

# MAINE STATE LEGISLATURE

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

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE

**FIRST SPECIAL SESSION**

October 9, 1987 to October 10, 1987

**SECOND SPECIAL SESSION**

October 21, 1987 to November 20, 1987

and the

**SECOND REGULAR SESSION**

January 6, 1988 to May 5, 1988

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST AND SECOND SPECIAL SESSIONS  
and  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
1987

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include any claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer;

Sec. 9. 24-A MRSA §4441, sub-§1, ¶A, as enacted by PL 1969, c. 561, is amended to read:

A. Notify the association of the existence of an insolvent insurer not later than 3 days after he the superintendent receives notice of the determination of the insolvency. The association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member insurer which is domiciled in this State at the same time that the complaint is filed with a court of competent jurisdiction; and

Sec. 10. 24-A MRSA §4443, as enacted by PL 1969, c. 561, is repealed and the following enacted in its place:

#### §4443. Nonduplication of recovery

1. Insurance policy. Any person having a claim against an insurer under any provision in an insurance policy, other than that of an insolvent insurer, which is also a covered claim, shall be required to exhaust first the person's right under the policy. Any amount otherwise payable on a covered claim under this subchapter shall be reduced by the amount of any recovery under the insurance policy.

2. Governmental insurance. Any person having a claim or legal right of recovery under any governmental insurance, which is also a covered claim, shall be required to exhaust first that person's right under that insurance. Any amount payable on a covered claim under this subchapter shall be reduced by the amount of any recovery under that insurance.

3. Insurance guaranty association. Any person having a claim which may be recovered from more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that, if it is a first party claim for damage to property with a permanent location, that person shall seek recovery first from the association of the location of the property, and, if it is a workers' compensation claim, that person shall seek recovery first from the association of the residence of the claimant. Any recovery under this subchapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Sec. 11. 24-A MRSA §4444, sub-§6, as amended by PL 1985, c. 279, §7, is further amended to read:

6. Report. At the request of the superintendent the board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information

available to the association, and submit such report to the superintendent.

Sec. 12. 24-A MRSA §4449, as amended by PL 1985, c. 279, §8, is further amended by adding at the end a new paragraph to read:

The liquidator, receiver or statutory successor of an insolvent insurer covered by this subchapter shall permit access by the board of directors, or its authorized representative, to those records of the insolvent insurer which are necessary for the board to carry out its functions under this subchapter with regard to covered claims. The liquidator, receiver or statutory successor shall provide the board or its representative with copies of these records upon request by the board and at the expense of the board.

Effective August 4, 1988.

## CHAPTER 708

H.P. 1555 — L.D. 2115

### AN ACT to Make Certain Statutory Changes to Facilitate District Court Judicial Administration.

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

Sec. 1. 4 MRSA §173-A, as repealed and replaced by PL 1987, c. 414, §1, is amended to read:

#### §173-A. Costs taxable for the State in civil violation or traffic infraction proceedings

Costs in the amount of \$25 shall be automatically taxable for the State in civil violation and traffic infraction proceedings for failure to pay a fine imposed for the commission of a civil violation or traffic infraction within 30 days of entry of judgment or within 30 days of the date fixed for a final installment payment if the fine is to be paid under a plan approved under Title 14, section 3141, subsection 4.

~~This section applies to all judgments imposing fines which remain unpaid and which predate the effective date of this section.~~

Sec. 2. 5 MRSA §4652, as enacted by PL 1987, c. 515, §1, is amended to read:

#### §4652. Filing of petition

Proceedings under this chapter shall be filed, heard and determined in the District Court or Superior Court of the division or county in which either the plaintiff or the defendant resides. If the plaintiff has left the plaintiff's residence to avoid abuse harassment, the plaintiff may bring an action in the division or county of the plaintiff's previous residence or new residence.

Sec. 3. 5 MRSA §4653, sub-§1, as enacted by PL 1987, c. 515, §1, is amended to read:

1. Filing. Any person who has been a victim of harassment may seek relief by filing a sworn petition in an appropriate court alleging that ~~abuse~~ harassment.

Sec. 4. 5 MRSA §4654, sub-§2, ¶A, as enacted by PL 1987, c. 515, §1, is amended to read:

A. It appears clearly from a verified petition or an affidavit accompanying the petition that:

(1) Before the defendant or his attorney can be heard, the plaintiff may be in immediate and present danger of physical abuse from the defendant or may suffer extreme emotional distress as a result of the defendant's conduct;

(2) Either the plaintiff has or has not contacted any law enforcement officials concerning the alleged harassment; and

(3) The plaintiff has provided sufficient information to substantiate the alleged harassment;

Sec. 5. 5 MRSA §4655, sub-§1, ¶A, as enacted by PL 1987, c. 515, §1, is amended to read:

A. Directing the defendant to refrain from harassing, threatening, assaulting, molesting, attacking or otherwise abusing the plaintiff;

Sec. 6. 5 MRSA §4658, sub-§3, as enacted by PL 1987, c. 515, §1, is amended to read:

3. Self-defense. The right to relief, under this chapter, shall not be affected by the plaintiff's use of reasonable force in response to ~~abuse~~ harassment by the defendant.

Sec. 7. 14 MRSA §3125, sub-§2, as enacted by PL 1987, c. 184, §7, is amended to read:

2. Agreement. If the creditor or the debtor, at or prior to the disclosure hearing, presents the court with a written agreement for an order pursuant to section 3127 with affidavit signed by the judgment debtor on a form provided by the District Court, the court may enter an order for an installment payment in the amount agreed upon by the parties or a ~~lessor~~ lesser amount without the necessity of appearance by the parties. In determining whether to accept, reject or modify to a ~~lessor~~ lesser amount the agreement of the parties, the court shall apply the factors set forth in section 3128.

Sec. 8. 14 MRSA §3131, sub-§6, as enacted by PL 1987, c. 184, §14, is amended to read:

6. Sale proceeds. When the property is subject to a security interest, mortgage, lien, encumbrance or other interest which is subordinate to that of the judgment

creditor and which is recorded, possessory or of which the judgment ~~debtor~~ creditor has actual knowledge, which secures the payment of any indebtedness, the judgment creditor shall remit the excess of any sale proceeds over the amount owed on the judgment, costs and interest through the sale date, plus the expenses of sale, to the holder of the interest up to the amount of the indebtedness. The judgment creditor shall remit to the 3rd party any exempt portion of the sale proceeds subject to the 3rd party's interest. The judgment creditor shall remit any further excess, plus any exempt portion of the sale proceeds which is not subject to a 3rd party interest, to the judgment debtor and shall be entitled to any deficiency.

Sec. 9. 14 MRSA §3134, as repealed and replaced by PL 1987, c. 184, §17, is amended to read:

§3134. Failure to appear

1. Issuance of civil order of arrest. If the judgment debtor fails to appear after being duly served with a subpoena under section 3123 and the judgment creditor appears at the time and place named in that subpoena, the creditor may request the court to issue a civil order of arrest. The court shall issue a civil order of arrest upon the ~~filing by the written request of the creditor of an affidavit stating that he knows of no infirmity, disability or good cause preventing the appearance of the debtor, which affidavit also sets forth.~~ The request must contain the address and telephone number where the creditor or his representative can be reached and the address of the debtor.

2. Alternative method. Instead of requesting a civil order of arrest, the creditor may proceed by way of a motion for contempt for failure to appear. This motion ~~shall be under oath or accompanied by an affidavit and shall be served upon the debtor with a contempt subpoena in the manner set forth in section 3136.~~ If the debtor, after being duly served with a contempt subpoena, fails to appear at the time and place named in the contempt subpoena, the court may find the debtor in civil contempt and shall issue a civil order of arrest under section 3136, subsection 4 or, at the creditor's request, shall issue an order for the debtor to appear in court at a certain date and time for further proceedings, which order shall be served upon the debtor in hand by the sheriff who shall obtain from the debtor his personal recognizance bond to appear in court at the specified date and time.

Sec. 10. 14 MRSA §3135, 2nd ¶, as enacted by PL 1987, c. 184, §18, is amended to read:

After a civil order of arrest has been issued, the sheriff shall cause the individual named in the order to be arrested and shall deliver him without undue delay to the division of the District Court ~~that issued~~ designated in the civil order of arrest. The sheriff may take such steps as he determines necessary for his safety or the safety of others then present, including searching the debtor

for weapons, if he has a reasonable suspicion that the debtor has a weapon, and handcuffing the debtor if that is necessary to transport the debtor to the court or to cause the debtor to remain peaceably at the court. Upon arrival at the court, the sheriff shall notify the clerk or bailiff that the debtor is present and may release the debtor into the custody of the bailiff. The sheriff shall instruct the debtor that the debtor must wait at the court until released by the court or clerk. Upon release of the debtor into the custody of the bailiff, the sheriff need not remain with the debtor at the court.

Sec. 11. 14 MRSA §3141, sub-§3, as enacted by PL 1987, c. 414, §2, is amended to read:

3. Immediate payment. When a court has imposed a fine, as described in subsection 1, the imposition of such a fine constitutes an order to pay the full amount of the fine in accordance with this chapter. Following imposition of the fine, the court shall inform the defendant that full payment of the fine is due immediately and shall inquire of the defendant what arrangements he has made to comply with the court's order to pay the fine. Without utilizing the provisions of subsection 4, the court may allow the defendant a period of time, not to extend beyond the time of the close of the clerk's office on that day, within which to return to the court and tender payment of the fine. If the defendant fails to appear as directed, the court shall issue a civil order of arrest. The arrest order shall be carried out by the sheriff as a civil order of arrest is carried out under section 3135. If the underlying offense involves any violation of Title 23, section 1980; Title 28-A, section 2052; or Title 29, the court shall also, upon the defendant's failure to appear, suspend the defendant's license or permit to operate motor vehicles in this State and the right to apply for or obtain a license or permit to operate a motor vehicle in this State ~~or his motor vehicle registration.~~

If the defendant claims an inability to pay the fine, the court shall inquire into the defendant's ability to pay and shall make a determination of the defendant's financial ability to pay the fine. If the court finds that the defendant has the financial ability to make immediate payment of the fine in full, the court shall order him to pay the fine. Failure or refusal to pay as ordered by the court shall subject the defendant to the contempt procedures provided in section 3142.

Sec. 12. 14 MRSA §3141, sub-§4, as enacted by PL 1987, c. 414, §2, is repealed and the following enacted in its place:

4. Installment payments. If the court concludes that the defendant has the ability to pay the fine, but that requiring the defendant to make immediate payment in full would cause a severe and undue hardship for the defendant and the defendant's dependents, the court may authorize payment of the fine by means of installment payments in accordance with this subsection. When a court authorizes payment of a fine by means of installment payments, it shall issue, without a separate dis-

closure hearing, an order that the fine be paid in full by a date certain and that in default of payment the defendant must appear in court to explain the failure to pay. Failure to pay by the date fixed by the court's order or an amended order shall subject the defendant to the contempt procedures provided in section 3142.

In fixing the date of payment, the court shall issue an order which will complete payment of the fine as promptly as possible without creating a severe and undue hardship for the defendant and the defendant's dependents.

Sec. 13. 14 MRSA §§3142 and 3143, as enacted by PL 1987, c. 414, §2, are amended to read:

#### §3142. Contempt hearing

Unless the defendant shows that his failure to pay a fine was not attributable to a willful refusal to obey the order or to a failure on his part to make a good faith effort to obtain the funds required for the payment, the court shall may find the defendant in civil contempt and may punish him by such reasonable fine or imprisonment as the case requires. The defendant shall be allowed to purge himself of his contempt by complying with the court's order to pay or to an amended order to pay.

#### §3143. Default judgments

If a person who has been summoned or ordered to answer for a civil violation or a traffic infraction fails to appear, the court shall direct the clerk to send notice by a regular mail to appear to the person at the address appearing on the summons or order to appear.

The notice shall advise the person that he was summoned or ordered to answer for a civil violation or a traffic infraction and failed to appear on the date directed. The notice shall set a new date and time for the person's appearance to answer the civil violation or traffic infraction and shall inform the person that failure to appear on this occasion will result in the adjudication of the person having committed the offense and the imposition of a fine. Notice under this section shall be complete upon mailing.

Notwithstanding the Maine Rules of Civil Procedure, Rule 55, or the Maine District Court Rules of Civil Procedure, Rule 55, if a person who has been summoned or ordered to answer for a civil violation or a traffic infraction fails to appear, has been mailed notice as provided in this section and thereafter again fails to appear, the court, on its own motion, shall adjudicate the defendant to have committed the offense and shall impose a fine. In the case of an adjudication for a traffic infraction, the court shall immediately suspend the defendant's license or permit to operate motor vehicles in this State or the right to apply for or obtain a license or permit to operate motor vehicles in this State ~~or the registration of motor vehicles registered by the defendant, in accordance with Title 29, section 2301-A.~~ Relief from a default judgment entered pursuant to this section may

be addressed to the court and may be granted in the court's discretion upon a finding that it will further the interest of justice.

**Sec. 14. Application.** Section 1 of this Act applies to all judgments imposing fines which remain unpaid and which predate the effective date of this Act.

Effective August 4, 1988.

## CHAPTER 709

H.P. 1716 — L.D. 2355

### AN ACT to Require Legislative Confirmation of Members of the Maine Human Rights Commission.

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

**Sec. 1.** 5 MRSA §4561, as repealed and replaced by PL 1983, c. 812, §32, is amended to read:

#### §4561. Members

The Maine Human Rights Commission, established by section 12004, subsection 8, shall be an independent commission of no more than 5 members. No more than 3 of the members shall be of the same political party. The members shall be appointed by the Governor, ~~who~~ subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary and confirmation by the Legislature. The Governor shall designate one member to be ~~its~~ the chairman.

**Sec. 2.** 5 MRSA §4564, as amended by PL 1983, c. 812, §33, is further amended to read:

#### §4564. Compensation; reappointment

Each member of the commission shall be compensated as provided in chapter 379. All members of the commission shall be eligible for reappointment subject to section 4561.

**Sec. 3. Application.** Each member of the Maine Human Rights Commission serving on the effective date of this Act shall serve the remainder of the term for which that member was appointed. All appointments made on or after the effective date of this Act are subject to this Act.

Effective August 4, 1988.

## CHAPTER 710

S.P. 963 — L.D. 2555

### AN ACT to Reform the Pharmacy Laws.

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

Whereas, the pharmacy board and the Department of Professional and Financial Administration need the recodified laws in force in time to prepare for the next fiscal year; and

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

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

**Sec. 1.** 5 MRSA §12004, sub-§1, ¶A, sub-¶(29) is amended to read:

(29) Board of Commissioners of the Profession of Pharmacy	<del>§25/Day</del>	<del>32 MRSA §2851</del>
	§35/Day	32 MRSA §13711

**Sec. 2.** 22 MRSA c. 551, sub-c. II, as amended, is repealed.

**Sec. 3.** 22 MRSA c. 557, as amended, is repealed.

**Sec. 4.** 32 MRSA c. 41, as amended, is repealed.

**Sec. 5.** 32 MRSA c. 117 is enacted to read:

### CHAPTER 117

#### MAINE PHARMACY ACT

#### SUBCHAPTER I

#### TITLE AND DEFINITIONS

##### §13701. Short title

This chapter shall be known and may be cited as the "Maine Pharmacy Act."

##### §13702. Definitions

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

1. Board. "Board" means the Board of Commissioners of the Profession of Pharmacy.

2. Commissioner. "Commissioner" means the Commissioner of the Department of Professional and Financial Regulation.

3. Dangerous substance. "Dangerous substance" means a substance defined in section 13731, subsection 2.