

# 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

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

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Twin City Printery  
Lewiston, Maine  
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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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30 MRSA §6203, sub-§8, as enacted by PL 1979, c. 732, §§1 and 31, is amended to read:

8. Penobscot Indian Reservation. "Penobscot Indian Reservation" means the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine consisting solely of Indian Island, also known as Old Town Island, and all islands in said that river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818, and prior to the effective date of this Act. If any land within Nicatow Island is hereafter acquired by the Penobscot Nation, or the secretary on its behalf, that land shall be included within the Penobscot Indian Reservation.

The "Penobscot Indian Reservation" includes the following parcels of land which have been or may be acquired by the Penobscot Nation from Bangor Pacific Hydro Associates as compensation for flowage of reservation lands by the West Enfield dam: A parcel located on the Mattagamon Gate Road and on the East Branch of the Penobscot River in T.6 R.8 WELS, which is a portion of the "Mattagamon Lake Dam Lot" and has an area of approximately 24.3 acres, and Smith Island in the Penobscot River, which has an area of approximately one acre.

Sec. 2. **Effective date.** This Act shall not be effective unless, within 60 days after 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 provisions 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 to the Secretary of the Senate and the Clerk of the House of Representatives; provided that in no event may this Act become effective until 90 days after adjournment of the Legislature.

Certification of this Act was received by the Secretary of State, from the Penobscot Indian Nation, on June 21, 1988, which was within the 60 day period following adjournment.

Effective August 4, 1988.

## CHAPTER 713

H.P. 1463 — L.D. 1974

### AN ACT to Strengthen Enforcement of Marine Resources and Boating Safety Laws.

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

Sec. 1. 12 MRSA §6133 is enacted to read:  
§6133. Inspection of documents and watercraft

1. Inspection powers. Marine patrol officers may stop and board any watercraft at any time to inspect its

documents, licenses and permits of the occupants of the watercraft and to conduct a safety inspection.

2. Rules. The commissioner shall adopt rules pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, which:

A. Specify safety requirements for watercraft subject to inspection. Requirements may be incorporated by reference to other state or federal watercraft safety laws, rules or regulations; and

B. Define the procedure for a safety inspection.

3. Failure to submit to inspection. Failure of an owner, operator or occupant of watercraft to submit to the inspection authorized by this section is a Class E crime and shall be grounds for the suspension, pursuant to chapter 617, of licenses issued under this Part to the person failing to submit.

Sec. 2. 12 MRSA §6306, sub-§1, as enacted by PL 1977, c. 661, §5, is repealed and the following enacted in its place:

1. Consent to inspection. Any person who signs an application for a license or receives a license under this Part has a duty to submit to inspection and search for violations related to the licensed activities by a marine patrol officer under the following conditions.

A. Watercraft or vehicles and the equipment located on watercraft or vehicles which are used primarily in a trade or business requiring a license under this Part may be searched or inspected at any time.

B. Any other location where activities subject to this Part are conducted may be inspected or searched during the hours when those activities occur.

C. A location specified in paragraph B may be inspected at any time if a marine patrol officer has a reasonable suspicion of a violation of this Part.

D. No residential dwelling may be searched without a search warrant unless otherwise allowed by law.

2. Seizure of evidence. Any person who signs an application for a license or receives a license under this Part has a duty to permit seizure of evidence of a violation of marine resources laws found during an inspection or search.

Effective August 4, 1988.

## CHAPTER 714

S.P. 844 — L.D. 2190

### AN ACT to Allow Disclosure of Confidential Information Relevant to Personnel and Licensure Actions.

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

Sec. 1. 5 MRSA §9057, sub-§6 is enacted to read:

6. Confidential information. Information may be disclosed which is confidential pursuant to Title 22, chapters 958-A and 1071 and section 7703; and Title 34-A, except for information, the disclosure of which is absolutely prohibited under Title 34-A, section 3003. Disclosure may be only for the determination of issues involving un-employment compensation proceedings relating to a state employee, state agency personnel actions and professional or occupational board licensure, certification or registration.

A. For the purpose of this subsection, "hearing officer" means presiding officer, judge, board chairman, arbitrator or any other person deemed responsible for conducting a proceeding or hearing subject to this subsection. In the case of the Civil Service Appeals Board, the presiding officer shall be the entire board. "Employees of the agency" means employees of a state agency or department or members, agents or employees of a board who are directly related to and whose official duties involve the matter at issue.

B. The confidential information disclosed pursuant to this subsection is subject to the following limitations:

(1) The hearing officer determines that introduction of the confidential information is necessary for the determination of an issue before the hearing officer;

(2) During the introduction of confidential information, the proceeding is open only to the hearing officer, employees of the agency, parties, parties' representatives, counsel of record and the witness testifying regarding the information, and access to the information is limited to these people. Disclosure is limited to information directly related to the matter at issue;

(3) Witnesses shall be sequestered during the introduction of confidential information, except when offering testimony at the proceeding;

(4) The names or identities of reporters of confidential information or of other persons shall not be disclosed, except when disclosure is deemed necessary and relevant by the hearing officer; and

(5) After hearing, the confidential information is sealed within the record and shall not be further disclosed, except upon order of court.

Sec. 2. 22 MRSA Pt. 1-B, c. 857 is enacted to read:

#### PART 1-B

#### DISCLOSURE OF CONFIDENTIAL INFORMATION

#### CHAPTER 857

#### USE OF CONFIDENTIAL INFORMATION FOR PERSONNEL AND LICENSURE ACTIONS

##### §3291. Definitions

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

1. Bureau. "Bureau" means the Bureau of Social Services with respect to chapters 958-A and 1071, and the Bureau of Social Services or the Bureau of Medical Services with respect to section 7703.

2. Confidential information. "Confidential information" means information deemed confidential by chapters 958-A and 1071, and section 7703.

3. Department. "Department" means the Department of Human Services.

4. Director. "Director" means the Director of the Bureau of Social Services with respect to confidential information derived from chapters 958-A and 1071, and the Director of the Bureau of Medical Services or the Director of the Bureau of Social Services with respect to confidential information derived from section 7703.

5. Hearing officer. "Hearing officer" means presiding officer, judge, board chairman, arbitrator or any other person deemed responsible for conducting a proceeding or hearing subject to this chapter.

6. Licensing board. "Licensing board" means a professional or occupational licensing board that licenses, certifies or registers a person in a profession or occupation which is included in the list of professional and occupational licensing boards in Title 5, section 12004, subsection 1, paragraph A.

##### §3292. Disclosure and use of confidential information; governing provisions

Any information derived by the department from the implementation of chapters 958-A and 1071, and section 7703 deemed confidential by these chapters and relating to a state employee or a person licensed, certified or registered by a licensing board as defined in section 3291 who is alleged to have engaged in any unlawful activity or professional misconduct, or in conduct in violation of laws or rules relating to a licensing board may be disclosed to and used by the appropriate state agencies and licensing boards only in accordance with this chapter. The department, other state agencies and licensing boards shall comply with the following.

1. Purpose for which disclosure is made. Any confidential information provided to a state agency, department or licensing board shall be used only for investigative and other action within the scope of the authority

of that agency, department or licensing board and to determine whether the employee or the person licensed, certified or registered by the board has engaged in unlawful activity, professional misconduct or activities in violation of the laws or rules relating to the board.

2. Designation of person to receive confidential information. State agencies, departments and licensing boards reasonably expected to be recipients of confidential information, as determined by the director of the bureau, shall designate a person to receive the confidential information for investigative purposes.

3. Limitations on disclosure. Disclosure is limited to information which is directly related to the matter at issue. The identity of reporters and other persons shall not be disclosed except as necessary and relevant. Access to the information shall be limited to parties, parties' representatives, counsel of record and the hearing officers responsible for the determinations. The information shall be used only for the purpose for which the release was intended.

§3293. Confidential information provided to state employees, the Bureau of Human Resources and the Bureau of Employee Relations

1. Disclosure to state employees. Confidential information which is relevant to a grievance or a disciplinary procedure within the department shall be provided to the affected employee and the employee's designated representative.

2. Disclosure to Bureau of Employee Relations and the Bureau of Human Resources. Confidential information which is relevant to a grievance or disciplinary procedure within the department shall be provided to the Bureau of Employee Relations in cases regarding state employment subject to the State Employee Labor Relations Act, Title 26, chapter 9-B, and to the Bureau of Human Resources for state employees not subject to Title 26, chapter 9-B, when the Bureau of Employee Relations or the Bureau of Human Resources become involved in the grievance or disciplinary process, including appeals to an arbitrator or the Civil Service Appeals Board.

3. Procedures governed by contract. If any other procedure relating to the use of confidential information in state employee personnel actions is governed by collective bargaining agreements, the collective bargaining agreements shall control, except as provided in section 3292.

§3294. Confidential information provided to professional and occupational licensing boards

If confidential information regarding a person subject to or seeking licensure, certification or registration by a licensing board indicates that the person may have engaged in unlawful activity, professional misconduct or conduct which may be in violation of the laws or rules relating to the licensing board, the director may release

this information to the appropriate licensing board. Confidential information shall be disclosed and used in accordance with section 3292 and may also be disclosed to members, employees and agents of a licensing board who are directly related to the matter at issue.

1. Notice to the licensee or applicant. Notice of the release of confidential information shall be provided by the board to the licensee or applicant in accordance with the law and rules relating to the licensing board. If the law or rules relating to a licensing board do not provide for notice to licensees or applicants subject to or seeking licensure, certification or registration, the licensing board shall provide notice to the licensee or applicant upon determination of the board to take further action following its investigation.

2. Licensing board requests for confidential information. Any licensing board pursuing action within the scope of the board's authority or conducting an investigation of any person subject to or seeking licensure, certification or registration by the board for engaging in unlawful activity, professional misconduct or conduct which may be in violation of the laws or rules relating to the board may request confidential information from the bureau. Any information provided to the board for an investigation shall be governed by section 3292 and this section.

3. Use of confidential information in proceedings. The use of confidential information in proceedings, informal conferences and adjudicatory hearings shall be governed by Title 5, section 9057, subsection 6.

§3295. Information provided for unemployment compensation proceedings relevant to state employment

If confidential information relevant to an unemployment compensation proceeding with respect to the provision of, denial or termination of unemployment compensation benefits related to a person's state employment, the director may release the confidential information to the Commissioner of Labor or the commissioner's designee. The commissioner may request from the director of the bureau confidential information that may be directly related to an unemployment compensation proceeding with respect to a person's state employment. The director may release the confidential information to the commissioner or the commissioner's designee if the confidential information is related to the proceeding. The commissioner shall provide the claimant with access to the information.

§3306. Penalty for violations

Any person who violates this chapter shall be subject to the applicable penalty as provided in chapters 958-A and 1071 and section 7702.

Sec. 3. 22 MRSA §3474, sub-§2, ¶¶E and F, as enacted by PL 1981, c. 527, §2, are amended to read:

E. A person having the legal responsibility or authorization to care for, evaluate, treat or supervise an incapacitated or dependent adult; ~~and~~

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or his designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact; and

Sec. 4. 22 MRSA §3474, sub-§2, ¶G is enacted to read:

G. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857.

Sec. 5. 22 MRSA §4008, sub-§2, ¶F, as amended by PL 1983, c. 354, §1, is further amended to read:

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or his designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact; ~~and~~

Sec. 6. 22 MRSA §4008, sub-§2, ¶G, as enacted by PL 1987, c. 354, §2, is amended to read:

G. Any agency involved in approving homes for the placement of children, with protection for identity of reporters and other persons when appropriate; and

Sec. 7. 22 MRSA §4008, sub-§2, ¶H is enacted to read:

H. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857.

Sec. 8. 22 MRSA §7703, sub-§3, ¶¶G and H, as enacted by PL 1983, c. 691, §2, are amended to read:

G. An individual seeking to place a child or adult in a particular facility with protection for the identity of any reference, complainant, reporter of suspected abuse or neglect or other person, when appropriate; ~~or~~

H. An owner or operator of a facility which is the subject of a record, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate; or

Sec. 9. 22 MRSA §7703, sub-§3, ¶I is enacted to read:

I. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857.

Sec. 10. 34-A MRSA §3003, sub-§3 is enacted to read:

3. Disclosure of confidential information. The disclosure of confidential information as provided by this section shall also be governed by Title 5, section 9057, subsection 6.

Effective August 4, 1988.

## CHAPTER 715

H.P. 1764 — L.D. 2417

### AN ACT to Make Changes in the Administration of the Maine State Retirement System.

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

Sec. 1. 2 MRSA §6, sub-§3, as amended by PL 1985, c. 785, Pt. B, §1, is further amended to read:

3. Range 89. The salaries of the following state officials and employees shall be within salary range 89:

Director of Public Improvements;

State Budget Officer;

State Controller;

Director of the Bureau of Forestry;

Chief of the State Police;

Director, State Planning Office;

Director, Energy Resources Office;

Public Advocate;

Commissioner of Defense and Veterans' Services; ~~and~~

Director of Human Resources; and

Executive Director, Retirement System.

Sec. 2. 2 MRSA §6, sub-§4, as repealed and replaced by PL 1987, c. 402, Pt. A, §3, is amended to read:

4. Range 88. The salaries of the following state officials and employees shall be within salary range 88:

State Purchasing Agent;

Director, Arts and Humanities Bureau;

Director, State Museum Bureau;

Director of the Bureau of Parks and Recreation;

State Director of Alcoholic Beverages;