

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
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Twin City Printery
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1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
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1987

Sec. 3. Effective date. Section 1 of this Act shall not be effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provision of 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, the Secretary of the Senate and the Clerk of the House, provided that in no event may this Act become effective until 90 days after adjournment of the Legislature.

Section 2 of this Act shall not be effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the Governor and council of the Penobscot Nation that the nation has agreed to the provision of 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, the Secretary of the Senate and the Clerk of the House, provided that in no event may this Act become effective until 90 days after adjournment of the Legislature.

Effective September 29, 1987, as indicated.

CHAPTER 154

H.P. 324 — L.D. 423

AN ACT to Establish Pilot Indigency Screening Units for Court-appointed Counsel.

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

Sec. 1. 34-A MRSA §5405 is enacted to read:

§5405. Indigency screening units for court-appointed counsel; pilot program

The director, with the approval of the commissioner, shall establish a pilot program to screen defendants requesting court-appointed counsel. The program shall include 2 indigency screening units located in the probation and parole district offices of 2 counties. Each unit shall have one indigency investigator appointed by the director who shall be supervised by the district supervisor.

1. Duties of the indigency investigator. The indigency investigator for each unit shall not be required to perform other responsibilities of probation and parole officers during the duration of the pilot program, except as follows:

A. Assist the defendant in completion of a financial disclosure affidavit;

B. Determine the degree of investigation required and conduct the investigation;

C. Recommend that the defendant be declared indigent, partially indigent or nonindigent, based upon guidelines adopted by the Supreme Judicial Court;

D. Submit the recommendation, accompanied by supporting material, to a justice or judge;

E. Notify defendants and counsel when the defendant is determined to be partially indigent or nonindigent after counsel has already been appointed;

F. Establish and monitor payment arrangements for partially indigent defendants and for defendants determined to be nonindigent after having received the services of court-appointed counsel; or

G. Maintain detailed records and compile statistical reports as required.

2. Establishment of indigency guidelines. Guidelines or rules shall be promulgated by the Supreme Judicial Court to provide the investigator with standards against which the defendant's financial situation may be measured.

3. Establishment of advisory committee. An advisory committee shall be appointed by the Supreme Judicial Court to serve as a project planning committee during the early stages of the project and to provide oversight and guidance to the screening units throughout the duration of the project. The committee shall also determine the location of the 2 pilot screening units. Prior to the end of the 2-year project, the committee shall provide a report with recommendations to the Legislature concerning the effectiveness of the program and the desirability of the program expansion. The committee shall be composed of members of the judiciary, court administrative staff, Division of Probation and Parole and other appropriate participants, in such numbers and composition as determined by the Supreme Judicial Court.

Sec. 2. Legislative intent. This pilot program shall be implemented by utilizing the staff of the Intensive Supervision Unit within the Division of Probation and Parole.

Effective September 29, 1987.

CHAPTER 155

H.P. 679 — L.D. 912

AN ACT Regarding the Maine Agricultural Marketing and Bargaining Act of 1973.

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

Sec. 1. 5 MRSA §12004, sub-§3, ¶A, sub-¶(4), as amended by PL 1985, c. 785, Pt. B, §39, is further amended to read:

(4) Maine Agricultural \$50 \$75/Day 13 MRSA §1956 Bargaining Board

Sec. 2. 13 MRSA §1956, sub-§2, as amended by PL 1977, c. 564, §§67 and 68, is repealed and the following enacted in its place:

2. Membership. The Maine Agricultural Bargaining Board established by Title 5, section 12004, subsection 3, shall consist of 5 members and 2 alternates, who shall be appointed by the Governor. One member and one alternate shall be appointed from a list of names submitted by agricultural producer organizations organized under this subchapter and chapter 81. One member and one alternate shall be appointed from a list of names submitted by processors of agricultural products. In appointing these members and alternates, the Governor shall seek to represent as many different agricultural products as possible and a member and the alternate for that member shall not be associated with the same agricultural product, unless suitable persons cannot otherwise be appointed. An alternate shall serve when for any reason the respective member is unable to serve. Three members shall be representatives of the public.

A. The term of office for all members and alternates shall be 3 years. Members selected from lists submitted by agricultural producer organizations and by processors of agricultural products may serve no more than 2 terms in succession, not to include the current term of a member serving at the time this section becomes effective. The limitation to 2 successive terms shall not apply to the public members or to alternates.

B. Board members serving at the time this section becomes effective shall continue as members for the duration of their present terms. The Governor shall appoint 2 alternate members in accordance with this subsection. The initial terms of these alternates shall expire at the same time as that of the current respective members. The Governor shall designate one of the public members to be the board's chairman. In the event of a vacancy, the Governor shall, within one month, appoint a successor to fill the unexpired term. All appointments to the board shall be made in conformity with the foregoing plan. Members shall take the oath of office prescribed for state officers.

Sec. 3. 13 MRSA §1956, sub-§3, as amended by PL 1979, c. 731, §19, is further amended to read:

3. Removal. Members of the board shall be removed by the Commissioner of Agriculture, Food and Rural Resources upon notice and hearing for neglect of duty or malfeasance in office but for no other cause. If a member is absent from 3 successive meetings of the board and if the board finds the member's reasons for the absence to be without merit, that member's conduct shall be considered to be neglect of duty.

Sec. 4. 13 MRSA §1956, sub-§5, as amended by PL

1983, c. 812, §96, is further amended to read:

5. Expenses. Members and alternate members of the board shall be compensated according to the provisions of Title 5, chapter 379 and shall receive necessary expenses.

Sec. 5. 13 MRSA §1956, sub-§6, as amended by PL 1977, c. 694, §277, is further amended to read:

6. Rules. The board shall have authority from time to time to adopt, amend and repeal, in the manner prescribed by the Maine Administrative Procedure Act, such rules and regulations as may be necessary or appropriate to carry out this Article. The board shall act as expeditiously as possible to adopt interpretive and procedural rules for carrying out the purposes of this article.

Sec. 6. 13 MRSA §1956, sub-§§7 and 8 are enacted to read:

7. Board's staff and attorney. In hearings under sections 1958 and 1965, neither the board's staff nor its attorney shall function as an advocate for any party.

8. Annual report. The board shall issue an annual report to the Commissioner of Agriculture, Food and Rural Resources and to the joint standing committee of the Legislature having jurisdiction over agriculture on or before January 15th of each year regarding the operation of this subchapter. This annual report shall take into consideration the following issues as the Maine Agricultural Bargaining Board reviews the effectiveness of the Maine Agricultural Marketing and Bargaining Act of 1973:

- A. Unfair practices;
- B. Qualification of grower associations;
- C. Funding of the Maine Agricultural Bargaining Board;
- D. Investigation and hearing procedures;
- E. Any other issues relating to this subchapter; and
- F. Any recommended changes to this subchapter.

Sec. 7. 13 MRSA §1957, sub-§3, ¶¶B and D, as enacted by PL 1973, c. 621, §1, are amended to read:

B. The association has ~~contracts with its members that are binding under state law~~ membership agreements signed by each of its members which authorize the association to represent the member for the purposes of this article;

D. The association, except for an association of blueberry producers, represents 51% of the producers and or produced at least 1/2 of the volume of a particular

agricultural product for ~~the~~ a specific handler involved with those producers and that agricultural product during the previous 12 months, not including any volume produced by the handler, its subsidiaries, agents or employees or procured by the handler from sources other than producers; for the purposes of this article, members of farmer cooperatives shall be counted as individual farmer members; in the case of an association of blueberry producers, the association represents 51% of the producers and produced at least 1/2 of the volume of a particular agricultural product for a specific handler involved with those producers and that agricultural product during the previous 12 months; if the board has reasonable cause to question such representation, the board shall require a secret ballot election to certify the percentage of representation; and

Sec. 8. 13 MRSA §1957, sub-§4, as amended by PL 1977, c. 694, §279, is further amended to read:

4. Refiling of petition. If after ~~said~~ the hearing, the board does not deem an association qualified, it shall, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, clearly specify the reasons for such failure to qualify in its decision and, upon the refiling of ~~said~~ the petition, shall reconsider its decision within 30 days after the date on which ~~said~~ the petition was filed. An association seeking reconsideration shall refile its petition within 30 days of receipt of the board's initial decision.

Sec. 9. 13 MRSA §1957, sub-§8 is enacted to read:

8. Confidentiality. Information provided to the board by an association regarding the identification of its members and information provided to the board by a handler regarding its volume of purchases of agricultural products and the identification of producers from whom it purchased those products shall be treated by the board as confidential information not to be disclosed to the adverse party or any other person without the consent of the association or the handler, respectively, until the board has rendered its final decision as to the qualification of the association. After a final decision has been rendered, the information is no longer confidential information, but its disclosure shall be governed by Title 1, section 402, subsection 3, paragraph B.

Sec. 10. 13 MRSA §1958, sub-§1, as enacted by PL 1973, c. 621, §1, is amended to read:

1. Definition. As used in this ~~Article~~ article, "bargaining" is the mutual obligation of a handler and a qualified association to meet at reasonable times and negotiate in good faith with respect to the price, terms of sale, compensation for commodities produced or sold, or both, under contract and other contract provisions relative to the commodities that such qualified association represents and the execution of a written contract incorporating any agreement reached if requested by either party. Such obligation on the part of any handler shall extend only

to a qualified association that represents producers with whom such handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession. The obligation to bargain continues until the commencement of required mediation, as provided in section 1958-B, subsection 2.

Sec. 11. 13 MRSA §1958, sub-§4, as enacted by PL 1973, c. 621, §1, is repealed.

Sec. 12. 13 MRSA §1958, sub-§6, as repealed and replaced by PL 1977, c. 694, §281, is amended to read:

6. Notice; opportunity for hearing. Whenever it is charged that a qualified association or handler refuses to bargain, as that term is defined in subsection 1, ~~the board shall investigate the charges. If, upon investigation, the board considers that there is reasonable cause to believe that the person charged has refused to bargain in violation of this Article,~~ the board shall provide that person with notice and opportunity to be heard, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory hearings.

Sec. 13. 13 MRSA §1958, sub-§8, as enacted by PL 1973, c. 621, §1, is amended to read:

8. Findings. If, upon a preponderance of the evidence, the board determines that the person complained of has refused to bargain, in violation of this ~~Article~~ article, it shall state its findings of fact and shall issue ~~and cause to be served on such person~~ an order requiring him to bargain as that term is defined in subsection 1 and shall order such further affirmative action, excluding an award of damages, as will effectuate the policies of this ~~Article~~ article. Failure to comply with such an order is a violation of this article. If the board determines that the person complained of has not refused to bargain, it shall state its findings of fact and shall issue an order dismissing the charges.

Sec. 14. 13 MRSA §1958-A, as amended by PL 1985, c. 578, §§3 and 4, is repealed.

Sec. 15. 13 MRSA §1958-B is enacted to read:

§1958-B. Dispute resolution

1. Voluntary mediation. At any time prior to the commencement of required mediation under subsection 2, a handler and a qualified association may mutually agree to obtain or may unilaterally obtain the services of a mediator. Regardless whether mediation is sought mutually or unilaterally, both parties shall participate in mediation in good faith. For such mediation, the parties shall use the services of the State's Panel of Mediators. Voluntary mediation shall last for no more than 3 days for annual crops; all other commodities shall last no more than 5 days. Mediation may be extended by mutual agreement by the bargaining parties.

2. Required mediation. Any matters remaining in dispute between the handler and a qualified association 30 days prior to the contract date, as defined in subsection 4, shall be submitted by the parties to required mediation. No later than 30 days prior to the contract date, the parties shall have mutually agreed on a mediator and on sharing the costs of mediation or shall have notified the board that the services of the State's Panel of Mediators will be needed. If services of the State's Panel of Mediators are used, the parties shall share all costs of mediation equally. Mediation shall continue for no more than 3 days for annual crops; all other commodities shall last no more than 5 days, unless the mediator earlier declares that resolution by mediation is not possible. Mediation may be extended by mutual agreement by the bargaining parties. At the end of the mediation period or upon the mediator's earlier declaration, the mediator shall promptly prepare a report specifying all agreements reached in mediation and recommending that the parties either resume bargaining as to all matters remaining in dispute for a period of time not to exceed 2 days or that the parties submit all matters remaining in dispute to arbitration. The parties shall proceed according to the mediator's recommendation. If the parties are to resume bargaining, that bargaining shall commence on the day after the day on which the mediator makes his recommendation. Any matters remaining in dispute at the end of the specified bargaining period shall be submitted to arbitration.

3. Different contract date. Once a contract date has been established as provided in subsection 2, the parties may mutually agree to a different contract date, provided that they do so no less than 45 days prior to the contract date established as provided in subsection 4.

4. Definition. The term "contract date" as used in subsection 2, shall have the following meaning.

A. Where, on the effective date of this section, there is no contract under this article in existence between the parties, the contract date shall be the date set by the board, in consultation with the parties, as the date by which a contract must be signed by both parties. After that date, as between those parties, the contract date shall be the anniversary of the date set by the board initially.

B. Where, on the effective date of this section, a contract under this article exists between the parties, the contract date shall be the anniversary of the date upon which that contract was signed by both parties.

5. Commencement of arbitration. At the commencement of required mediation, the parties shall so notify the board and the commissioner and an arbitrator shall be selected as provided in paragraph D. One day after the mediator recommends arbitration or one day after the conclusion of the period of further bargaining, as provided in subsection 2, each party shall submit to the arbitrator its final offer, in which it shall identify all matters as to which the parties agree, with contractual lan-

guage setting forth these agreements, and all matters as to which the parties do not agree, with contractual language setting forth the party's final offer for resolution of those disagreements.

A. As to all matters submitted to arbitration, the arbitrator shall choose between the final offers of the parties. If the parties reach an agreement on the matters under arbitration before the arbitrator issues his decision, they may submit a joint final offer which the arbitrator shall accept and render as his decision. The arbitrator may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence and issue subpoenas to compel the attendance of witnesses and the production of records. A person who fails to obey the subpoena of an arbitrator may be punished for contempt of court on application by the arbitrator to the Superior Court for the county in which the failure occurs. The arbitrator may utilize other information in addition to that provided by or elicited from the parties. The arbitrator shall issue a decision within 10 days of the commencement of arbitration and that decision shall be binding on the parties.

B. Within 2 days of the arbitrator's decision, the board shall prepare a contract which shall include all terms agreed to by the parties in bargaining or settled by voluntary or required mediation or by arbitration and shall present the contract to the parties, who shall sign the contract within 2 days of its presentation.

C. The commissioner, in consultation with the board, shall establish a panel of arbitrators, who shall be qualified by education, training or experience to carry out the responsibilities of an arbitrator under this article.

D. Upon notification by the parties as provided in this subsection, the commissioner shall submit to the parties a list containing an odd number of names of members of the panel of arbitrators who are available for arbitration. The parties shall alternately strike names from the list until a single name is left, who shall be the arbitrator. The order of striking names shall be determined by chance.

E. All costs of arbitration shall be borne equally by the parties. The arbitrator shall submit a statement of charges and expenses to the parties and to the board. Each party shall pay the arbitrator directly.

6. Violation. Failure by a party to comply with any of the requirements of this section is a violation of this article.

Sec. 16. 13 MRSA §1959, sub-§1, as enacted by PL 1973, c. 621, §1, is amended to read:

1. Complaint. The board shall have power to complain to the Superior Court for the enforcement of its orders made under ~~section~~ sections 1958 and 1965 and for appropriate temporary relief or restraining order, and shall

file in the court the original or certified copy of the entire record in the proceeding, and shall cause notice of such complaint to be served upon such person, and said court shall thereupon have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. No objection that has not been urged before the board shall may be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

Sec. 17. 13 MRSA §1959, sub-§3, as amended by PL 1977, c. 694, §285, is further amended to read:

3. Stay. The commencement of proceedings for judicial review shall not stay enforcement of the board's decision, but the reviewing court may order a stay upon such terms as it deems proper. The provisions of Title 5, section 11004, shall govern with respect to any application for a stay of an order of the board.

Sec. 18. 13 MRSA §1959, sub-§5 is enacted to read:

5. Penalties. In an action to enforce an order or in a separate action, the board may seek civil penalties for violation of this article. In any such action, a violation shall be punishable by a civil penalty of not more than \$5,000. When the violation is a refusal to bargain under section 1958 or an unfair practice under section 1965, each day that such conduct occurred shall constitute a separate violation. If a qualified association is found to have committed a violation under sections 1958 and 1965, and if a civil penalty is imposed, and if the court finds that the association is unable to pay the civil penalty, the court shall instead issue an order suspending for one year the association's rights as a qualified association under this article.

Sec. 19. 13 MRSA §1960, as enacted by PL 1973, c. 621, §1, is repealed.

Sec. 20. 13 MRSA §1961, as enacted by PL 1973, c. 621, §1, is repealed.

Sec. 21. 13 MRSA §1962, as enacted by PL 1973, c. 621, §1, is repealed.

Sec. 22. 13 MRSA §1963, first ¶, as enacted by PL 1973, c. 621, §1, is amended to read:

In any proceeding before the board under this Act article, the board may issue subpoenas for the attendance of witnesses, or for the production of documents and may examine witnesses under oath provided that:

Sec. 23. 13 MRSA §1965, sub-§1, ¶A, as enacted by PL 1973, c. 621, §1, is amended to read:

A. To coerce a producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of his right to join and belong to an association except as provided in section 1958, ~~subsections 4 and~~ subsection 5;

Sec. 24. 13 MRSA §1965, sub-§§3 to 6 are enacted to read:

3. Notice; opportunity for hearing. Whenever it is charged that a qualified association or a handler has committed an unfair practice under this section, the board shall provide that person with notice and opportunity to be heard, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory hearings.

4. Hearing. Hearings held pursuant to subsection 3 shall be held in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory hearings. The board shall request that the Attorney General or any attorney in his department designated by the Attorney General, be present at these hearings and shall advise the board on procedure and on the admissibility of any evidence.

5. Findings. If, upon a preponderance of the evidence, the board determines that the person complained of has committed an unfair practice, in violation of this article, it shall state its findings of fact and shall issue an order requiring the person to cease and desist from such conduct and shall order such further affirmative action, excluding an award of damages, as will effectuate the policies of this article. Failure to comply with such an order is a violation of this article. If the board determines that the person complained of has not committed an unfair practice, it shall state its findings of fact and shall issue an order dismissing the charges.

6. Frivolous charges. If the board determines that a charge of unfair practice is frivolous, it shall state its findings of fact and may issue a reprimand to the person making the charge. Where the board determines that a person who made a charge which was determined to

be frivolous did so knowing the charge to be frivolous, it shall state its findings of fact and shall issue an order requiring that person to pay the reasonable attorneys fees and double the amount of other reasonable costs incurred by the person against whom the charge was made in defending against the charge before the board. Where it is disputed, reasonableness shall be determined by the board. The order shall also require that person to reimburse the State for the per diem payments made to board members for their attendance at the hearing on the charge. Failure to comply with such an order is a violation of this article.

Effective September 29, 1987.

CHAPTER 156

S.P. 314 — L.D. 916

AN ACT to Extend the Freeze on Maximum Weekly Benefits Under the Workers' Compensation Act.

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

Sec. 1. 39 MRSA §53-A, as enacted by PL 1985, c. 372, Pt. A, §15, is amended to read:

§53-A. Maximum benefit levels

The maximum weekly benefit payable under section 54-A, 55-A or 58-A is \$447.92. Beginning on ~~July 1, 1988~~ August 1, 1988, this maximum benefit level shall be adjusted annually so that it continues to bear the same percentage relationship to the state average weekly wage, as computed by the Maine Unemployment Insurance Commission, as it did on ~~July 1, 1987~~ August 1, 1987.

Sec. 2. Application. This Act shall apply only as to injuries occurring on or after June 30, 1985.

Effective September 29, 1987.

CHAPTER 157

S.P. 403 — L.D. 1243

AN ACT to Clarify the Law Relating to Restitution for Victims of Crime by Expressly Providing that Cities, Counties and other Governmental Entities can be Victims and that Organizations may be Ordered to Pay Restitution.

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

Whereas, the Legislature has declared in the Maine Revised Statutes, Title 17-A, section 1321, that repay-

ment, in whole or in part, to the victim by a person convicted of a crime may operate to rehabilitate the offender in certain instances; and

Whereas, the Legislature has recognized the need to encourage the compensation of crime victims by the person most responsible for the victim's loss, that is, the offender; and

Whereas, restitution by the offender may serve to reinforce the offender's sense of responsibility for the crime and to provide him the opportunity to pay his debts to society and to his victim in a constructive manner; and

Whereas, the term "victim" as it is now defined in the Maine Revised Statutes, Title 17-A, section 1322, subsection 7, includes an organization and a human being but does not include cities, towns, counties and other governmental entities; and

Whereas, towns, cities, counties, departments and agencies of the State, and other governmental entities within the meaning of Title 17-A, section 2, subsection 13, frequently suffer economic loss as a result of crimes, as do human beings or organizations within the meaning of Title 17-A, section 2, subsection 19; and

Whereas, in the year 1986, the Department of the Attorney General prosecuted thefts of government property valued between \$70,000 to \$100,000; and

Whereas, it is unclear whether under Title 17-A, chapter 54, courts have authority to order restitution, when appropriate, to governmental entities that are victims of crime; and

Whereas, it is desirable to clarify as soon as possible that courts in Maine do have authority to order criminal offenders to make restitution to governmental entities; and

Whereas, the Maine Criminal Code contains a chapter on fraud which includes criminal conduct by businesses; and

Whereas, the Maine Criminal Code now does not include restitution as a sentencing alternative for organizations such as corporations, partnerships or other business entities convicted of a crime; and

Whereas, restitution, which would prevent an organization from keeping funds obtained as a result of a crime, would have a direct economic impact and be of significant deterrent value; 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: