

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

Legislative Document

No. 1926

S.P. 735

In Senate, June 5, 1991

Submitted by the Joint Standing Committee on Judiciary pursuant to Joint Rule 21.  
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

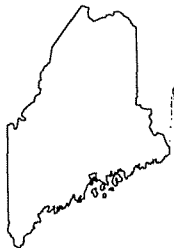
Presented by Senator GAUVREAU of Androscoggin  
Cosponsored by Representative PARADIS of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

An Act to Correct Errors and Inconsistencies in the Laws of Maine.

(EMERGENCY)



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

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

Whereas, it is vitally necessary that these uncertainties and the 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:

Sec. 1. 3 MRSA §927, sub-§9, ¶B, as amended by PL 1989, c. 700, Pt. B, §1 and c. 857, §13, is repealed and the following enacted in its place:

B. Independent agencies:

(1) Maine Conservation School;

(2) Office of State Historian;

(3) Maine Arts Commission;

(4) Maine State Museum Commission;

(5) Maine Historic Preservation Commission;

(6) Maine Health Care Finance Commission;

(7) Board of Occupational Therapy Practice;

(8) Board of Respiratory Care Practitioners;

(9) Radiologic Technology Board of Examiners;

(10) Maine Library Commission; and

(11) Maine Waste Management Agency.

Sec. 2. 4 MRSA §152, sub-§6-A, ¶C, as enacted by PL 1989, c. 878, Pt. A, §7, is amended to read:

2 C. Shoreland zoning ordinances enacted under Title 30-A,  
section 3001, and in accordance with Title 12 38, sections  
4 4811-~~to~~-4817 435 to 446 and section 449;

6 **Sec. 3. 4 MRSA §1151, sub-§2**, as repealed and replaced by PL  
1989, c. 502, Pt. A, §9, is amended to read:

8 **2. Licensing jurisdiction.** Except as provided in Title 5,  
section 10004; Title 10, section 8003, subsection 5; Title 29;  
10 Title 32, ~~chapter--113~~ chapters 105 and 114; and Title 35-A,  
section 3132, the Administrative Court ~~shall-have~~ has exclusive  
12 jurisdiction upon complaint of an agency or, if the licensing  
agency fails or refuses to act within a reasonable time, upon  
14 complaint of the Attorney General, to revoke or suspend licenses  
issued by the agency, and ~~shall-have~~ has original jurisdiction  
16 upon complaint of a licensing agency to determine whether renewal  
or reissuance of a license of that agency may be refused. The  
18 Administrative Court ~~shall---have~~ has original concurrent  
jurisdiction to grant equitable relief in proceedings initiated  
20 by an agency or the Department of the Attorney General alleging  
any violation of a license or licensing laws or rules.

22 Notwithstanding any other provisions of law, no licensing agency  
24 may reinstate or otherwise affect a license suspended, revoked or  
modified by the Administrative Court pursuant to a complaint  
26 filed by the Attorney General, without the approval of the  
Attorney General.

28 **Sec. 4. 5 MRSA §947-A, sub-§1, ¶F**, as enacted by PL 1985, c.  
30 785, Pt. A, §47, is repealed.

32 **Sec. 5. 5 MRSA §10051, sub-§1**, as amended by PL 1989, c. 203,  
34 **§1**, is further amended to read:

36 **1. Jurisdiction.** Except as provided in section 10004;  
Title 8, section 279-B; Title 10, section 8003; Title 29; Title  
38 32, chapters 105 and 114; and Title 35-A, section 3132, the  
Administrative Court ~~shall-have~~ has exclusive jurisdiction upon  
40 complaint of any agency or, if the licensing agency fails or  
refuses to act within a reasonable time, upon complaint of the  
42 Attorney General to revoke or suspend licenses issued by the  
agency and ~~shall-have~~ has original jurisdiction upon complaint of  
44 an agency to determine whether renewal or reissuance of a license  
of that agency may be refused.

46 **Sec. 6. 5 MRSA §12004-G, sub-§17**, as enacted by PL 1987, c.  
48 786, §5, is repealed.

50 **Sec. 7. 12 MRSA §7901, sub-§10**, as enacted by PL 1985, c. 737,  
Pt. A, §34, is repealed.

2           **Sec. 8. 15 MRSA §224-A, sub-§2**, as amended by PL 1983, c. 862,  
§42, is further amended to read:

4           **2. Funding.** The Extradition Account in each prosecutorial  
district shall ~~be~~ is funded by bail forfeited to and recovered by  
6 the State pursuant to the Maine Rules of Criminal Procedure, Rule  
~~46D or District Court Criminal Rules, Rule 40~~ 46. Whenever bail  
8 is so forfeited and recovered by the State, the district attorney  
shall determine whether it or a portion of it shall ~~be~~ is  
10 deposited in the Extradition Account for ~~his~~ that district  
attorney's prosecutorial district, but in no event may the  
12 account exceed \$10,000. Any bail so forfeited and recovered and  
not deposited in the Extradition Account shall ~~must~~ be deposited  
14 in the General Fund. Any unexpended balance in the Extradition  
Account of a prosecutorial district established by this section  
16 shall ~~may~~ not lapse but shall ~~must~~ be carried forward into the  
next year.

18           **Sec. 9. 17-A MRSA §202, sub-§1**, as amended by PL 1979, c.  
20 701, §20, is further amended to read:

22           **1.** A person is guilty of felony murder if acting alone or  
with one or more other persons in the commission of, or an  
24 attempt to commit, or immediate flight after committing or  
attempting to commit, murder, robbery, burglary, kidnapping,  
26 arson, ~~rape~~, gross sexual ~~misconduct~~ assault, or escape, ~~he~~ the  
person or another participant in fact causes the death of a human  
28 being, and such ~~the~~ death is a reasonably foreseeable consequence  
of such commission, attempt or flight.

30           **Sec. 10. 20-A MRSA §13451, sub-§3**, as amended by PL 1989, c.  
32 875, Pt. E, §25 and affected by §26 and as repealed and replaced  
by c. 878, Pt. A, §46, is repealed and the following enacted in  
34 its place:

36           **3. Payment by State.** The State through the Maine State  
Retirement System shall pay 25% of only the retired teacher  
38 members' share of this insurance.

40           **Sec. 11. 20-A MRSA §13451, sub-§3-A** is enacted to read:

42           **3-A. School units that change plans.** If a school unit  
changes its group health insurance plan or provider, the school  
44 unit, at the time that it transfers active teachers to the new  
plan or provider, shall inform all retired teachers who  
46 participate in the group accident and health insurance plan  
through prior employment with that school unit of the change,  
48 detailing the provisions of both the old and new plans. Any  
retired teacher eligible under this subsection may request,  
50 within 90 days of notification of the change, to be transferred  
to the new plan or provider.

52

2           **Sec. 12. 20-A MRSA §13451, sub-§5**, as enacted by PL 1989, c.  
878, Pt. A, §46, is repealed.

4           **Sec. 13. 24-A MRSA §2304, sub-§4**, as amended by PL 1989, c.  
843, §1, is repealed.

6           **Sec. 14. 24-A MRSA §2304-A**, as enacted by PL 1989, c. 797,  
8 §8 and c. 843, §2, is repealed and the following enacted in its  
place:

10           **§2304-A. Rate filings**

12           1. Every insurer shall file with the superintendent, except  
14 as to inland marine risks which by general custom of the business  
16 are not written according to manual rates or rating plans, every  
18 manual rate, minimum premium, class rate, rating schedule or  
20 rating plan and every other rating rule, and every modification  
22 of any of the foregoing which it proposes to use. Every such  
24 filing must state the effective date of the filing, and indicate  
the character and extent of the coverage contemplated. Every such  
filing must be made not less than 30 days in advance of the  
stated effective date unless that 30-day requirement is waived by  
the superintendent. The effective date may be suspended by the  
superintendent for a period of time not to exceed 60 days.

26           2. Every insurer must file or incorporate by reference  
28 material that has been approved by the superintendent at the time  
30 rates are filed, including all supplementary rating, and  
32 supporting information to be used in support of or in conjunction  
with a rate. The information furnished in support of a filing  
may include or reference:

34           A. The experience or judgment of the insurer or information  
36 filed by an advisory organization on behalf of the insurer  
as permitted by sections 2321-D and 2321-E;

38           B. The insurer's interpretation of any statistical data  
upon which it relies;

40           C. The experience of other insurers or advisory  
42 organizations; or

44           D. Any other relevant factors.

46           3. An advisory organization filing of prospective loss  
48 costs and supplementary rating information must be filed for  
approval at least 60 days before it becomes effective. This  
50 period may be extended by the superintendent for an additional  
52 period not to exceed 60 days if written notice is given to the  
advisory organization that additional time is needed for the  
consideration of the filing. Upon written application by the  
advisory organization, the superintendent may authorize a filing

2 that has been reviewed to become effective before the expiration  
3 of the waiting period or any extension of the waiting period. A  
4 filing is deemed to meet the requirements of this chapter unless  
5 disapproved by the superintendent within the waiting period or  
6 any extension of the waiting period.

7 If the superintendent has requested the advisory organization to  
8 furnish the information upon which it supports that filing, the  
9 waiting period commences as of the date that information is  
10 furnished.

11 4. When a filing is not accompanied by the information upon  
12 which the insurer supports that filing, the superintendent may  
13 require the insurer to furnish the information upon which it  
14 supports the filing.

15 Any filing may be supported by the experience, or judgment if  
16 experience is not available, of the insurer or advisory  
17 organization making the filing, the experience of other insurers  
18 or advisory organizations or any other factors that the insurer  
19 or advisory organization determines relevant. A filing and any  
20 other supporting information are open to public inspection after  
21 the filing becomes effective.

22 5. Specific inland marine rates on risks specially rated,  
23 made by an advisory organization, must be filed with the  
24 superintendent, become effective when filed, and are deemed  
25 approved and in compliance with the requirements of this chapter  
26 until the superintendent rejects the filing.

27 6. Filings of rates to be utilized in connection with one  
28 or more mass marketing plans as defined in section 2932 must  
29 clearly identify their applicability to those plans.

30 7. Except as provided in section 2304-C, a rate filing and  
31 its supporting data are confidential until the filing becomes  
32 effective.

33 8. Nothing in this chapter requires an advisory  
34 organization or its members or subscribers immediately to refile  
35 final rates or premium charges previously approved or lawfully in  
36 effect. Members or subscribers of an advisory organization are  
37 authorized to continue to use rates or premium charges approved  
38 or lawfully in effect before the effective date of this chapter.

39 **Sec. 15. 24-A MRS §2304-C is enacted to read:**

40 **§2304-C. Physicians and surgeons liability insurance rates**

41 Physicians and surgeons liability insurance rate filings are  
42 first subject to this section, but any other provisions of this  
43 chapter not inconsistent with this section also apply.  
44

2 Notwithstanding this section, filings made by advisory  
3 organizations are subject to this section only to the extent  
4 permitted by law, and laws prohibiting activities or the filing  
5 of certain information by advisory organizations supersede the  
6 provisions of this section.

7 1. Contents of filing. Every filing subject to this  
8 section must include the data, statistics, schedules or  
9 information necessary for the superintendent to determine whether  
10 the filing complies with this chapter. The superintendent may  
11 wave any noncompliance with this subsection if the  
12 superintendent determines that the noncompliance is immaterial.  
13 The required information includes, but is not limited to:

14 A. Rates:

15 (1) Current rates by rating class at basic limits and  
16 larger optional limits of coverage; and

17 (2) Proposed rates by rating class at basic limits and  
18 larger optional limits of coverage;

19 B. Historical experience:

20 (1) Maine total limits premium, paid claims, paid  
21 allocated loss adjustment expenses, incurred claims,  
22 incurred allocated loss adjustment expenses, and  
23 incurred loss ratio for not less than the 5 most recent  
24 years available;

25 (2) Maine basic limits written or earned premium or  
26 exposure, paid claims, paid allocated loss adjustment  
27 expenses, incurred claims, incurred allocated loss  
28 adjustment expenses, and incurred loss ratio or pure  
29 premium for not less than the 5 most recent years  
30 available; and

31 (3) Any other experience used to support the proposed  
32 changes;

33 C. Adjustment factors:

34 (1) Premiums or exposure at basic limit adjusted to  
35 current rate level or exposure; and a description of  
36 the method used to adjust historical earned premium or  
37 exposure to current level;

38 (2) Loss development exhibits showing the change in  
39 paid and incurred losses and allocated loss adjustment  
40 expenses from period to period, evaluated at least  
41 annually, and an explanation of the loss development



2 method used to project the ultimate value of claims and  
allocated loss adjustment expenses;

4 (3) Trend factor calculations and application,  
including the following:

6  
8 (a) An explanation of the trending procedure and  
assumptions;

10 (b) Trend based on experience in this State as  
well as other actuarially sound sources of trend  
12 information; and

14 (c) Frequency and severity trend factor  
calculations, shown separately; and

16  
18 (4) Credibility weighting of alternative sources of  
data, including a description of the methodology used  
20 and the appropriateness of the method to its use in the  
filing;

22 D. Classification exposure, premium and loss experience in  
the State for not less than the 5 most recent years  
24 available, and other experience determined to be credible in  
selecting the proposed classification relativities.  
26 Classification experience must be provided in any filing in  
which the filer has proposed changes to the classification  
28 relativities, but not less frequently than every 3 years;

30 E. Expense provisions used in developing the proposed  
rates, an explanation of the procedure used to develop these  
32 provisions, and the actual historical expenses for each of  
the 3 most recent years available in the following  
34 categories: commissions; other acquisition expenses;  
general expenses; taxes, licenses and fees; unallocated loss  
36 adjustment expenses; and other expenses;

38 F. An evaluation of any law changes that will become  
effective during the period in which rates will be in effect  
40 or any law changes in effect but not evaluated in a prior  
filing and not reflected in the reported experience;

42  
44 G. An estimate of the investment income that will be earned  
on loss and loss adjustment expense reserves and unearned  
46 premium reserves during the period the rates are to be in  
effect and claims remain unpaid, and evidence that the  
filing gives full consideration to that estimated income.  
48 The filing must include the expected expense and claim  
payout pattern and an explanation of the derivation of the  
50 payout pattern; and

2 H. Information regarding cost or expense control programs,  
4 procedures or practices implemented by the filer to improve  
efficiency of the company or to control or limit premium  
charges to insureds.

6 2. Additional information. The superintendent may require,  
8 at any time, any additional information the superintendent  
determines necessary.

10 3. Assertion of confidential status. Any insurer, rating  
12 organization or advisory organization that asserts that any  
portion of a filing is entitled to confidential status for  
14 purposes of subsection 5, shall identify that portion of the  
filing at the time of filing and shall state the basis for the  
assertion.

16 4. Notice of filing. The superintendent shall maintain a  
18 list of all persons who request notice of physicians and surgeons  
liability insurance rate filings. Within 10 days of receipt of  
20 such a rate filing, the superintendent shall notify each person  
on that list.

22 5. Interested persons. Immediately after receiving a  
24 filing under this section, the superintendent shall grant access  
to the entire filing, including confidential information, to any  
26 interested person who pays premiums for physicians and surgeons  
liability coverage to the company that made the filing, and to  
28 any person or organization representing a group of such persons.  
Any person who has access to confidential information under this  
30 section shall maintain the confidentiality of that information by  
means of a confidentiality agreement or pursuant to a protective  
32 order of the superintendent.

34 6. Public hearing. The superintendent may hold a public  
36 hearing on any filing, as provided in sections 229 to 235. At  
the request of any person described in subsection 5, the  
38 superintendent shall, as required by section 229, hold a public  
hearing on the filing.

40 7. Procedures; rules. The superintendent may adopt rules  
42 under Title 5, chapter 375, establishing procedures for the  
administration of this section.

44 **Sec. 16.** 24-A MRS §2367, sub-§7, as enacted by PL 1989, c.  
46 673, §2 and affected by §3 and as enacted by c. 780, §8 and  
48 affected by §9, is repealed and the following enacted in its  
place:

50 7. Public Advocate participation. The Public Advocate may  
participate as follows.

1 A. The Public Advocate, as appointed under Title 35-A,  
2 section 1701, may participate as a party in the hearing in  
3 which the superintendent makes the determinations required  
4 by this section. The Public Advocate may make timely and  
5 appropriate requests for data necessary to participate in  
6 those determinations.

7 B. At the time the superintendent begins the proceeding  
8 required by this subsection, the insurance carriers  
9 participating in the proceeding shall pay to the  
10 superintendent a fee of \$20,000, which the superintendent  
11 shall immediately credit to the Public Advocate. If the  
12 insurance carriers file the data necessary for the  
13 superintendent's determination under this section at the  
14 same time as the carriers file for a rate change under  
15 section 2363, the carriers shall be required to pay a fee of  
16 only \$10,000. The fee is to be segregated and expended for  
17 the purpose of employing outside consultants and paying  
18 other expenses, including staff salaries, to fulfill the  
19 requirements of this subsection. Any portion of the fee not  
20 so expended is to be returned to the insurance carrier.

22

23 Sec. 17. 24-A MRSA §2367, sub-§7-A is enacted to read:

24 7-A. Exemption from 1990 surcharge. Notwithstanding this  
25 section, employers who were policyholders during the policy year  
26 for which the deficit was determined but who are self-insured in  
27 1990 are not subject to any surcharge ordered in 1990. This  
28 subsection does not exempt those employers from surcharges  
29 ordered after 1990 with respect to the deficit determined for the  
30 policy year beginning January 1, 1988.

32

33 Sec. 18. 26 MRSA §1192, sub-§11, as enacted by PL 1977, c.  
34 570, §22, is amended to read:

35 11. Benefit payments to illegal aliens. On and after  
36 January 1, 1978, benefits shall are not be payable on the basis  
37 of services performed by an alien unless such the alien is an  
38 individual who was lawfully admitted for permanent residence at  
39 the time such the services were performed, was lawfully present  
40 for purposes of performing such the services, or was permanently  
41 residing in the United States under color of law at the time such  
42 the services were performed, including an alien who was lawfully  
43 present in the United States as a result of the application of  
44 the provisions of section 203(a)(7) or section 212(d)(5) of the  
45 Immigration and Nationality Act. Any data or information required  
46 of individuals applying for benefits to determine whether  
47 benefits are not payable to them because of their alien status  
48 shall must be uniformly required from all applicants for  
49 benefits. In the case of an individual whose application for  
50 benefits would otherwise be approved, no determination that  
51 benefits to such the individual are not payable because of his  
52

2 the individual's alien status shall may be made except upon a  
preponderance of the evidence.

4 **Sec. 19. 28-A MRSA §124, sub-§1, ¶A,** as enacted by PL 1987, c.  
45, Pt. A, §4, is amended to read:

6  
8 A. A majority of the votes cast in any municipality or  
unincorporated place on any local option question is in the  
affirmative, the commission may issue licenses of the type  
10 authorized by the affirmative vote in that municipality or  
unincorporated place, ~~except that in the case of a local~~  
12 ~~option question under section 123, question 9, on bottle~~  
~~clubs, no license is required under this Title;~~

14  
16 **Sec. 20. 28-A MRSA §1054, sub-§8,** as enacted by PL 1987, c.  
45, Pt. A, §4, is amended to read:

18 **8. Appeal procedure.** Any licensee who has applied for a  
permit and has been denied, or whose permit has been revoked or  
20 suspended, may appeal the decision to the municipal board of  
appeals, as defined in Title 30 30-A, section 2411 2691, within  
22 30 days of the denial, suspension or revocation. The municipal  
board of appeals, if the municipality has such a board, may grant  
24 or reinstate the permit if it finds that:

26 A. The permitted activities would not constitute a  
detriment to the public health, safety or welfare, or  
28 violate municipal ordinances or regulations; or

30 B. The denial, revocation or suspension was arbitrary and  
capricious.

32  
34 **Sec. 21. 29 MRSA §1312, sub-§11, ¶D,** as amended by PL 1989, c.  
740 and c. 784, §3, is repealed and the following enacted in its  
place:

36  
38 D. Notwithstanding any other provision of this section,  
each operator of a motor vehicle involved in a motor vehicle  
accident shall submit to and complete a chemical test to  
40 determine that person's blood-alcohol level or drug  
concentration by analysis of the person's blood, breath or  
42 urine if there is probable cause to believe that a death has  
occurred or will occur as a result of the accident. The  
44 investigating law enforcement officer shall cause a test to  
be administered as soon as practicable following the  
46 accident. A law enforcement officer may determine which  
type of test is administered and shall report any failure of  
48 a person to submit to or complete a test at the officer's  
request to the Secretary of State by written statement under  
50 oath. The result of a test taken pursuant to this paragraph  
is admissible at trial if the court, after reviewing all the  
52 evidence regardless of whether the evidence was gathered

2 prior to, during or after the administration of the test, is  
4 satisfied that probable cause exists, independent of the  
6 test result, to believe that the operator was under the  
8 influence of intoxicating liquor or drugs or had an  
10 excessive blood-alcohol level.

12 The Secretary of State shall suspend, for a period of one  
14 year, the license or permit to operate, right to operate a  
16 motor vehicle and right to apply for or obtain a license,  
18 pursuant to section 2241, subsection 1, paragraph N, of any  
20 person who fails to submit to or complete a test. The scope  
22 of any hearing the Secretary of State holds pursuant to  
24 section 2241 includes whether there was probable cause to  
26 believe that the person was the operator of a motor vehicle  
28 involved in a motor vehicle accident, whether there was  
30 probable cause to believe that the accident resulted or  
32 would result in a fatality and whether that person failed to  
34 submit to or complete chemical tests to determine the  
36 blood-alcohol level or drug concentration. If the person  
38 shows, after hearing, that the person was not under the  
40 influence of intoxicating liquor or drugs or that the person  
42 did not negligently cause the accident, then any suspension  
44 must be removed immediately.

46 **Sec. 22. 29 MRSA §1312-B, sub-§2, ¶B, as amended by PL 1989,**  
48 **c. 771, §3 and c. 784, §6, is repealed and the following enacted**  
50 **in its place:**

52 B. In the case of a person having no previous convictions  
54 of a violation of former section 1312, subsection 10, former  
56 section 1312-B or this section and having no previous  
58 suspension of license or privilege to operate for failure to  
60 comply with the duty to submit to and complete chemical  
62 testing under section 1312 within a 6-year period, the fine  
64 may not be less than \$300, the sentence must include a  
66 period of incarceration of not less than 48 hours and the  
68 court shall suspend the defendant's license or permit to  
70 operate, right to operate a motor vehicle and right to apply  
72 for and obtain a license for a period of 90 days. These  
74 penalties may not be suspended when the person:

76 (1) Was tested as having a blood-alcohol level of  
78 0.15% or more;

80 (2) Was driving in excess of the speed limit by 30  
82 miles an hour or more during the operation that  
84 resulted in the prosecution for operating under the  
86 influence or with a blood-alcohol level of 0.08% or  
88 more;

90 (3) Eluded or attempted to elude an officer, as  
92 defined in section 2501-A, subsection 3, during the

2 operation that resulted in prosecution for operating  
3 under the influence or with a blood-alcohol level of  
4 0.08% or more;

6 (4) Failed to submit to a chemical test for the  
7 determination of that person's blood-alcohol level or  
8 drug concentration at the request of a law enforcement  
9 officer on the occasion that resulted in the  
10 conviction; or

12 (5) Was, on the occasion that resulted in the  
13 conviction, operating or attempting to operate a motor  
14 vehicle with a passenger under 16 years of age.

16 **Sec. 23. 29 MRSA §2013, sub-§1, ¶E,** as repealed and replaced  
17 by PL 1989, c. 866, Pt. B, §14 and affected by §26 and repealed  
18 and replaced by c. 878, Pt. A, §81, is repealed and the following  
enacted in its place:

20 E. Passes an examination as the Secretary of State  
21 prescribes to determine that person's ability to operate the  
22 specific vehicle that will be driven as a school bus or any  
23 vehicle of comparable type. A fee of \$10 must accompany the  
24 initial application for the examination. The fee for  
25 subsequent examinations is \$5;

26 **Sec. 24. 29 MRSA §2184, sub-§1,** as amended by PL 1989, c. 822,  
27 §2; c. 866, Pt. B, §16 and affected by §26 and amended by c. 891,  
28 Pt. A, §10, is repealed and the following enacted in its place:

30 1. Offense; penalty. A person may not operate a motor  
31 vehicle on any public way or parking area in this State at a time  
32 when that person's license or permit to operate, right to operate  
33 or right to apply for or obtain a license or permit has been  
34 suspended or revoked, except for a revocation as an habitual  
35 offender under chapter 18-A or former chapter 18, when that  
36 person:

38 A. Has received written notice of a suspension or  
39 revocation pursuant to section 1312-D, subsection 1, section  
40 2241-H or other written notice from the Secretary of State;

42 B. Has been orally informed of the suspension or revocation  
43 by a law enforcement officer who is aware of the information  
44 as a result of records maintained by the Secretary of State,  
45 including those obtainable by telecommunications;

48 C. Has actual knowledge of the suspension or revocation;

50 D. Is a person to whom written notice was sent in  
accordance with section 2241, subsection 4; or

2 E. Has failed to appear in court pursuant to any notice or  
3 order specified in section 2301-A.

4  
5 For the purposes of this section, the term "parking area" means  
6 any area designed for use as access or parking for patrons and  
7 customers of establishments to which the public is invited.

8  
9 Violation of this section is a Class D crime, except that,  
10 notwithstanding Title 17-A, section 1301, the maximum fine is  
11 \$2,500.

12  
13 Sec. 25. 36 MRSA §5219-C, as enacted by PL 1989, c. 501, Pt.  
14 P, §32; c. 530, §§ 2 and 4; c. 585, Pt. C, §17 and as amended by  
15 c. 702, Pt. E, §14, is repealed and the following enacted in its  
16 place:

17 §5219-C. Forest management planning income credits

18  
19 Once every 10 years, an individual is allowed a credit  
20 against the tax otherwise due under this Part for the lesser of  
21 \$200 or the individual's cost for having a forest management and  
22 harvest plan developed for a parcel of forest land greater than  
23 10 acres. For purposes of this section, the licensed  
24 professional forester may not be in the regular employ of the  
25 individual. In no case may this credit reduce the state income  
26 tax to less than zero. Those taxpayers claiming this credit must  
27 attach a statement from the forester supporting the claim and  
28 swear that the credit has not been claimed by them in the  
29 previous 10 years. Those taxpayers deducting the cost of the  
30 forester as an expense under the Internal Revenue Code must  
31 reduce the expense by the amount of the credit. This credit may  
32 be used in any tax year beginning on or after January 1, 1989.

33  
34 Sec. 26. 36 MRSA §5219-E is enacted to read:

35  
36 §5219-E. Investment tax credit

37  
38 1. Definitions. As used in this section, unless the  
39 context otherwise indicates, the following terms have the  
40 following meanings.

41  
42 A. "Directly" has the same meaning as defined in section  
43 1752, subsection 2-A.

44  
45 B. "Investment credit base" means the total original basis,  
46 without adjustment, for federal income tax purposes, of the  
47 taxpayer of all machinery and equipment placed in service  
48 for the first time in this State by the taxpayer or other  
49 person during any of the prior 3 taxable years, except in  
50 taxable years ending in 1993, the prior 4 taxable years,  
51 excluding the basis of machinery and equipment placed in  
52

2 service in this State prior to January 1, 1989. In the case  
3 of a combined report, the term investment credit base means  
4 the sum of the investment credit bases for all corporations  
5 included in the report.

6 C. "Machinery and equipment" means machinery and equipment  
7 as defined in section 1752, subsection 7-B, with a situs in  
8 the State as of the last day of the immediately prior  
9 taxable year:

10  
11 (1) That was subject to an allowance for depreciation  
12 under the Code by the taxpayer as of the last day of  
13 the immediately prior taxable year or would have been  
14 subject to an allowance for depreciation under the Code  
15 by the taxpayer as of that date, but for the fact that  
16 the property had been fully depreciated; and

17 (2) That is used directly and primarily in the  
18 production of tangible personal property intended to be  
19 sold or leased ultimately for final use or consumption.

20  
21 D. "Primarily" has the same meaning as defined in section  
22 1752, subsection 9-A.

23 E. "Production" has the same meaning as defined in section  
24 1752, subsection 9-B.

25  
26 2. Credit allowed. A taxpayer is allowed a credit against  
27 the tax imposed by this Part for each taxable year equal to 1.5%  
28 of the investment credit base of the taxpayer. In the case of an  
29 affiliated group of corporations engaged in a unitary business,  
30 the credit must be applied against the total tax liability of all  
31 the taxable corporations in the affiliated group and must be  
32 apportioned among those taxable corporations in the same  
33 proportion as the tax liability of each taxable corporation bears  
34 to the total tax liability of all the taxable corporations.

35  
36 3. Limitation. The credit allowed by subsection 2 for the  
37 taxable year, plus any credit carry-forward or carry-back to the  
38 taxable year allowed by subsection 5, may not exceed so much of  
39 the tax liability of the taxpayer, or the total tax liability of  
40 all taxable corporations that are members of an affiliated group  
41 engaged in a unitary business, for the taxable year as does not  
42 exceed \$25,000 plus 75% of so much of the tax liability for the  
43 taxable year as exceeds \$25,000. When the limitation provided in  
44 this subsection is exceeded, carry-forwards are applied first,  
45 credits under subsection 2 for the taxable year are applied 2nd  
46 and carry-backs are applied last. Carry-forwards from an earlier  
47 unused credit year are applied before carry-forwards from a later  
48 unused credit year and carry-backs from an earlier unused credit  
49 year are used before carry-backs from a later unused credit year.  
50  
51  
52





2 Section 1 corrects a section that was affected by 2 public  
4 laws. Public Law 1989, chapter 700 amended the Maine Revised  
6 Statutes, Title 3, section 927, subsection 9, paragraph B to add  
8 the Maine Library Commission to the list of independent agencies  
10 subject to the Maine Sunset Act in 1998. Public Law 1989,  
12 chapter 857 also added a new agency, the Maine Waste Management  
14 Agency. This section retains the Maine Library Commission and  
the Maine Waste Management Agency. This section also deletes the  
erroneous reference to the Maine Health Facilities Authority that  
was succeeded by the Maine Health and Higher Educational  
Facilities Authority in Public Law 1979, chapter 680, which is  
not an independent agency.

16 Section 2 corrects cross-references to sections in Title 12  
18 that have been reallocated to or the substance of which is now in  
Title 38.

20 Section 3 eliminates conflicting statutory provisions  
22 pertaining to the real estate brokerage license laws, Title 32,  
chapter 114 and the revised Maine Securities Act, Title 32,  
chapter 105 regarding the role of the Administrative Court's  
licensing jurisdiction.

24 Section 4 repeals a provision placing Assistant Deputy  
26 Commissioners of Administration in the unclassified service to  
28 further the intent of the Legislature evidenced by Public Law  
1989, chapter 857, section 25. The only such deputies are within  
the Office of Information Services.

30 Section 5 eliminates conflicting statutory provisions  
32 pertaining to the real estate brokerage license laws, Title 32,  
chapter 114 and the Revised Maine Securities Act, Title 32,  
34 chapter 105 concerning the role of the Administrative Court's  
licensing jurisdiction.

36 Section 6 repeals Title 5, section 12004-G, subsection 17.  
38 This subsection contains the statutory listing of the Therapeutic  
40 Pharmaceutical Monitoring Panel that was repealed May 15, 1990.  
The statutory listing of this panel is no longer needed due to  
the repeal of the panel.

42 Section 7 repeals a duplicative provision also found in  
44 Title 12, section 7901, subsection 5-A, regarding an exception to  
46 criminal violations under the Department of Inland Fisheries and  
Wildlife.

48 Section 8 corrects 2 erroneous references to the Maine Rules  
of Court. Rule 46 of the Maine Rules of Criminal Procedure was  
50 substantially reorganized and now incorporates the language  
formerly found in Rule 46D. The Maine District Court Criminal  
52 Rules have been abolished.

2 Section 9 corrects a section that refers to outdated  
terminology. Public Law 1989, chapter 401 repealed the crime of  
4 rape in favor of a single Class A crime of gross sexual assault,  
which was formerly referred to as Class A gross sexual  
6 misconduct. This section changes the use of the terms "rape" and  
"gross sexual misconduct" to "gross sexual assault" to reflect  
8 the intent of Public Law 1989, chapter 401.

10 Sections 10 and 12 clarify the intent of Public Law 1989,  
chapter 875, Part E, section E-25 to increase the percentage of  
12 state payment of health insurance for retired teachers to 25%.  
Public Law 1989, chapter 878, Part A, section A-46 repealed and  
14 replaced Title 20-A, section 13451 and reallocated the provision  
for state payment of health insurance for retired teachers to  
16 section 13451, subsection 5, but did not reflect the increase  
intended by Public Law 1989, chapter 875, Part E, section E-25.  
18 Section 10 places the correct language in Title 20-A, section  
13451, subsection 3. Section 12 repeals Title 20-A, section  
20 13451, subsection 5.

22 Section 11 corrects a subsection that was affected by 2  
public laws. Public Law 1989, chapter 875, Part E, sections  
24 E-25 and E-26 amended Title 20-A, section 13451, subsection 3 to  
increase the percentage of the state payment of health insurance  
26 for retired teachers and added an effective date. The errors  
bill, Public Law 1989, chapter 878, Part A, section A-46 repealed  
28 and replaced Title 20-A, section 13451 to incorporate language  
from conflicting bills in 1987 and, in doing so, reallocated the  
30 provision for state payment of health insurance for retired  
teachers from subsection 3 to subsection 5. Some language  
32 allocated to subsection 3, however, was omitted by section A-46.  
This section enacts the correct language for state payment of  
34 health insurance as subsection 3-A.

36 Section 13 repeals Title 24-A, section 2304, subsection 4  
because the information is now located in Title 24-A, section  
38 2304-A.

40 Sections 14 and 15 correct a conflict created by 2 public  
laws. Public Law 1989, chapter 797 added a new section 2304-A to  
42 Title 24-A concerning rate filings by insurers. Public Law 1989,  
chapter 843 also added a new section 2304-A, concerning  
44 physicians and surgeons liability insurance rates. Rate filings  
by insurers is retained as Title 24-A, section 2304-A and  
46 physicians and surgeons liability insurance rates is enacted in  
Title 24-A, section 2304-C.

48 Sections 16 and 17 correct a subsection that was affected by  
50 2 public laws. Public Law 1989, chapter 673 added a new  
subsection 7 to Title 24-A, section 2367 concerning public  
52 advocate participation in workers' compensation insurance rate

2 proceedings. Public Law 1989, chapter 780, section 8, also added  
4 a new subsection 7, exempting self-insured employers from any  
6 surcharge ordered in 1990. Public advocates' participation in  
8 workers' compensation proceedings is retained as Title 24-A,  
section 2367, subsection 7 and exempting self-insured employers  
from any surcharge in 1990 is enacted in Title 24-A, section  
2367, subsection 7-A.

10 Section 18 removes a reference to the federal Immigration  
12 and Nationality Act. The reference to that Act no longer applies  
due to a change in the federal unemployment tax. This section  
also makes technical corrections.

14 Section 19 corrects a reference to a repealed section.  
16 Public Law 1987, chapter 342 repealed and replaced Title 28-A,  
18 section 123. Title 28-A, section 124, subsection 1, paragraph A  
makes reference to one of the repealed subsections. This section  
takes out the reference to the repealed section.

20 Section 20 amends Title 28-A, section 1054, subsection 8 to  
22 make reference to the correct cross-reference. Public Law 1987,  
24 chapter 737 repealed and replaced Title 30, section 2411. Title  
28-A, section 1054, subsection 8 makes reference to that repealed  
section.

26 Section 21 incorporates the changes from 2 public laws.  
28 Public Law 1989, chapter 740 made substantive changes to the law  
concerning blood testing of the operator of a motor vehicle when  
30 an accident could have resulted in a fatality. Public Law 1989,  
chapter 784 incorporated changes suggested by the Alcohol and  
32 Drug Abuse Planning Committee.

34 Section 22 incorporates changes from 2 public laws. Public  
36 Law 1989, chapter 771 amended Title 29, section 1312-B,  
38 subsection 2, paragraph B by making technical changes and adding  
40 a new subparagraph (5) indicating that having a passenger under  
the age of 16 years in the vehicle also may result in loss of  
license or a fine. Public Law 1989, chapter 784 amended Title  
29, section 1312-B, subsection 2, paragraph B by making changes  
recommended by the Alcohol and Drug Abuse Planning Committee.

42 Section 23 corrects a section that was affected by 2 public  
44 laws. Public Law 1989, chapter 866 repealed and replaced all of  
46 Title 29, section 2013, incorporating changes from Public Law  
1989, chapters 414 and 514 and making additional technical  
48 changes. Public Law 1989, chapter 878 repealed and replaced only  
Title 29, section 2013, subsection 1, paragraph E, incorporating  
changes from Public Law 1989, chapters 414 and 514.

50 Section 24 incorporates the changes made by 3 public laws.  
52 Public Law 1989, chapter 822 made substantive changes to the law  
concerning the definition of the term parking area. Public Law

2 1989, chapter 866 made substantive changes to the law by changing  
a reference to the Secretary of State's records and replacing it  
4 with a reference to a specific section. Public Law 1989, chapter  
891 made technical changes to the law.

6 Sections 25 and 26 correct a conflict. In the first  
8 biennium of the 114th Legislature, 3 public laws enacted 3  
unrelated provisions designated Title 36, section 5219-C. In the  
10 2nd biennium, a 4th public law enacted Title 36, section 5219-D  
with changes to one of the earlier enactments and attempted to  
12 correct part of the numbering error. The latter enactment failed  
to repeal the earlier section. This section renumbers 2 of the  
14 provisions and repeals a 3rd, the substance of which is now  
contained in Title 36, section 5219-D. These sections also make  
16 technical corrections.

18 Section 27 corrects the text of Title 38, section 2310,  
subsection 2 to reflect the intent that no Toxics Reduction  
20 Advisory Committee member may serve more than 2 3-year terms. An  
error was made in stating that "no appointed member may serve  
22 more than 2 4-year terms."

24 Section 28 repeals Public Law 1989, chapter 700, Part A,  
section A-41 which made a technical correction to Title 15,  
26 section 3601, subsection 5 that was repealed by Title 1, section  
2501, subsection 15.