or zoning map pertaining to the area in which the remaining portion is located.

**2. Classification.** The assessor shall determine what land meets the requirements of this subchapter and shall classify such land as working waterfront land in accordance with this subchapter. The assessor shall file, in the municipal office of the town in which the working waterfront land is located, the original schedule and the value of the working waterfront land as established under this subchapter and the value at which the working waterfront land would have been assessed had it not been classified under this subchapter.

**3. Notification of determination.** The assessor shall notify the owner or owners in writing of the assessor's determination as to the applicability of this subchapter by June 1st following receipt of a signed schedule meeting the requirements of this section. The assessor's notification must state whether the application has been accepted or denied, and if denied the assessor shall state the reasons for the denial and provide the owner or owners an opportunity to amend the schedule to conform to the requirements of this subchapter.

**4. Investigation.** The assessor or the assessor's duly authorized representative may enter and examine the lands under this subchapter for tax purposes and may examine any information submitted by the owner or owners.

Upon notice in writing by certified mail, return receipt requested, any owner or owners shall, within 60 days of the receipt of such notice, respond to such written questions or interrogatories as the assessor may consider necessary to obtain material information about those lands. If the assessor determines that it is not reasonable to obtain the required material information regarding those lands through such written questions or interrogatories, the assessor may require any owner or owners, upon notice in writing by certified mail, return receipt requested, or by such other method as provides actual notice, to appear before the assessor at such reasonable time and place as the assessor may designate and answer such questions or interrogatories as the assessor may consider necessary to obtain material information about those lands.

**5. Owner obligation.** If the owner or owners of any land subject to taxation under this subchapter fail to submit the schedules under this section, or fail to respond, within 60 days of receipt, to written questions or interrogatories of the assessor, or fail within 60 days of receipt of notice as provided in this section to appear before the assessor to respond to questions or interrogatories, or fail to provide information after notice duly received as provided under this section, that owner or those owners are deemed to have waived all rights of appeal.

It is the obligation of the owner or owners to report to the assessor any disqualifying change of use of land subject to taxation under this subchapter by the end of the tax year in which the change occurs. If the owner or owners fail to report any disqualifying change of use of land to the assessor, the assessor shall assess those taxes that should have been paid, shall assess the penalty provided in section 1138 and shall assess an additional penalty of 25% of the foregoing penalty amount. The assessor may waive the additional penalty for cause.

**6. Recertification.** The assessor shall determine annually whether any classified land continues to meet the requirements of this subchapter. Each year the assessor shall recertify any classifications made under this subchapter and update the information required under subsection 1. If any classified land no longer meets the requirements of this subchapter, or the owner or owners request withdrawal of the land from the classification in writing, the assessor shall remove the classification.

**§1138. Recapture penalty**

**1. Assessor determination; owner request.** If the assessor determines that land subject to this subchapter no longer meets the requirements of this subchapter, the assessor must withdraw the land from taxation under this subchapter. The owner or owners of land subject to this subchapter may at any time request withdrawal of any land from taxation under this subchapter by certifying in writing to the assessor that the land is no longer to be classified under this subchapter.

**2. Withdrawal of portion.** In the case of withdrawal of a portion of the working waterfront land, the owner or owners, as a condition of withdrawal, shall file with the assessor a schedule including the information required under section 1137, subsection 1 showing the area withdrawn and the area remaining under this subchapter.

**3. Penalty.** If land is withdrawn from taxation under this subchapter, the assessor shall impose a penalty upon the owner or owners. The penalty is the greater of:

A. An amount equal to the taxes that would have been assessed on the first day of April for the 5 tax years, or any lesser number of tax years starting with the year in which the property was first classified, preceding such withdrawal had such real estate been assessed in each of those years at its just value on the date of withdrawal less all taxes paid on that real estate over the preceding 5 years, and interest at the prevailing municipal rate from the date or dates on which those amounts would have been payable; and

B. An amount computed by multiplying the amount, if any, by which the fair market value of the real estate on the date of withdrawal exceeds the 100% valuation of the real estate pursuant to this subchapter on the preceding April 1st by the following rates:

(1) If the real estate was subject to valuation under this subchapter for 10 years or less prior to the date of withdrawal, the rate is 30%; and

(2) If the real estate was subject to valuation under this subchapter for more than 10 years prior to the date of withdrawal, the rate is that percentage obtained by subtracting 1% from 30% for each full year beyond 10 years that the real estate was subject to valuation under this subchapter prior to the date of withdrawal until a rate of 20% is reached.

For purposes of this section, just value at the time of withdrawal is the assessed just value of comparable property in the municipality adjusted by the municipality's certified assessment ratio.

**4. Assessment and collection of penalties.** The penalties for withdrawal must be paid upon withdrawal to the tax collector as additional property taxes. Penalties may be assessed and collected as supplemental assessments in accordance with section 713-B.

**5. Eminent domain.** A penalty may not be assessed under this section if the withdrawal of the parcel is occasioned by a transfer to the State or other entity holding the power of eminent domain resulting from the exercise or threatened exercise of that power.

**6. Relief from requirements.** Upon withdrawal, the land is relieved of the requirements of this subchapter immediately and is returned to taxation under the statutes relating to the taxation of real property to be so taxed on the following April 1st.

**7. Reclassification as open space.** No penalty may be assessed upon the withdrawal of land from taxation under this subchapter if the owner or owners apply for and are accepted for classification of that land as open space land under subchapter 10.

**8. Report of penalty.** Any municipality that receives a penalty for the withdrawal of land from taxation under this subchapter shall report to the State Tax Assessor the total amount received in that reporting year on the municipal valuation return form described in section 383.

#### **§1139. Enforcement**

A tax lien is created to secure the payment of the penalties provided in section 1138. The lien may be enforced in the same manner and has the same effect as liens on real estate created by section 552.

#### **§1140. Transfer of ownership**

If land taxed under this subchapter is transferred to a new owner or owners, in order to maintain the classification, within one year of the date of transfer, the new owner or owners must file with the assessor a new application and a sworn statement indicating that the transferred parcel continues to meet the requirements of section 1132, subsection 11.

#### **§1140-A. Appeals and abatements**

The denial of an application or an assessment made under this subchapter is subject to the abatement procedures provided by section 841. Appeal from a decision rendered under section 841 is to the State Board of Property Tax Review.

#### **§1140-B. Analysis and report**

**1. Analysis.** The State Tax Assessor, in consultation with municipal assessors, the director of the Land for Maine's Future Program within the Executive Department, State Planning Office, representatives of working waterfront organizations and other interested parties, shall collect and analyze the sales prices of all actual sales that occur in the State of waterfront land

that is subject to restrictions on that land's use that are legally enforceable and prohibit or substantially restrict development that is not commercial fishing activity or commercial activity that is the functional equivalent of commercial fishing activity.

**2. Report.** By January 15th of each even-numbered year, the State Tax Assessor shall submit a report to the joint standing committee of the Legislature having jurisdiction over taxation matters that identifies the total value of each sale of working waterfront land and the value of each sale that is reasonably related to the working waterfront land, that compares the sale price of the working waterfront land with the just value of the same land and that categorizes the sales data by region, type of commercial use or commercial fishing use and any other relevant categories. The report may include any other data or analysis that the assessor finds relevant and any recommendations the assessor develops to assist municipal assessors in calculating the current use value of enrolled working waterfront land that is used for or supports commercial fishing activities. The report may also include recommendations to amend this subchapter for the purposes of improving or ensuring the accuracy of current use assessment of working waterfront land.

**Sec. A-59. 36 MRSA c. 105, sub-c. 11,** as amended, is repealed.

**Sec. A-60. 36 MRSA §2013, sub-§1, ¶A,** as amended by PL 2005, c. 519, Pt. QQQ, §1 and affected by §2 and amended by c. 638, §2, is repealed and the following enacted in its place:

A. "Commercial agricultural production" means commercial production of crops for human and animal consumption, including the commercial production of sod, agricultural composting operation as defined in Title 17, section 2805, the commercial production of seed to be used primarily to raise crops for nourishment of humans or animals and the production of livestock, including the removal and storage of manure from that livestock.

**Sec. A-61. 36 MRSA §2017,** as enacted by PL 2005, c. 665, §4, is reallocated to 36 MRSA §2018.

**Sec. A-62. 36 MRSA §4064, first ¶,** as amended by PL 2005, c. 618, §5 and affected by §22 and amended by c. 622, §20, is repealed and the following enacted in its place:

A tax is imposed upon the transfer of real property and tangible personal property situated in this State and held by an individual who dies prior to January 1, 2002 or after December 31, 2002 and who at the time of death was not a resident of this State. When real or tangible personal property has been transferred into a trust or a limited liability company or other pass-through entity, the tax imposed by this section applies

as if the trust or limited liability company or other pass-through entity did not exist and the property was personally owned by the decedent. Maine property is subject to the tax imposed by this section to the extent that such property is either included in the decedent's federal gross estate or is Maine elective property. The amount of this tax is equal to that proportion of the federal credit that the value of the decedent's Maine real and tangible personal property in this State bears to the value of the decedent's federal gross estate. The share of the federal credit used to determine the amount of a nonresident individual's estate tax under this section is computed without regard to whether the specific real or tangible personal property located in the State is marital deduction property.

**Sec. A-63. Application.** That section of this Act that repeals and replaces Title 36, section 4064, first paragraph applies to the estates of decedents who die on or after January 1, 2005.

**Sec. A-64. 36 MRSA §4404-A, sub-§2,** as enacted by PL 2005, c. 627, §11, is amended to read:

**2. Manufacturers.** A manufacturer may transport tobacco products into this State and may transport tobacco products from place to place within this State in quantities greater than those excepted in ~~section~~ subsection 3 for the purpose of marketing and sales if the sale or distribution of those tobacco products is accounted for and the taxes are paid by a person licensed pursuant to section 4402.

**Sec. A-65. 36 MRSA §5122, sub-§2, ¶V,** as enacted by PL 2005, c. 622, §28 and affected by §33 and amended by c. 644, §6, is repealed and the following enacted in its place:

V. The taxpayer's pro rata share of an amount that was previously added back to federal taxable income pursuant to section 5200-A, subsection 1, paragraph H by an S corporation of which the taxpayer is a shareholder and by which, absent the S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph H;

**Sec. A-66. 36 MRSA §5122, sub-§2, ¶W,** as enacted by PL 2005, c. 622, §29 and affected by §33 and enacted by c. 644, §7, is repealed and the following enacted in its place:

W. The taxpayer's pro rata share of an amount that was previously added back to federal taxable income pursuant to section 5200-A, subsection 1, paragraph M by an S corporation of which the taxpayer is a shareholder and by which, absent the S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph L;

**Sec. A-67. 36 MRSA §5122, sub-§2, ¶X**, as enacted by PL 2005, c. 622, §30 and affected by §33, is amended to read:

X. The taxpayer's pro rata share of an amount that was previously added back to federal taxable income pursuant to section 5200-A, subsection 1, paragraph N by an S corporation of which the taxpayer is a shareholder and by which, absent the S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph M;

**Sec. A-68. 36 MRSA §5122, sub-§2, ¶Y** is enacted to read:

Y. The portion of contributions to a qualified tuition program established under Section 529 of the Code up to \$250 per designated beneficiary. This deduction may not be claimed on returns when federal adjusted gross income exceeds \$100,000 for returns with a filing status of single or married filing separately or \$200,000 for returns with a filing status of married joint or head of household; and

**Sec. A-69. 36 MRSA §5122, sub-§2, ¶Z** is enacted to read:

Z. For income tax years beginning on or after January 1, 2006, to the extent included in federal adjusted gross income and not otherwise removed from Maine taxable income, an amount equal to the total of capital gains and ordinary income resulting from depreciation recapture determined in accordance with the Code, Sections 1245 and 1250 that is realized upon the sale of property certified as multifamily affordable housing property by the Maine State Housing Authority in accordance with Title 30-A, section 4722, subsection 1, paragraph AA.

**Sec. A-70. Application.** Those sections of this Part that repeal and replace the Maine Revised Statutes, Title 36, section 5122, subsection 2, paragraph V and subsection 2, paragraph W and amend subsection 2, paragraph X apply to tax years beginning on or after January 1, 2005. That section of this Part that enacts Title 36, section 5122, subsection 2, paragraph Y applies to tax years beginning on or after January 1, 2007.

**Sec. A-71. 38 MRSA §1277, first ¶**, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §220, is further amended to read:

The Department of ~~Administration~~ Administrative and Financial Services shall provide supporting services to the commissioner for the implementation of this chapter, including:

**Sec. A-72. 38 MRSA §1310-B, sub-§2**, as amended by PL 2005, c. 561, §7 and c. 590, §3, is repealed and the following enacted in its place:

**2. Hazardous waste information and information on mercury-added products and electronic devices and mercury reduction plans.** Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6, paragraph A, subparagraph (4), division (i) and section 1610, subsection 6, paragraph B or information relating to mercury reduction plans submitted to the department under section 585-B, subsection 6 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Food and Rural Resources and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submittor. Within 15 days after receipt of the notice, the submittor shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submittor and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that

request to the commissioner to be processed by the department as provided in this subsection.

**Sec. A-73. 38 MRSA §2401**, as repealed by PL 1995, c. 49, §2 and c. 50, §2 and amended by c. 65, Pt. A, §151 and affected by §153 and Pt. C, §15, is repealed.

**Sec. A-74. 38 MRSA §2402**, as repealed by PL 1995, c. 49, §2 and c. 50, §2 and amended by c. 65, Pt. A, §152 and affected by §153 and Pt. C, §15, is repealed.

**Sec. A-75. P&SL 2005, c. 60, §7** is amended to read:

**Sec. 7. Effective date.** Sections 1 to ~~4~~ 5 of this Act take effect on July 1, 2007 if deorganization is approved by the voters of Drew Plantation pursuant to section ~~5~~ 6 of this Act.

## PART B

**Sec. B-1. 5 MRSA §13090-H, sub-§1, ¶A**, as reallocated by RR 1995, c. 2, §11, is amended to read:

A. The commission consists of 11 members appointed by the Governor.

(1) The members appointed must be involved in a related business field or have experience or familiarity with media marketing or public relations. The Governor shall ensure an equitable regional representation from the State.

(2) The Director of the Maine Arts Commission and the commissioner or the commissioner's designee shall serve as ex officio, nonvoting members of the commission.

**Sec. B-2. 5 MRSA §15302, sub-§3**, as amended by PL 2005, c. 425, §19, is further amended to read:

**3. Board of Directors of the Maine Technology Institute.** The institute is governed and all of its powers exercised by a board of directors, referred to in this chapter as the "board," consisting of ~~12~~ 13 voting members and ~~3~~ 2 nonvoting members.

A. The Governor shall appoint 10 voting directors, 8 of whom must be representatives of targeted technologies. The other 2 directors must have demonstrated significant experience in finance, lending or venture capital. In making the appointments from targeted technologies, the Governor shall consider recommendations submitted by representatives of targeted technology sectors. Directors of the board appointed by the Governor are entitled to receive reimbursement at the legislative rate for necessary expenses for their attendance at authorized meetings of the board.

B. The Commissioner of Economic and Community Development or the commissioner's designee,

the President of the Maine Community College System or the president's designee and the Chancellor of the University of Maine System or the chancellor's designee are ex officio voting directors.

C. The Director of the State Planning Office or the director's designee is an ex officio nonvoting director.

D. The Maine Technology Institute Director is a nonvoting director.

**Sec. B-3. 9-A MRSA §3-315**, as enacted by PL 2007, c. 185, §1 and c. 273, Pt. A, §1 and affected by §41, is repealed and the following enacted in its place:

### **§3-315. Choice of accounting, tax or attest services provider**

A supervised lender may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of an accounting, tax or attest services provider who is accredited as a certified public accountant, public accountant or enrolled agent, except that the supervised lender may require the provider chosen by the purchaser or borrower to provide adequate evidence of liability insurance or such other written policy requirements as the supervised lender may determine necessary to protect its interest.

**Sec. B-4. 9-A MRSA §3-316** is enacted to read:

### **§3-316. Real estate settlement procedures**

A creditor and its loan officers shall comply with the provisions of the federal Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq. and its implementing regulation, Regulation X, 24 Code of Federal Regulations, Section 3500 et seq.

**Sec. B-5. Effective date.** That section of this Part that repeals and replaces the Maine Revised Statutes, Title 9-A, section 3-315 takes effect 90 days after the adjournment of the First Regular Session of the 123rd Legislature. That section of this Part that enacts Title 9-A, section 3-316 takes effect January 1, 2008.

**Sec. B-6. 9-A MRSA §8-103, sub-§1-A, ¶Q**, as enacted by PL 2007, c. 273, Pt. A, §4 and affected by §41, is amended to read:

Q. "High-rate, high-fee mortgage" means a residential mortgage loan in which the terms of the loan meet or exceed one or more of the thresholds defined in paragraph ~~EE~~ FF.

**Sec. B-7. 9-A MRSA §9-311**, as enacted by PL 2007, c. 185, §2 and c. 273, Pt. A, §25 and affected by §41, is repealed and the following enacted in its place:



**§9-311. Choice of accounting, tax or attest services provider**

A creditor may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of an accounting, tax or attest services provider who is accredited as a certified public accountant, public accountant or enrolled agent, except that the creditor may require the provider chosen by the purchaser or borrower to provide adequate evidence of liability insurance or such other written policy requirements as the creditor may determine necessary to protect its interest.

**Sec. B-8. 9-A MRSA §9-311-A** is enacted to read:

**§9-311-A. Real estate settlement procedures**

A creditor and its loan officers shall comply with the provisions of the federal Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq. and its implementing regulation, Regulation X, 24 Code of Federal Regulations, Section 3500 et seq.

**Sec. B-9. 9-A MRSA §10-307**, as enacted by PL 2007, c. 273, Pt. A, §31 and affected by §41, is amended to read:

**§10-307. Real estate settlement procedures**

A loan broker and its loan officers shall comply with the provisions of 12 United States Code, Section 2601 et seq., the federal Real Estate Settlement Procedures Act of 1974 and its implementing regulation and, Regulation X, 24 Code of Federal Regulations, Section 3500 et seq.

**Sec. B-10. Effective date.** That section of this Part that repeals and replaces the Maine Revised Statutes, Title 9-A, section 9-311 takes effect 90 days after the adjournment of the First Regular Session of the 123rd Legislature. Those sections of this Part that amend Title 9-A, section 8-103, subsection 1-A, paragraph Q and Title 9-A, section 10-307 and that enact Title 9-A, section 9-311-A take effect January 1, 2008.

**Sec. B-11. 17-A MRSA §16, sub-§2**, as amended by PL 2007, c. 144, §1 and c. 173, §7, is repealed and the following enacted in its place:

2. Any person who, in fact, is committing in the private person's presence and in a public place any of the Class D or Class E crimes described in section 207; 209; 211; 254; 255; 501, subsection 2; 501-A, subsection 1, paragraph B; 503; 751; 806 or 1002.

**Sec. B-12. Effective date.** That section of this Part that repeals and replaces the Maine Revised Statutes, Title 17-A, section 16, subsection 2 takes effect 90 days after the adjournment of the First Regular Session of the 123rd Legislature.

**Sec. B-13. 19-A MRSA §352, sub-§1, ¶B-1**, as enacted by PL 2005, c. 323, §2, is amended to read:

B-1. An active family ~~ease management officer~~ law magistrate;

**Sec. B-14. 20-A MRSA §401, sub-§1**, as amended by PL 2007, c. 179, §1, is repealed and the following enacted in its place:

**1. Appointment.** The state board consists of 9 members and, beginning in the 2007-2008 school year, 2 nonvoting student members, one junior and one senior in high school. All members are appointed by the Governor. Four members must reside in the State's First Congressional District at the time of appointment, 4 members must reside in the State's Second Congressional District at the time of appointment and one member may reside in either the First Congressional District or the Second Congressional District at the time of appointment. One of the student members must reside in the State's First Congressional District at the time of appointment and the other student member must reside in the State's Second Congressional District at the time of appointment. Each appointment is subject to review by the joint standing committee of the Legislature having jurisdiction over education matters and to confirmation by the Senate.

**Sec. B-15. Effective date.** That section of this Part that repeals and replaces the Maine Revised Statutes, Title 20-A, section 401, subsection 1 takes effect 90 days after the adjournment of the First Regular Session of the 123rd Legislature.

**Sec. B-16. 20-A MRSA §15689, sub-§2, ¶A**, as enacted by PL 2003, c. 712, §17, is amended to read:

A. A school administrative unit is eligible for this adjustment under the following conditions.

(1) The school administrative unit's local share results in a full-value education mill rate less than the local cost share expectation as described in section 15671-A.

(2) The school administrative unit has debt service costs defined under section ~~15603~~ 15672, subsection ~~8~~ 2-A that have been placed on the state board's priority list by January 2005.

**Sec. B-17. 22 MRSA §1471-B, sub-§1**, as amended by PL 1991, c. 376, §45, is further amended to read:

**1. Board established.** The Board of Pesticides Control is established by Title 5, section 12004-D, subsection 3, within the Department of Agriculture, Food and Rural Resources. Except as provided in this chapter, the board must be composed of 7 members, appointed by the Governor, subject to approval by the joint standing committee of the Legislature having

jurisdiction over agricultural matters and confirmation by the ~~Legislature~~ Senate. To provide the knowledge and experience necessary for carrying out the duties of the board, the board must consist of the following members: one person with practical experience and knowledge regarding the agricultural use of chemicals; one person who has practical experience and knowledge regarding the use of chemicals in forest management; one person from the medical community; a scientist from the University of Maine System specializing in agronomy or entomology having practical experience and knowledge of integrated pest management; one commercial applicator; and 2 persons appointed to represent the public. The 2 members appointed to represent the public must have a demonstrated interest in environmental protection and represent different geographic areas of the State. The term must be for 4 years, except that of the initial appointees, 2 shall serve 4-year terms, 2 shall serve 3-year terms, 2 shall serve 2-year terms and one shall serve a one-year term. Any vacancy must be filled by an appointment for the remainder of the unexpired term.

**Sec. B-18. 22 MRSA §8702, sub-§4**, as amended by PL 2007, c. 136, §1, is further amended to read:

**4. Health care facility.** "Health care facility" means a public or private, proprietary or not-for-profit entity or institution providing health services, including, but not limited to, a radiological facility licensed under chapter 160, a health care facility licensed under chapter 405 ~~or certified under chapter 405-A~~, an independent radiological service center, a federally qualified health center certified by the United States Department of Health and Human Services, Health Resources and Services Administration, a rural health clinic or rehabilitation agency certified or otherwise approved by the Division of Licensing and Regulatory Services within the Department of Health and Human Services, a home health care provider licensed under chapter 419, an assisted living program or a residential care facility licensed under chapter 1663, a hospice provider licensed under chapter 1681, a retail store drug outlet licensed under Title 32, chapter 117, a state institution as defined under Title 34-B, chapter 1 and a mental health facility licensed under Title 34-B, chapter 1.

**Sec. B-19. PL 2007, c. 88, §2** is repealed and the following enacted in its place:

**Sec. 2. 14 MRSA §4751**, as amended by PL 1985, c. 187, §5, is further amended to read:

**§4751. Goods sold on execution**

All chattels, real and personal liable at common law to attachment and not exempted therefrom by statute, may be taken and sold on execution as prescribed in this subchapter and subchapter ~~W~~ 4. Credits of a sole proprietorship doing business under an assumed

or trade name, partnership, limited liability company or corporation, other than payroll accounts expressly so designated to the credit holder by the account owner, may be taken on execution by an officer and turned over to the judgment creditor to be applied to the judgment, together with interest and costs.

**Sec. B-20. PL 2007, c. 155, §1** is repealed and the following enacted in its place:

**Sec. 1. 30-A MRSA §4360, sub-§3, ¶B**, as amended by PL 2007, c. 77, §1, is further amended to read:

B. The ordinance sets the number of building or development permits for new residential dwellings, not including permits for affordable housing, at 105% or more of the mean number of permits issued for new residential dwellings within the municipality during the 10 years immediately prior to the year in which the number is calculated. The mean is determined by adding together the total number of permits issued, excluding permits issued for affordable housing, for new residential dwellings for each year in the prior 10 years and then dividing by 10;

**Sec. B-21. Effective date.** That section of this Part that amends Public Law 2007, chapter 155, section 1 takes effect 90 days after adjournment of the First Regular Session of the 123rd Legislature.

**PART C**

**Sec. C-1. 4 MRSA c. 1, sub-c. 1-F** is repealed.

**Sec. C-2. 5 MRSA §1743, sub-§2**, as enacted by PL 2001, c. 271, §1, is amended to read:

**2. Competitive bids.** A public improvement contract may be awarded under a system of competitive bidding in accordance with this Part and such other conditions as the Governor may prescribe. The competitive bidding process may be waived in individual cases involving emergency circumstances with the written approval of the director.

**Sec. C-3. 10 MRSA §8002, sub-§9**, as amended by PL 1999, c. 184, §13, is further amended to read:

**9. Licensing.** Coordinate all administrative processes related to licensing functions of bureaus, offices, boards and commissions within the department, including but not limited to the frequency and form of applications and licenses; ~~and~~

**Sec. C-4. 10 MRSA §8002, sub-§10**, as amended by PL 1999, c. 687, Pt. C, §3, is further amended to read:

**10. Confidentiality of shared information.** Keep confidential any information provided by or to the commissioner that has been designated confiden-

tial by the agency, bureau, board or commission within or affiliated with the department that furnished the information and that is the property of the agency, bureau, board or commission that furnished the information. Any information provided pursuant to this subsection may not be disclosed by the recipient of the information unless disclosure has been authorized by the agency, bureau, board or commission that furnished the information; ~~and~~

**Sec. C-5. 10 MRSA §8002, sub-§11** is enacted to read:

**11. Report on fees.** By December 1st of each even-numbered year, conduct a review of the fees assessed by the department and provide a written report to the State Budget Officer and the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs, insurance and financial services matters and business, research and economic development matters identifying any fee changes the commissioner recommends for the next biennium.

**Sec. C-6. 17-A MRSA §1058, sub-§2**, as amended by PL 2005, c. 527, §9, is further amended to read:

**2.** This section does not apply to:

A. A law enforcement officer, a corrections officer or a corrections supervisor engaged in the performance of the law enforcement officer's, corrections officer's or corrections supervisor's public duty; ~~or~~

B. A person possessing an unloaded firearm for the purpose of offering the firearm as evidence in a civil or criminal proceeding if the presiding judge or justice has granted prior approval in writing to the person and the person possesses a copy of the written approval; ~~or~~

C. An employee of a courier or security service in the course and scope of employment for the courier or security service, as approved by the state judicial marshal.

**Sec. C-7. 20-A MRSA §7201, sub-§6**, as amended by PL 2005, c. 662, Pt. A, §22, is further amended to read:

**6. Participation in cocurricular activities.** Eligibility for a child with a disability to participate in cocurricular activities may not be denied solely because the student is enrolled in a reduced course load when the reduced course load is due to the student's disability, ~~only if~~ as long as the student is satisfactorily completing the requirements of the educational components of an individualized family service plan or individualized education program and is otherwise in compliance with the program. If the student is not satisfactorily completing the educational components of an individualized family service plan or individual-

ized education program or is not otherwise in compliance with the program, the student's eligibility may be determined in the same manner as the eligibility of a child without disabilities who is not satisfying the applicable academic standards.

**Sec. C-8. 32 MRSA c. 1-A, sub-c. 3**, as enacted by PL 2007, c. 240, Pt. LLL, §1, is repealed.

## PART D

**Sec. D-1. 24-A MRSA §222, sub-§6**, as enacted by PL 1975, c. 356, §1, is amended to read:

**6. Information as to tender offeror.** If the person required to file the statement referred to in subsection ~~4~~ 4-A is a partnership, limited partnership, syndicate or other group, the superintendent may require that the information called for by subsection ~~4~~ 4-A ~~shall~~ must be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If the person required to file the statement referred to in subsection ~~4~~ 4-A is a corporation, the superintendent may require that the information called for thereby ~~shall~~ must be given with respect to such corporation and each officer and director thereof and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding securities of such corporation.

**Sec. D-2. 24-A MRSA §222, sub-§7, ¶D**, as amended by PL 1983, c. 394, §2, is further amended to read:

D. Violation

(1) Failure to file the statement required under subsection ~~4~~ 4-A ~~shall constitute~~ 4-A constitutes a violation of this chapter.

(2) Effectuation of or any attempt to effectuate an acquisition of, control of or merger with a domestic insurer within 30 days of the filing of the statement required by subsection ~~4~~ 4-A, prior to the superintendent's decision if a hearing is held or after disapproval of such acquisition of control or merger by the superintendent ~~shall constitute~~ constitutes a violation of this chapter.

**Sec. D-3. 24-A MRSA §222, sub-§14, ¶A**, as enacted by PL 1975, c. 356, §1, is amended to read:

A. Any person who willfully violates any of the provisions of this section, or the rules and regulations promulgated by the superintendent under authority thereof, or any person who willfully, in a filing pursuant to subsection ~~4~~ 4-A or a registration pursuant to subsection 8, paragraph B, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, ~~shall~~ must upon conviction

be fined not more than \$1,000 or imprisoned not more than 3 years, or both;

**Sec. D-4. 24-A MRSA §707, sub-§1, ¶C-1,** as amended by PL 1991, c. 872, §2, is further amended to read:

C-1. Employee benefit excess insurance. Insurance, protecting an employer against higher than expected obligations under an employee benefit plan, at retention levels that do not have the effect of making the plan an insured plan. Reinsurance provided to employers that self-insure their workers' compensation exposures pursuant to Title ~~39~~ 39-A, section ~~23~~ 403 does not constitute employee benefit excess insurance. The transaction of employee benefit excess insurance does not constitute the conduct of the business of reinsurance;

**Sec. D-5. 24-A MRSA §2008, sub-§5,** as amended by PL 1997, c. 592, §55, is further amended to read:

5. Any producer with surplus lines authority who knowingly or negligently issues a false certificate of insurance or who fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate as provided in subsection 3, upon conviction, is subject to the penalty provided by section ~~42~~ 12-A or to any greater applicable penalty otherwise provided by law.

**Sec. D-6. 24-A MRSA §2302, sub-§2, ¶A,** as enacted by PL 1969, c. 132, §1, is amended to read:

A. Reinsurance, except joint reinsurance as provided in section ~~2322~~ 2322-A;

**Sec. D-7. 24-A MRSA §4204, sub-§2-A, ¶D,** as amended by PL 2001, c. 72, §19, is further amended to read:

D. The health maintenance organization is financially responsible, complies with the minimum surplus requirements of ~~this~~ section 4204-A and, among other factors, can reasonably be expected to meet its obligations to enrollees and prospective enrollees.

(1) In a determination of minimum surplus requirements, the following terms have the following meanings.

(a) "Admitted assets" means assets recognized by the superintendent pursuant to section 901-A. For purposes of this chapter, the asset value is that contained in the annual statement of the corporation as of December 31st of the year preceding the making of the investment or contained in any audited financial report,

as defined in section 221-A, of more current origin.

(b) "Reserves" means those reserves held by corporations subject to this chapter for the protection of subscribers. For purposes of this chapter, the reserve value is that contained in the annual statement of the corporation as of December 31st of the preceding year or any audited financial report, as defined in section 221-A, of more current origin.

(2) In making the determination whether the health maintenance organization is financially responsible, the superintendent may also consider:

(a) The financial soundness of the health maintenance organization's arrangements for health care services and the schedule of charges used;

(b) The adequacy of working capital;

(c) Any agreement with an insurer, a nonprofit hospital or medical service corporation, a government or any other organization for insuring or providing the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the plan;

(d) Any agreement with providers for the provision of health care services that contains a covenant consistent with subsection 6; and

(e) Any arrangements for insurance coverage or an adequate plan for self-insurance to respond to claims for injuries arising out of the furnishing of health care services.

## PART E

**Sec. E-1. PL 2007, c. 317, §22** is amended to read:

**Sec. 22. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 35-A, section 10007, subsection 3, of the original appointments of voting members of the Maine Energy Conservation Board, one member serves an initial term of one year, one member serves an initial term of 2 years and ~~one member serves an~~ 2 members serve initial ~~term~~ terms of 3 years. An initial term of one or 2 years may not be considered a full term for purposes of limiting the number of terms for which a member may serve.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved, except as otherwise indicated.

Effective July 2, 2007, unless otherwise indicated.

**CHAPTER 467**  
**S.P. 475 - L.D. 1361**

**An Act Concerning Certain  
Flavored Cigarettes and  
Flavored Cigars and Hard  
Snuff**

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

**Sec. 1.** 22 MRSA §1556-A, sub-§1, as amended by PL 1999, c. 616, §2, is further amended to read:

**1. Contract officers.** The authority of contract officers hired under this chapter is limited to enforcement of this ~~Act~~ chapter and Title 36, section 4366-C. Authorization to enforce this chapter is granted by the Commissioner of Public Safety, by terms mutually agreed upon between the department and the Department of Public Safety. Contract officers must have an appropriate background in law enforcement. Contract officers are exempt from ongoing training requirements except as otherwise determined by the Commissioner of Public Safety. These contract officers are not considered law enforcement officers for the purposes of enforcing the Maine Juvenile Code.

**Sec. 2.** 22 MRSA §1560-A is enacted to read:

**§1560-A. Hard snuff**

**1. Hard snuff defined.** As used in this section, unless the context otherwise indicates, "hard snuff" means a smokeless, dissolvable tobacco product in lozenge, bit or tablet form that contains as an ingredient compressed, powdered tobacco with nicotine, that is intended for human consumption and that is not regulated as a food or drug or approved as nicotine replacement therapy.

**2. Prohibition.** A person may not sell, furnish, give away or offer to sell, furnish or give away hard snuff in this State.

**3. Violation.** A person who violates this section commits a civil violation for which fines may be imposed under subsection 4.

**4. Fines.** The fines that apply to violations of this section are as set out in this subsection.

A. A person who violates subsection 2 commits a civil violation for which a fine of \$500 may be adjudged.

B. A person who violates subsection 2 after having previously been adjudicated of a violation of subsection 2 commits a civil violation for which a fine of \$1,000 may be adjudged.

C. A person who violates subsection 2 after having previously been adjudicated of a violation of subsection 2 more than once commits a civil violation for which a fine of \$5,000 may be adjudged.

**Sec. 3.** 22 MRSA c. 262-A, sub-c. 5 is enacted to read:

**SUBCHAPTER 5**

**FLAVORED CIGARETTES AND FLAVORED CIGARS**

**§1560-D. Flavored cigarettes and flavored cigars**

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

A. "Characterizing flavor" means a distinguishable taste or aroma that is imparted to tobacco or tobacco smoke either prior to or during consumption, other than a taste or aroma from tobacco, menthol, clove, coffee, nuts or peppers.

B. "Component part" includes but is not limited to the tobacco, filter and paper in a cigarette or cigar.

C. "Constituent" means any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to the tobacco, paper or filter of a cigarette or cigar during the processing, manufacture or packing of the cigarette or cigar. "Constituent" includes a smoke constituent.

D. "Flavored cigar" means a cigar or any component part thereof that contains a constituent that imparts a characterizing flavor.

E. "Flavored cigarette" means a cigarette or any component part thereof that contains a constituent that imparts a characterizing flavor.

F. "Smoke constituent" means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigarette or cigar to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

**2. Prohibition on sale or distribution of product.** Beginning July 1, 2009, a person may not sell or distribute or offer to sell or distribute in this State any flavored cigarette or flavored cigar unless:

A. The flavored cigarette or flavored cigar was first on the market prior to January 1, 1985, based