

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

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

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND SPECIAL SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

child under 24 months of age served is equal to or exceeds the percentage of each of these group's incidence on each agency's or organization's waiting list as of July 1st of each year.

Effective August 29, 1986.

CHAPTER 819

H.P. 1761 - L.D. 2441

AN ACT Making Corrections of Errors and Inconsistencies in the Laws of Maine.

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

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

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

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

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

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

PART A

Sec. 1. 4 MRSA §1051, as repealed and replaced by PL 1985, c. 737, Part A, §13, and c. 787, §2, is repealed and the following enacted in its place:

§1051. Legal holidays

No court may be held on Sunday or any day designated for the annual Thanksgiving; New Year's Day,

January 1st; Martin Luther King, Jr., Day, the 3rd Monday in January; Washington's Birthday, the 3rd Monday in February; Patriot's Day, the 3rd Monday in April; Memorial Day, the last Monday in May, but if the Federal Government designates May 30th as the date for observance of Memorial Day, the 30th of May; the 4th of July; Labor Day, the first Monday of September; Columbus Day, the 2nd Monday in October; Veterans' Day, November 11th; or on Christmas Day. The Chief Justice of the Supreme Judicial Court may order that court be held on a legal holiday when he finds that the interests of justice and judicial economy in any particular case will be served. The public offices in county buildings may be closed to business on the holidays named in this section. When any one of the holidays named in this section falls on Sunday, the Monday following shall be observed as a holiday, with all the privileges applying to any of the days named in this section.

Sec. 2. 5 MRSA §284 is enacted to read:

§284. Division of Administrative Services

The Division of Administrative Services is established to provide assistance to the Commissioner of Finance and to the agencies within the department in personnel matters, budgeting and financial matters, purchasing and clerical and support services, and to perform such other duties as the commissioner may designate.

Sec. 3. 5 MRSA §350, as amended by PL 1985, c. 785, Pt. A, §35, is further amended to read:

§350. Statement of purpose; Advisory Committee on State Telecommunications

The Department of Administration, as the principal administrative and fiscal department of the State Government, has responsibilities for the general administration of state telecommunications services, including, but not limited to, telephone services, radio, teletype, microwave and data transmission links. It is recognized that the department should serve to provide needed coordination between state agencies utilizing telecommunications services in such areas as engineering assistance; systems maintenance, frequency allocation, systems planning, and the purchase of services and equipment. The Advisory Committee on State Telecommunications, established by section 12004, subsection 10, shall assist the Department of Administration in providing for the coordination of state telecommunications services.

Sec. 4. 5 MRSA §1876, sub-§1, ¶F, as enacted by PL 1985, c. 785, Pt. A, §78, is amended to read:

F. The Bureau of Purchases, the head of which shall be the Director of Purchases State Purchasing Agent;

Sec. 5. 5 MRSA §1885, first ¶, as enacted by PL 1985, c. 785, Pt. A, §78, is amended to read:

The Office of Information Services shall be under the direction of the Deputy Commissioner of Administration for Information Services and shall be responsible for providing information services in data processing, planning for telecommunications and planning for the coordination of data processing through the State Government.

Sec. 6. 5 MRSA §7041, sub-§2, ¶G, as enacted by PL 1985, c. 785, Pt. B, §38, is amended to read:

G. Two persons appointed by the Governor who are not state employees and who are well qualified by experience, training and education in personnel systems in the private sector with firms which have implemented progressive personnel systems.

Sec. 7. 5 MRSA §12004, sub-§8, ¶A, sub-¶(1-C) is enacted to read:

(1-C)	<u>Administration</u>	<u>Information</u>	<u>Expenses</u>	5 MRSA
		<u>Services</u>	<u>Only</u>	<u>§1891</u>
		<u>Policy</u>		
		<u>Board</u>		

Sec. 8. 8 MRSA §350, as enacted by PL 1985, c. 785, Pt. A, §86, is amended to read:

§350. Bureau of Lottery

The State Lottery Bureau of Lottery is established within the Department of Finance to carry out the purposes of this chapter.

Sec. 9. 9-A MRSA §1-106, sub-§2, as amended by PL 1985, c. 763, Pt. A, §16, is further amended to read:

2. The designated dollar amounts may change on July 1st of every 4th even-numbered year after 1986 if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is 20% or more, except that:

A. The portion of the percentage change in the Index in excess of a multiple of 20% shall be disregarded and the dollar amounts shall change only in multiples of 20% of the amounts appearing in this Act on the date of enactment; and

B. The dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this Act as a result of earlier application of this section.

Sec. 10. 9-A MRSA §2-306, as enacted by PL 1973, c. 762, §1, is repealed.

Sec. 11. 9-A MRSA §2-308, sub-§1, as amended by PL 1985, c. 763, §29, is further amended to read:

1. Except as provided in section 3-308, supervised loans, not made pursuant to open-end credit and in which the amount financed is \$1,000 \$700 or less and the principal of which is payable in more than a single payment, shall be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor and over a period of not more than 25 months.

Sec. 12. 9-A MRSA §2-504, first ¶, as amended by PL 1985, c. 316, §1, is further amended to read:

Subject to section 2-308, with respect to a consumer credit transaction, the creditor may, by agreement with the consumer, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding by 1% per year the rate charged in the original agreement and stated to the consumer pursuant to the provisions on disclosure. This section shall not apply to consumer loans in which the principal thereof is payable in a single payment on demand or at a specified time and the finance charge, calculated according to the actuarial method, does not exceed 12 1/4% per year, or to consumer loans which, at the time of refinancing, are subject to the provisions of federal laws or regulations governing interest on deposits secured by a savings or time deposit, provided that the difference between the rate of interest earned on the savings or time deposit and the rate of interest charged on the loan secured by that deposit does not exceed the difference between the rate of interest earned on the savings or time deposit and the rate of interest charged on the loan secured by that deposit for the

loan that is being refinanced or upon voluntarily providing different collateral than that securing the original loan, provided that the consumer has not been in default on the loan with the creditor within the 12-month period preceding the refinancing of the loan. This section also does not apply to consumer loans in which the principal is payable in a single payment on demand or at a specified time and the debt is secured by an interest in securities, bonds, debentures or other corporate obligations. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing comprises the following:

Sec. 13. 9-A MRSA §3-201, sub-§2, as enacted by PL 1973, c. 762, §1, is amended to read:

2. Without limiting the generality of subsection 1 and without requiring a statement of rate of finance charge if the finance charge is not more than \$5 when the amount financed does not exceed \$75, or \$7.50 when the amount financed exceeds \$75, an advertisement with respect to a consumer credit transaction made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television or similar mass media, is misleading if:

A. It states the rate of finance charge and the rate is not stated in the form required by the provisions on disclosure; or

B. It states the dollar amounts of the finance charge or instalment payments, and does not also state the rate of any finance charge and the number and amount of the ~~instalment~~ installment payments.

Sec. 14. 9-B MRSA §161, sub-§2, ¶I, as repealed by 9-B MRSA §161, sub-§2, ¶I and as amended by PL 1985, c. 668, § 2, is reenacted to read:

I. Any disclosure of records made pursuant to Title 22, section 16; or

Sec. 15. 10 MRSA §8001, as repealed and replaced by PL 1985, c. 748, §15, is amended to read:

§8001. Department; organization

There is created and established the Department of Professional and Financial Regulation, in this chapter referred to as the "department," to regulate financial institutions, insurance companies, commercial sports, grantors of consumer credit and to li-

cense and regulate professions and occupations. The department shall be composed of the following bureaus, boards and commissions:

Banking, Bureau of;

Consumer Credit Protection, Bureau of;

Insurance, Bureau of;

Athletic Commission, Maine;

Pilotage Commission, Maine State;

Real Estate Commission;

Running Horse Racing Commission, State;

Arborist Examining Board;

Auctioneers, Board of Licensing of;

Barbers, State Board of;

Commercial Driver Education, Board of;

Dietetic Practice, Board of Registration of;

Electricians' Examining Board;

Foresters, State Board of Registration for Professional;

Funeral Service, State Board of;

Geologists and Soil Scientists, State Board of Certification for;

Hearing Aid Dealers and Fitters, Board of;

Manufactured Housing Board;

Nursing Home Administrators Licensing Board;

Occupational Therapy Practice, Board of;

Oil and Solid Fuel Board;

Physical Therapy, Board of Examiners in;

Plumbers' Examining Board;

Psychologists, State Board of Examiners of;

Respiratory Care Practitioners, Board of;
 Social Worker Registration, State Board of;
 Speech Pathology and Audiology, Board of Examiners on; ~~and~~
 Substance Abuse Counselors, Board of Registration of; and
Veterinary Board.

Sec. 16. Effective date. Section 15 of this Part shall take effect July 16, 1986.

Sec. 17. 12 MRSA §550-A, sub-§1, as enacted by PL 1985, c. 201, §3, is amended to read:

1. Anticipated filing, notices of intent to file. Companies anticipating to file for a permit under Title 38, ~~Article~~ chapter 3, subchapter I, article 6 to mine a metallic mineral deposit on a site larger than 20 acres on state land or privately-owned land shall file a notice of intent to file with the director at least 6 months prior to the date when an application for a site location permit will be filed.

Companies shall publish the notice of intent in a daily or weekly newspaper having general circulation in the municipality in which the deposit is located, on the earliest date practicable following the filing of the notice with the director, and shall repeat the publication of the notice at weekly intervals for a total of 4 successive weeks.

Sec. 18. 12 MRSA 685-B, sub-§1, ¶C, as amended by PL 1979, c. 127, §68, is further amended to read:

C. No person ~~shall~~ may commence any construction or operation of any development without a permit issued by the commission.

The commission may waive the requirement of a hearing for any person having received approval by the Board of Environmental Protection pursuant to the Site Location of Department Law, Title 38, sections 481 to 488.

Approval by the commission that the proposed development meets the requirements of subsection 4, and of the land use standards, and rules ~~and regulations~~ adopted by the commission shall be a sufficient basis to support, but shall not re-

quire, a finding by the administering agency that the development meets the requirements of the Site Location of Development Law, Title 38, sections 481 to 488; the Minimum Lot Size Law, sections 4807 to 4807-G; the Wetlands Law, Title 38, sections 471 to 478; the Great Ponds Law, Title 38, chapter 3, subchapter 1, ~~Article~~ article 1-A; or the Stream Alteration Law, ~~sections 2206 to 2212~~ Title 38, chapter 3, subchapter I, article 2-A; and the rules and regulations adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply. Disapproval by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the proposed development does not meet the requirements of the Site Location of Development Law, Title 38, sections 481 to 488; the Minimum Lot Size Law, sections 4807 to 4807-G; the Wetlands Law, Title 38, sections 471 to 478; the Great Ponds Law, Title 38, section 422; or the Stream Alteration Law, ~~sections 2206 to 2212~~ Title 38, chapter 3, subchapter I, article 2-A; and the rules and regulations adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply.

The commission may establish standards within which authority may be delegated to its staff, to approve with reasonable conditions or deny applications submitted hereunder. Any person aggrieved by a decision of the staff shall have the right to a review of such decision by the commission members.

The commission shall establish coordination and assistance procedures for all land use permits issued by agencies of the State for proposed development within the unorganized townships and plantations. Such procedures shall, to the extent practicable, ensure: The availability to the public of necessary information concerning such land use permits; the provision of assistance to applicants in obtaining such permits from such agencies; the coordination of application procedures, time schedules, application forms and similar requirements so as to reduce delay and duplication of effort by applicants and the issuing agencies. Such permit issuing agencies shall cooperate with the commission in the development and effectuation of such coordination and assistance procedures.

Sec. 19. 12 MRSA §685-B, sub-§4, ¶A, as amended by PL 1979, c. 127, §69, is further amended to read:

A. Adequate technical and financial provision has been made for complying with the requirements of the state's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the Site Location of Development Law, Title 38, sections 481 to 488, the Minimum Lot Size Law, sections 4807 to 4807-G, the Wetlands Law, Title 38, sections 471 to 478, the Great Ponds Law, Title 38, chapter 3, subchapter 1, ~~Article~~ article 1-A, and the Stream Alteration Law, ~~sections 2206 to 2212~~ Title 38, chapter 3, subchapter I, article 2-A, for solid waste disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies; and

Sec. 20. 21-A MRSA §157, first ¶, as amended by PL 1985, c. 614, §11, is further amended to read:

In a city or town which has a board of registration, the clerk shall accept applications for registration and enrollment when the board is not in session, except during the closed period prior to election day under section 122.

Sec. 21. Effective date. Section 20 of this Part shall take effect July 16, 1986.

Sec. 22. 21-A MRSA §622, as amended by PL 1985, c. 614, §16, is further amended to read:

§622. Warrant

The warrant for announcing an election must read substantially as follows.

(Title of election) ELECTION WARRANT

(Name of county), ss.

State of Maine

To (name of constable or resident), a constable (or resident) of (name of municipality): You are hereby required in the name of the State of Maine to notify the voters of this municipality of the election described in this warrant.

To the voters of (name of municipality and voting district, if any):

You are hereby notified that an (~~title of election~~) election will be held at (name of voting place) on (day and date of election) for the purpose of (nomination or election) to the following offices:

(list of offices); and determining the following referendum questions: (list of questions).

The polls shall be opened at _____ a.m. and closed at _____ p.m.

The registrar of voters or board of registration will hold office hours while the polls are open to correct any error in or change a name or address on the voting list; to accept the registration of any person eligible to vote and to accept new enrollments.

A person who is not registered as a voter may not vote in any election. A voter who is not enrolled in a political party may not vote in a primary election.

Dated

(date signed).

Majority of municipal officers
of (name of municipality)

Sec. 23. Effective date. Section 22 of this Part shall take effect July 16, 1986.

Sec. 24. 22 MRSA §16, as repealed by 22 MRSA §16, sub-§3, and as amended by PL 1985, c. 668, §2, is reenacted to read:

§16. Access to financial records of deposit accounts of recipients of public assistance

1. Definitions. For the purposes of this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Financial institution" means a trust company, savings bank, industrial bank, commercial bank, savings and loan association or credit union organized under the laws of this State or otherwise authorized to do business in this State.

B. "Match" means a comparison by name and social security number of individuals included in any public assistance roll with individuals included

in records of deposit accounts in any financial institution.

C. "Public assistance" means aid, assistance or benefits available through:

(1) A program of aid to families with dependent children administered in this State pursuant to chapter 1053;

(2) A program of medical assistance administered in this State pursuant to chapter 855; or

(3) Any other program that is based on need and is conducted or administered by this State.

D. "Public assistance roll" means a list of individuals who are receiving aid, assistance or benefits in this State under one or more public assistance programs. The list may include individuals whose applications for aid, assistance or benefits are pending at the time of the match.

2. Verification procedure. Upon written request from the commissioner and at the expense of the department, each financial institution in this State shall match its records of deposit accounts against public assistance rolls provided to the financial institution by the department and shall compile for the department a list of accounts that, as a result of the match, appear to be owned in whole or in part by recipients of or applicants for public assistance. The list of accounts shall include the name and social security number of each matched applicant or recipient and the type of deposit account, the account number and the account balance that appear in the records of the financial institution. The department shall be responsible for making its computer data compatible with the data of any financial institution with which a match is sought.

The department may not automatically terminate or deny public assistance benefits solely on the basis of information received through a match, nor shall anything in this section be construed to create a lien on or otherwise encumber deposit accounts that are subject to a match. The department shall ensure that the privacy of individuals involved in matching will be protected to the maximum extent possible.

Sec. 25. 22 MRSA §4011, sub-§1, as amended by PL 1985, c. 530, §1, and c. 739, §7, is repealed and the following enacted in its place:

1. Reasonable cause to suspect. When, while acting in his professional capacity, a medical or osteopathic physician, resident, intern, emergency medical services' person, medical examiner, physician's assistant, dentist, dental hygienist, dental assistant, chiropractor, podiatrist, registered or licensed practical nurse, Christian Science practitioner, teacher, guidance counselor, school official, social worker, homemaker, home health aide, medical or social service worker, psychologist, child care personnel, mental health professional, law enforcement official, state fire inspector, municipal code enforcement official or municipal fire inspector knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected, he shall immediately report or cause a report to be made to the department.

A. Whenever a person is required to report in his capacity as a member of the staff of a medical or public or private institution, agency or facility, he shall immediately notify the person in charge of the institution, agency or facility, or his designated agent, who shall then cause a report to be made. The staff may also make a report directly to the department.

B. Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected.

D. When, while acting in his professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child, he shall immediately report or cause a report to be made to the appropriate district attorney's office, except as provided in subsection 1-A.

Sec. 26. Effective date. Section 25 of this Part shall take effect July 16, 1986.

Sec. 27. 32 MRS §2102, sub-§2, ¶B, as repealed and replaced by PL 1985, c. 724, §2, is amended to read:

B. Medical diagnosis or prescription of therapeutic or corrective measures when those services are delegated by a licensed or otherwise legally authorized physician to a registered nurse who has completed the necessary additional educational program required for the proper per-

formance of those services and whose credentials must be approved by the board.

The board may adopt, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, rules defining the appropriate scope of practice for nurses practicing under this paragraph. The rules shall also define the appropriate relationship with the physician. In adopting the rules, the board shall invite comment from the Board of Registration in Medicine;

Sec. 28. Effective date. Section 27 of this Part shall take effect July 16, 1986.

Sec. 29. 32 MRSA §2151, as amended by PL 1985, c. 280, is further amended to read:

§2151. Appointment; term; removal

A State Board of Nursing, as established by Title 5, section 12004, subsection 1, shall consist of 7 9 members who shall be appointed by the Governor. Five members of the board shall be professional nurses; ~~one of whom shall be active in practical nurse education or in a school of practical nursing at the time of appointment.~~ Two members shall be a licensed practical nurse ~~nurses.~~ Two members shall be a ~~representative~~ representatives of the public. Except to fill vacancies in unexpired terms, all appointments shall be for a term of 5 years after such appointment or until their successors have been duly appointed and qualified. No person may be eligible for more than one reappointment. Any vacancy on the board shall be filled for the unexpired term by the appointment of another member by the Governor. Any members of the board may be removed from office for cause by the Governor.

Sec. 30. Effective date. Section 29 of this Part shall take effect July 16, 1986.

Sec. 31. 32 MRSA §2153, first ¶, as amended by PL 1985, c. 724, §14, is further amended to read:

The board shall hold annual meetings at which it shall elect from its members a ~~president~~ chairman and a secretary. It may hold such other meetings during the year as may be deemed necessary to transact its business. Special meetings shall be called by the secretary on request of any 2 members. ~~Four~~ Five members of the board shall constitute a quorum at any meeting.

Sec. 32. Effective date. Section 31 of this Part shall take effect July 16, 1986.

Sec. 33. 32 MRSA §2261, sub-§1, as enacted by PL 1985, c. 724, §29, is amended to read:

1. Commission established. There is established a Commission on Nursing Supply and Educational Accessibility. This commission shall be composed of 15 persons appointed by the Governor, with 2 members representing the general public and 13 members representing respectively the Maine State Nurses' Association, the Maine Council of Nursing Service Administrators, the Maine Hospital Association, the Maine Society for Hospital Personnel Administrators, the Maine Licensed Practical Nurses' Association, the Maine Community Health Association, the State Board of Nursing, ~~the~~ Maine Health Care Association Longterm Care Nursing Council, Consortium United Maine Nurses, public baccalaureate nursing education, private baccalaureate nursing education, Vocational-technical institutes and Maine Council of Associate Degree Nursing Programs. All regions of the State must be fairly represented. Appointments shall be for 3-year terms, except that no more than 3 members' terms may expire in any one calendar year and appointments for terms of less than 3 years may be made in order to comply with this limitation.

Sec. 34. Effective date. Section 33 of this Part shall take effect July 16, 1986.

Sec. 35. 32 MRSA §2261, sub-§2, as enacted by PL 1985, c. 724, §29, is amended to read:

2. Staff The commission shall be provided staff support by the Office of Data Research and Vital Statistics. Fund for staff support and data collection shall come from the dedicated revenue fund of the State Board of Nursing.

Sec. 36. Effective date. Section 35 of this Part shall take effect July 16, 1986.

Sec. 37. 36 MRSA §841-B, as repealed by PL 1985, c. 764, §14 and as amended by PL 1985, c. 785, Pt. A, §111, is repealed.

Sec. 38. 36 MRSA §844, sub-§1, as enacted by PL 1985, c. 764, §18, is amended to read:

1. Municipalities without board of assessment review. Except where the municipality has adopted a board of assessment review or has been designated as

a primary assessing area, if the assessors or the municipal officers refuse to make the abatement asked for, the applicant may apply to the county commissioners within 60 days after notice of the decisions from which the appeal is being taken or within 60 days after the application is deemed to have been denied. If the assessors commissioners think that the applicant is over-assessed, the applicant shall be granted such reasonable abatement as the assessors commissioners think proper. If the applicant has paid the tax, he shall be reimbursed out of the municipal treasury, with costs in either case. If the applicant fails, the commissioners shall allow costs to the municipality, taxed as in a civil action in the Superior Court, and issue their warrant of distress against him for collection of such amount as may be due the municipality. The commissioners may require the assessors or municipal clerk to produce the valuation by which the assessment was made or a copy of it. Either party may appeal from the decision of the county commissioners to the Superior Court, in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the county commissioners fail to give written notice of their decision within 60 days of the date the application is filed, unless the applicant agrees in writing to further delay, the application shall be deemed denied and the applicant may appeal to the Superior Court as if there had been a written denial or the applicant may appeal to the State Board of Property Tax Review by following the procedures specified in section 843, subsection 2.

Sec. 39. Effective date. Section 38 of this Part shall take effect July 16, 1986.

Sec. 40. 36 MRSA §1760, sub-§3, as amended by PL 1985, c. 691, §10, and as repealed and replaced by PL 1985, c. 783, §4, is repealed and the following enacted in its place:

3. Food products. Sales of food products except:

A. Meals served on or off the premises of the retailer;

B. Drinks or food furnished, prepared or served for consumption at tables, chairs or counters, or from trays, glasses, dishes or other tableware provided by the retailer;

C. Those products which ordinarily are sold by the retailer for immediate consumption on or near the location of the retailer, even though the products are sold on a "take out" or "to go" or-

der and are actually packaged or wrapped and taken from the premises;

D. Those made from a retail location from which food ordinarily is sold for consumption without further preparation or storage, even though the products are packaged or wrapped in bulk quantities; and

E. Sales of heated food or drinks; sandwiches; ice cream or ice milk in a cone or cup, including sundaes, sodas, frappes and the like, ice cream or ice milk novelties and popsicles.

Sec. 41. Effective date. Section 40 of this Part shall take effect July 16, 1986.

Sec. 42. 36 MRSA §1760, sub-§54 is enacted to read:

54. Food stamp purchases. Sales of items purchased with federal food stamps distributed by the Department of Human Services.

Sec. 43. Effective date. Section 42 of this Part shall take effect October 1, 1987.

Sec. 44. 39 MRSA §2, sub-§5, ¶A, as repealed and replaced by PL 1985, c. 737, Pt. A, §116, is amended to read:

A. "Employee" includes officials of the State, counties, cities, towns, water districts and all other quasi-public corporations of a similar character, every duly elected or appointed executive officer of a private corporation, other than a charitable, religious, educational or other nonprofit corporation, and every person in the service of another under any contract of hire, express or implied, oral or written, except that:

(1) Persons engaged in maritime employment or in interstate or foreign commerce, who are within the exclusive jurisdiction of admiralty law or the laws of the United States; and persons operating as sternmen as defined in Title 36, section 5102, subsection 8-A;

(2) Firefighters, including volunteer firefighters who are active members of a volunteer fire fighters' association, as defined in Title 30, section 3771; volunteer emergency medical services' persons, as defined

in Title 32, section 83, subsection 12; and policemen shall be deemed employees within the meaning of this Act. In computing the average weekly wage of an injured volunteer firefighter or volunteer emergency services' person, the average weekly wage shall be taken to be the earning capacity of the injured employee in the occupation in which he is regularly engaged. Employers who hire workmen within this State to work outside the State may agree with such workmen that the remedies under this Act shall be exclusive as regards injuries received outside this State arising out of and in the course of that employment; and all contracts of hiring in this State, unless otherwise specified, shall be presumed to include such an agreement. Any reference to an employee who has been injured shall, when the employee is dead, include his legal representatives, dependents and other persons to whom compensation may be payable;

(3) Notwithstanding any other provisions of this Act any charitable, religious, educational or other nonprofit corporation that may be or may become an assenting employer under this Act may cause any duly elected or appointed executive officer to be an employee of the corporation by specifically including the executive officer among those to whom the corporation secures payment of compensation in conformity with subchapter II; and the executive officer shall remain an employee of the corporation under this Act while such payment is so secured. With respect to any corporation that secures compensation by making a contract of workers' compensation insurance, specific inclusion of the executive officer in the contract shall cause the officer to be an employee of the corporation under this Act;

(4) Any person who states in writing to the commission that he waives all the benefits and privileges provided by the workers' compensation laws, provided that the commission shall have found that person to be a bona fide owner of at least 20% of the outstanding voting stock of the corporation by which he is employed and that this waiver was not a prerequisite condition to employment.

Any person may revoke or rescind his waiver upon 30 days' written notice to the commis-

sion and his employer. The parent, spouse or child of a person who has made a waiver under the previous sentence may state, in writing, that he waives all the benefits and privileges provided by the workers' compensation laws if the commissioner finds that the waiver is not a prerequisite condition to employment and if the parent, spouse or child is employed by the same corporation which employs the person who has made the first waiver;

(5) The parent, spouse or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse or child of a partner who is employed by the partnership of that partner may state, in writing, that he waives all the benefits and privileges provided by the workers' compensation laws if the commission finds that the waiver is not a prerequisite condition to employment;

(6) Employees of an agricultural employer when harvesting 150 cords of wood or less each year from farm wood lots, provided that the employer is covered under an employer's liability insurance policy as required in subsection 1-A; or

(7) An independent contractor.

Sec. 45. PL 1985, c. 672, §4, is amended to read:

Sec. 4. Effective date. This Act shall be effective only if:

1. The United States enacts legislation:

A. Ratifying and approving Maine Public Law 1985 1981, chapter 675, without modification; and

B. Amending the United States Public Law 96-420, Section 6 (e), United States Code, Title 25, Section 1725 (e), to provide the consent of the United States for amendments to the Maine Implementing Act, with respect to the Houlton Band of Maliseet Indians, provided that such amendment of the Maine Implementing Act is made with the agreement of the Houlton Band of Maliseet Indians; and

2. Within 60 days of adjournment of the Legislature, the Secretary of State receives written certi-

fication by the council of the Houlton Band of Maliseet Indians that the band has agreed to this Act pursuant to the United States Code, Title 25, Section 1725(e)(1), copies of which shall be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives; provided that in no event shall this Act become effective until 90 days after adjournment of the Legislature.

Sec. 46. Effective date. Section 45 of this Part shall take effect July 16, 1986.

Sec. 47. PL 1985, c. 761, Pt. A, under the heading "HUMAN SERVICES, DEPARTMENT OF," under the caption "Bureau of Maine's Elderly," 3rd line is amended to read:

All Other	111,830	7,278
		<u>37,278</u>

Sec. 48. PL 1985, c. 783, is amended by striking out all of the emergency clause.

Sec. 49. PL 1985, c. 783, §38, is repealed and the following enacted in its place:

Sec. 38. 36 MRSA §5220, sub-§2, as amended by PL 1979, c. 711, Pt. H, §6, is further amended to read:

2. Nonresident individuals. Every nonresident individual who has taxable income for the year from sources within this State.

Sec. 50. Effective date. Section 49 of this Part shall take effect July 16, 1986.

Sec. 51. PL 1985, c. 783, §43 is amended to read:

Sec. 43. Application. Sections 17 and 19 to 41 shall apply to tax years beginning ~~on~~ on or after January 1, 1986.

Sec. 52. Effective date. Section 51 of this Part shall take effect July 16, 1986.

Sec. 53. Allocation. The following funds are allocated from the Local Government Fund to carry out the purposes of Part A, section 43.

1986-87

TREASURY, DEPARTMENT OF

State - Municipal Revenue Sharing	
All Other	\$7,650

PART B

Sec. 1. 5 MRSA §1891, as enacted by PL 1985, c. 785, Pt. A, §78, is amended to read:

§1891. Information Services Policy Board established; purpose of board

The Information Services Policy Board, as authorized by chapter 379, is established to assist the deputy commissioner to meet the purpose and mission of this chapter.

Sec. 2. Effective date. Section 1 of this Part shall take effect on July 1, 1986.

Sec. 3. 9-A MRSA §2-201, sub-§7, as repealed and replaced by PL 1985, c. 763, §22, is amended to read:

7. The finance charge on any transaction involving the credit sale of goods or services used in the modernization, rehabilitation, repair, alteration or improvement of real property, in which the seller or his agent installs the goods or provides the services related to the modernization, rehabilitation, repair, alteration or improvement of the real property, may not exceed 18% per year on the unpaid balance balances of the amount financed.

Sec. 4. Effective date. Section 3 of this Part shall take effect on July 1, 1986.

Sec. 5. 12 MRSA §7108, as amended by PL 1985, c. 718, §3 and as repealed by 12 MRSA, §7108, sub-§6, is reenacted to read:

§7108. Coyote hunting permit

1. Eligibility. Any person who possesses a valid hunting license is eligible to obtain a permit from the commissioner to hunt coyotes at night, except that no permit may be issued to any person who has been convicted of a violation of section 7406, subsection 5 within 5 years of the date of application for the permit.

2. Issuance. The commissioner shall issue a permit to hunt coyotes at night to eligible persons at a fee of \$2.

3. Open season. Notwithstanding section 7406, subsection 5, there shall be an open season for hunting coyotes at night in all counties of the State from January 1st to March 31st. The commissioner may

terminate this open season at any time in any area if, in his opinion, an immediate emergency action is necessary due to adverse weather conditions or illegal hunting activity.

4. Restrictions. The following restrictions apply during the open season for hunting coyotes at night.

A. All hunting shall be limited to the hours between 1/2 hour after sunset and 9 p.m. and to the hours between 4 a.m. and 1/2 hour before sunrise.

E. Any person hunting coyotes at night shall be in possession of an electronic, hand-held or mouth-operated predator calling device.

5. Revocation. Any hunting license of a person convicted of a violation of this section shall be revoked and he shall not be eligible to obtain any hunting license for a period of one year from the date of conviction.

Sec. 6. 38 MRSA §342, sub-§2, as amended by PL 1985, c. 746, §4 and c. 785, Pt. B, §177, is repealed and the following enacted in its place:

2. Employment of personnel. He may employ, subject to the Civil Service Law, such personnel and prescribe the duties of such employees, except persons occupying the positions defined in Title 5, section 938, subsection 1, as he deems necessary, to fulfill the duties of the department and of the Board of Environmental Protection.

Sec. 7. Effective date. Section 6 of this Part shall take effect on July 1, 1986.

Sec. 8. PL 1985, c. 785, Emergency clause, is amended to read:

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect on July 1, 1986, except: Part A, only that portion of section 47 enacting the Maine Revised Statutes, Title 5, section 947-A, subsection 1, paragraph D, shall take effect on July 1, 1987; Part A, only that portion of section 78 enacting the Maine Revised Statutes, Title 5, section ~~1875~~ 1876, subsection 1, paragraph C, shall take effect on July 1, 1987; Part B, only that portion of section 38 enacting the Maine Revised Statutes, Title 5, chapter 372, subchapter I, article I, shall take effect on July 1, 1987.

PART C

Sec. 1. 12 MRSA §7369-A, sub-§4, as enacted by PL 1983, c. 502, §4, is amended to read:

4. Sunset. The Whitewater Advisory Committee shall terminate June 30, ~~1986~~ 1990.

Sec. 2. 20-A MRSA §12507, sub-§3 is enacted to read:

3. Deferment. A recipient of a loan may seek a deferment of the annual principal payments for a period not to exceed 2 years. A request for deferment must be made to the commissioner who shall make a determination on a case-by-case basis. The decision of the commissioner shall be final.

Sec. 3. 22 MRSA §7912, sub-§2, as enacted by PL 1985, c. 770, §15, is amended to read:

2. Home and Community Based Waiver Program. Boarding care facilities which provide residential habilitation services through the Home and Community Based Waiver Program for persons who are mentally retarded may admit have as residents persons who are nonambulatory ~~or mobile nonambulatory~~, if:

A. The structure meets all of the requirements of the fire code for institutional occupancy; and

B. A physician certifies that the nonambulatory resident does not require nursing care. This certification is required at least annually.

Sec. 4. Effective date. That section of this Part amending the Maine Revised Statutes, Title 22, section 7912, subsection 2 shall take effect on July 16, 1986.

Sec. 5. 26 MRSA §61, sub-§2, as enacted by PL 1985, c. 372, Pt. A, §7, is amended to read:

2. Source of funds. The commissioner shall annually assess a levy based on ~~the total~~ actual annual workers' compensation paid losses, excluding medical payments, paid in the previous calendar year by employers under Title 39, the Workers' Compensation Act. As soon as practicable after July 1, 1985, the commissioner shall assess upon and collect from each insurance carrier licensed to do workers' compensation business in the State, and from each self-insured employer authorized to make workers' compensation payments directly to their employees,

excluding group self-insurers, an amount equal to 1/4 of 1% of the total workers' compensation benefits, exclusive of medical payments, paid by the insurance carrier or self-insured employer during the previous calendar year. As soon as practicable after July 1, 1986, and each year thereafter, the commissioner shall assess upon and collect from each carrier and individual self-insured employer a sum equal to that proportion of the current fiscal year's appropriation, exclusive of any federal funds, for the safety education and training division which the total workers' compensation benefits, exclusive of medical payments, paid by each carrier or each individual self-insured employer, bears to the total of the benefits paid by all carriers and individual self-insured employers, during the previous calendar year, except that the total amount levied annually may not exceed 1/4 of 1% of the total of the compensation benefits paid by all carriers and individual self-insured employers during the previous calendar year.

Sec. 6. 36 MRSA §1752, sub-§18-A, as repealed and replaced by PL 1985, c. 783, §3, is amended to read:

18-A. Telephone or telegraph service. "Telephone or telegraph service" means all telecommunications or telegraph service, including installation or use of telecommunication or telegraphic equipment, but not including telecommunications or telegraph service originating or terminating outside this State. "Telecommunications and telegraphic equipment" means any 2-way interactive communications device, system or process for transmitting or receiving electromagnetic signals and capable of exchanging audio, data base or textual information. Telecommunications Until January 1, 1988, telecommunications service includes access services provided by a local exchange carrier to an interstate or intrastate interexchange carrier. Notwithstanding subsection 11, a sale of access services shall be considered a retail sale. Beginning January 1, 1988, unless extended by the Legislature, telecommunications service shall not include those access services. "Telephone or telegraph service" does not include directory advertising service.

Sec. 7. Effective date. That section of this Part amending the Maine Revised Statutes, Title 36, section 1752, subsection 18-A shall take effect on July 16, 1986.

Sec. 8. PL 1985, c. 571, §9 is repealed.

Sec. 9. P&SL 1985, c. 84, §§2 and 7 are amended to read:

Sec. 2. Establishment of commission. There is created the Maine Sentencing Guidelines Commission which shall be comprised of 8 members, including the Commissioner of Corrections or his designee; 2 members of the joint standing committee of the Legislature having jurisdiction over judiciary to be appointed by the President of the Senate and the Speaker of the House of Representatives; a criminal defense attorney, a district attorney and 2 members of the public to be appointed by the Governor; and the Attorney General or his designee. The Governor shall select a chairman from one of these 8 voting members. In addition, a Supreme Court Justice, a Superior Court Justice and a District Court Judge, to be appointed by the Chief Justice of the Supreme Judicial Court, shall serve in an advisory capacity to the commission.

Members shall be appointed within 30 days of the effective date of this Act and shall serve for the duration of the 112th Legislature. Vacancies shall be filled for the portion of the term of the member being replaced.

Sec. 7. Report on findings and recommendations. The Maine Sentencing Guidelines Commission shall make a final report of its findings and recommendations with respect to the criteria indicated in section 3 on or before January 5, ~~1986~~ 1987, to the ~~Second~~ First Regular Session of the ~~112th~~ 113th Legislature. The report shall also include, in proper draft form, any suggested implementing legislation or amendment to the Constitution of Maine proposed to implement the commission recommendations.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved, except as otherwise indicated.

Effective June 6, 1986, unless otherwise indicated.

CHAPTER 820

H.P. 1762 - L.D. 2442

AN ACT to Appropriate Funds Necessary to
Implement an Intensive Supervision
Program, to Develop Community
Corrections and Treatment Programs and
to Address Needs of the Department of
Corrections for the Fiscal Year Ending
June 30, 1987.