

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
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

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1987

C. Has not been convicted as of June 1, 1987, of the illegal sale of liquor on Sunday in violation of local option provisions in that municipality.

2. Interim sales on Sunday. Notwithstanding any other law, a licensee may continue to sell liquor to be consumed on the premises on Sunday until August 15, 1987, after the following requirements have been met:

A. The municipal officers vote affirmatively to allow the continued sale of liquor on Sunday in that municipality until August 15, 1987; and

B. The municipal clerk files with the bureau a copy of the record of the vote of the municipal officers taken under paragraph A.

3. Repeal. This section is repealed on August 16, 1987.

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

Effective June 24, 1987.

CHAPTER 419

S.P. 641 — L.D. 1868

AN ACT to Amend the Laws Administered by the Department of Environmental Protection.

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

Whereas, certain changes in the environmental laws of the State are required for effective administration and enforcement for protection of public welfare and the environment; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the 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. 4 MRSA §152, sub-§7 is enacted to read:

7. Air quality laws. Original jurisdiction, concurrent with that of the Superior Court, to grant equitable relief in proceedings involving alleged violations of local or state air quality ordinances, regulations or laws, which shall include, but not be limited to, the following:

A. Laws pertaining to registration and licensing, Title 38, sections 589 and 590;

B. Municipal air pollution control laws adopted pursuant to Title 38, section 597; and

C. Laws pertaining to air quality standards, emission standards and visible emissions adopted pursuant to Title 38, sections 584-A, 585, 585-A, 598, 600, 601, 602, 603-A, 604 and 611.

Sec. 2. 5 MRSA §938, sub-§1, ¶C, as enacted by PL 1985, c. 746, §3, is repealed and the following enacted in its place:

C. Director, Bureau of Administration;

Sec. 3. 38 MRSA §342, sub-§5-A, ¶B, as enacted by PL 1985, c. 746, §6, is repealed.

Sec. 4. 38 MRSA §352, sub-§2, ¶A, as enacted by PL 1983, c. 574, §1, is amended to read:

A. Filing fees. Processing fees shall be assessed for direct costs incurred in determining the acceptability of an application for processing and in processing an application to determine whether it meets statutory and regulatory criteria.

Sec. 5. 38 MRSA §352, sub-§2, ¶B, as enacted by PL 1983, c. 574, §1, is repealed.

Sec. 6. 38 MRSA §352, sub-§3, as enacted by PL 1983, c. 574, §1, is repealed and the following enacted in its place:

3. Maximum fee. Except as provided in this subsection, no fee may exceed the maximum established in Table 1. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table 1, he may designate that application as subject to special fees. A special fee shall not exceed \$40,000. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. All department staff who have worked on the review of the application will submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application. The processing fee for that application shall be the actual cost to the department. The application shall be billed quarterly and all fees must be paid prior to receipt of the permit.

Sec. 7. 38 MRSA §352, sub-§4, as repealed and replaced by PL 1985, c. 746, §14, is repealed and the following enacted in its place:

4. Accounting system. In order to determine the extent to which the functions set out in this section are necessary for the licensing process or are being performed in an efficient and expeditious manner, the commissioner shall require that all employees of the department involved in any aspect of these functions shall keep accurate and regular daily time records

describing the matters worked on, services performed and amount of time devoted to those matters and services, as well as amounts of money expended in performing these functions for a sufficient duration as determined by the commissioner to establish to his satisfaction that the fees are appropriate.

TABLE I
MAXIMUM FEES IN DOLLARS

TITLE 36 SECTION	PROCESSING FEE	CERTI- FICATION FEE		
656, sub-§1, ¶E, Pollution Control Facilities				
A. Water pollution control facilities with capacities at least 4,000 gallons of waste per day and §1760, sub-§29, water pollution control facilities	\$250	\$20		
B. Air pollution control and §1760, sub-§30, air pollution control facilities	250	20		
TITLE 38 SECTION	PROCESSING FEE	LICENSE FEE		
362-A, Experiments	\$ 40	\$ 160		
393, Great Ponds	75	50		
410-E, Freshwater wetlands	100	50		
413, Waste discharge license				
A. Residential	75	25		
B. Commercial				
1. Flow of less than 2,000 gallons per day	600	160		
2. Flow of 2,000 to 20,000 gallons per day inclusive	600	500		
3. Flow of greater than 20,000 gallons per day	300	1,200		
C. Industrial minor (based upon EPA list of major and minor source discharges)				
1. Discharges of cooling water, sanitary waste water or treated storm water only	500	160		
2. All others	500	2,000		
D. Industrial major (based upon EPA list of major source discharges)				
1. Discharge of cooling water or sanitary waste water only	1,200	750		
2. All others	1,200	2,200		
E. Publicly owned treatment works				
1. Flow of less than or equal to 50,000 gallons per day and no significant industrial component	100	200		
2. Flow of greater than 50,000 gallons per day, but less than 0.5 million gallons per day and no significant industrial component	55	1,200		
3. Flow of at least 0.5 million gallons per day, but less than 5 million gallons per day and no significant industrial component	100	1,800		
4. Flow of at least 5 million gallons per day or a significant industrial component	100	1,800		
F. Special discharges				
1. Aquatic pesticides	130	25		
2. Dredge spoils	130	25		
418, Log storage	55	25		
421, Solid waste disposal areas			1,400	100
427, Alteration of rivers, streams and brooks			150	50
451, Mixing zones			1,200	2,200
451-A, Time schedule variances			25	25
471, Coastal wetlands and sand dunes			200	100
483, Site location				
A. Subdivisions			30/lot	25
B. Structures			1,100	500
C. Mining			775	500
D. Other			775	500
543, Oily waste discharge			40	160
560, Vessels at anchorage			125	100
587, Ambient air quality or emissions standards variances			5,050	50
590, Air emissions licenses				
A. Greater than or equal to 1,000 tons per year of any criteria air pollutant			10,050	1,200
B. Greater than or equal to 100 tons per year, but less than 1,000 tons per year of any criteria air pollutant			5,050	400
C. Greater than or equal to 50 tons per year, but less than 100 tons per year of any criteria air pollutant			1,050	100
D. Less than 50 tons per year of any criteria air pollutant			525	50
633, Hydropower projects				
A. New or expanded generating capacity			450/MW	50/MW
B. Maintenance and repair or other structural alterations not involving an increase in generating capacity			50	25
1101, Sanitary districts			150	50
1304, Nonhazardous waste facilities				
A. Septage facilities, other than landfill or landspreading sites			300	250
B. Sludge facilities, other than landfill or landspreading sites			550	500
C. Landspreading sites			50	35
D. Transfer stations			550	500
E. Landfills			1,575	1,500
F. Resource recovery and volume reduction facilities			1,575	1,500
G. Other, including land-applied utilization programs			550	250
H. Septage disposal site designation			50	25
United States Clean Water Act, United States Code Title 33, Section 1251, et seq., Section 401, Water Quality Certifications only when issued along with Federal Energy Regulatory Commission Renewals			450/MW	50/MW

Sec. 8. 38 MRSA §353, as amended by PL 1985, c. 746, §§15 and 16, is further amended to read:

§353. Payment of fees

1. Filing fee.—A filing fee shall be paid at the time of filing the application and is nonrefundable. The department may not process applications not accompanied by a filing fee.

2. Processing fee. A processing fee shall be paid within 10 days of the time the applicant is notified that the application has been accepted for processing by the commissioner and is not refundable, even if the applicant withdraws the application once processing has begun at the time of filing the application. Failure to pay the processing fee within the 10-day period will result in the cessation of processing until the fee has been paid at the time of filing the application will result in the application being returned to the applicant. The department shall not refund the processing fee if the application is denied by the board or the commissioner. If the application is withdrawn by the applicant within 30 days of the start of processing, the processing fee shall be refunded.

3. License fee. A license fee shall be paid prior to the issuance of any license or permit. If a license fee is paid prior to board or commissioner action on the application, the at the time of filing the application. Failure to pay the license fee at the time of filing will result in the application being returned to the applicant. The department shall refund the license fee if the board or commissioner denies the application or if the application is withdrawn by the applicant.

3-A. Certification fee. A certification fee shall be paid prior to the issuance of any certification. If the certification fee is paid prior to the certification and the certification is not issued, the department shall refund the certification fee.

4. Duplicate fees. The department shall not assess applicants for direct costs associated with filing, processing of licensing if those costs were previously assessed as the result of the filing, processing or licensing of separate but related applications.

5. Renewals or amendments. The filing fee for renewals or amendments shall be the same as the filing fee for an initial application. The processing fee for renewals or amendments shall be equal to direct costs up to 1/2 the processing fee for initial applications. The license fee for renewals shall be identical to the initial license fee. The license fee for amendments shall not exceed the initial license fee.

6. Application deemed unacceptable for processing. An application deemed unacceptable for processing which has been returned to the applicant shall may be resubmitted to the department within 60 days of the date the application was returned. If the application is resubmitted after the 60-day period has transpired, the resubmitted application shall be considered a new application and the appropriate processing fees shall be assessed.

7. Fees for minor revisions. All fees assessed for the costs of processing permits issued in accordance with section 344, subsection 7, shall be paid in full when the notification is submitted to the department. All fees for any minor license or permit revision shall be paid in full when the request for the revision is submitted to the depart-

ment. The applicant may also choose to prepay the filing, processing and license fees for applications pertaining to any other license or permit category.

8. Processing fee for certification. The processing fee for certification shall be assessed on the actual direct costs incurred by the department, but not greater than the processing fee found on Table I, section 352. The processing fee found on Table I shall be due according to subsection 2. Upon completion of processing, where direct costs are less than the processing fee found in section 352 on Table I, a refund shall be made to the applicant.

Sec. 9. 38 MRS §436, sub-§6, as reallocated by PL 1985, c. 481, Pt. A, §24, is amended to read:

6. Timber harvesting. "Timber harvesting" means the cutting and removal of trees from their growing site and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction. Within the strip extending 50 feet inland from the normal high watermark, a cleared opening or openings not greater than 30 feet in width for every 100 feet of shoreline may be created, provided that when openings are combined, there shall be no single opening along the shore wider than 60 feet, and there shall be no more than one 60-foot opening along 200 feet of shoreline. Notwithstanding other provisions of this subsection, timber harvesting is prohibited in the area extending 250 feet inland from the normal high watermark in those areas zoned for natural resources protection in the shoreland area abutting a pond.

Sec. 10. 38 MRS §464, sub-§4, ¶A, as amended by PL 1987, c. 180, §4, is further amended to read:

A. Notwithstanding section 414-A, the board shall not issue a water discharge license for any of the following discharges:

(1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that discharges into these waters which were licensed prior to January 1, 1986, shall be allowed to continue only until practical alternatives exist;

(2) New direct discharge of domestic pollutants to tributaries of Class-GPA waters;

(3) Any discharge into a tributary of GPA waters which, by itself or in combination with other activities, causes water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters;

(4) Discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and

characteristics ascribed to their class;

(5) Discharge of pollutants to any water of the State which violates sections 465, 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh waters to fall outside of the 6.0 to 8.5 range; causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range; or causes fish for human consumption to be injurious to human health as determined by the United States Food and Drug Administration under the procedures established by United States Code, Title 21, section 342 or as determined by the Department of Human Services. The Department of Human Services shall establish a protocol for determining risk in these situations. The protocol shall be promulgated as a rule in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375; and

(6) New discharges of domestic pollutants to the surface waters of the State which are not conveyed and treated in municipal or quasi-municipal sewage facilities. "New discharge" means any overboard discharge which is licensed after the effective date of this section. For purposes of licensing, the board shall treat an increase in the licensed volume or quantity of an existing discharge or an expansion in the months during which the discharge will take place as a new discharge of domestic pollutants.

Notwithstanding the provisions of this subparagraph, an increase in the volume or quantity of domestic pollutants in a licensed discharge of domestic pollutants emanating from an existing commercial or industrial business or from an existing state or federal facility is not prohibited so long as, in addition to all other provisions of applicable law, all the following conditions are met:

(a) The board finds that, based on the past record of compliance by the licensee with all requirements of its existing discharge licenses, the licensee is likely to comply with the requirements of any subsequent license governing the increased discharge. The board shall not make this finding if there have been significant, numerous or repeated violations of any standard, limit or condition of the existing licenses;

(b) The licensee agrees, as a license condition, to retain qualified employees or independent consultants to ensure that the overboard discharge system is meeting all requirements of the license and to test, monitor and maintain the system. The board shall require, as a license condition, that the licensee test the effluent on a weekly basis to ensure that the license requirements are being met and that the licensee promptly submit reports of these tests to the department; and

(c) The board finds that all requirements of paragraph G have been met with respect to the pro-

posed increase in the overboard discharge.

Sec. 11. 38 MRSA §466, sub-§9-B, as enacted by PL 1987, c. 180, §6, is amended to read:

9-B. Quasi-municipal. "Quasi-municipal" means any form of ownership and management by a governmental unit embracing a portion of a municipality, a single municipality or several municipalities which is created by law to deliver public waste water treatment services, but which is not a general purpose state governmental unit.

Sec. 12. 38 MRSA §560, sub-§5, as amended by PL 1977, c. 78, §205, is further amended to read:

5. Exemption. The board may by regulation exempt certain activities not inconsistent with the purposes of this section. An unpowered vessel of less than 500 barrels total oil storage capacity is exempt from the provisions of this section, provided that the vessel is subject to any applicable rules administered by the United States Coast Guard and the owner notifies the department of the location and contents of the vessel within 7 days of establishing the anchorage.

Sec. 13. 38 MRSA §1364, sub-§4, as amended by PL 1985, c. 746, §34, is further amended to read:

4. Designation. In accordance with section 1365, the commissioner may declare a site to be an uncontrolled hazardous substance site. The designation may be appealed only upon the issuance of an order pursuant to section 1365, subsection 5 2, as provided in section 1365, subsection 4.

Sec. 14. 38 MRSA §1371 is enacted to read:

§1371. Lien established

All costs incurred by the State resulting from the abatement, cleanup or mitigation of a discharge of a hazardous substance or of hazards posed by an uncontrolled hazardous substance site designated pursuant to section 1364, shall be a lien against the real estate of the person causing the discharge or, if the site is an uncontrolled site, the responsible party.

1. Notice. A certificate of lien signed by the Commissioner of Environmental Protection shall be mailed by certified mail, return receipt requested, to all those persons of record holding an interest in such real estate over which the commissioner's lien is entitled to priority. A certificate may be filed for record in the office of the clerk of any municipality in which the real estate is situated.

2. Recording. Such a lien shall be effective when filed with the registry of deeds for the county in which the real estate is located. The lien shall include a description of the real estate, the amount of the lien and the name of the owner as grantor. Such a lien shall take precedence over all transfers and encumbrances recorded

on or after June 1, 1987, which affect any interest in the real estate or any part of it, including all real estate which has been included in the property description of the real estate within the preceding 3 years.

3. Limitation. This section does not apply to real estate which consists exclusively of residential real estate.

4. Discharge of lien. When the amount with respect to which a lien has been recorded under the provisions of this section has been paid or reduced, the commissioner, upon request by any person of record holding an interest in the real estate, which is the subject of the lien, shall issue a certificate discharging or partially discharging such lien, which certificate shall be recorded in the registry in which the lien was recorded. Any action of the foreclosure of the lien shall be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the property subject to the lien is situated.

Sec. 15. PL 1985, c. 746, §36, is amended to read:

Sec. 36. Transition. Consistent with the Maine Revised Statutes, Title 5, chapter 69, for any position affected by this Act and subject to the Personnel Civil Service Law on the effective date of this Act, the incumbent in the position shall retain his appointment subject to the Personnel Law until 3 years after the effective date of this Act. The incumbent shall be compensated, whether occupying the same or another position, according to the terms of his salary range prior to the effective date of this Act during the 3 year period until July 16, 1989, unless that incumbent elects to waive the provisions of this section. If that incumbent waives the provisions of this section, he shall be compensated according to the provisions of the Maine Revised Statutes, Title 2, section 6, subsection 4, if he occupies a position named in that subsection.

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

Effective June 24, 1987.

CHAPTER 420

H.P. 1052 — L.D. 1415

AN ACT to Fight Illegal Drug Use.

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

Sec. 1. 15 MRSA c. 515, as enacted by PL 1985, c. 679, is repealed.

Sec. 2. 15 MRSA c. 517 is enacted to read:

CHAPTER 517

ASSET FORFEITURE

§5821. Subject property

The following shall be subject to forfeiture to the State and no property right may exist in them:

1. Scheduled drugs. All scheduled drugs which have been manufactured, made, created, grown, cultivated, sold, bartered, traded, furnished for consideration, furnished, distributed, dispensed, possessed or otherwise acquired in violation of any law of this State, any other state or of the United States;

2. Materials related to scheduled drugs. All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, compounding, processing, delivering, cultivating, growing or otherwise creating any scheduled drug in violation of any law of this State, any other state or the United States;

3. Other property. All property which is used or intended for use as a container for property described in subsection 1 or 2;

4. Conveyances. All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport or in any manner to facilitate the transportation, sale, trafficking, furnishing, receipt, possession or concealment of property described in subsection 1 or 2, except that:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier may be forfeited under this section, unless it appears that the owner or other person in charge of the conveyance was a consenting party or had knowledge of that violation of law; and

B. No conveyance may be forfeited under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted by any person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this State, any other state or of the United States;

5. Records. All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use in violation of Title 17-A, chapter 45;

6. Money instruments. Except as provided in paragraph A, all money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a scheduled drug in violation of Title 17-A, chapter 45; all proceeds traceable to such an exchange and all money, negotiable instruments and securities used or intended to be used to facilitate any violation of Title 17-A, chapter 45;

A. No property may be forfeited under this subsection