

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

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

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

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

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS
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hours to be credited for completion of each course or program.

§1879. Penalty

The license of any agent, broker or consultant who fails to comply with this subchapter shall not be renewed and shall terminate upon the biennial expiration date.

§1880. Rule-making authority

The superintendent may establish by rule reasonable procedures and standards to fulfill the purposes of this subchapter.

See title page for effective date.

CHAPTER 32

S.P. 74 - L.D. 64

An Act to Clarify the Law Authorizing the Use of Warning Devices on Department of Corrections' Vehicles

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

Sec. 1. 29 MRSA §946, as amended by PL 1987, c. 644, §4, is further amended to read:

§946. Police and fire vehicles

Police, fire department, forest fire control vehicles and ambulance vehicles, when operated in response to calls, or when a police officer is in pursuit of a motor vehicle operator for which ~~he~~ the police officer has probable cause to believe that the operator has committed or is in the process of committing a violation of law, and vehicles of the Department of Corrections making use of a blue light ~~or~~ and a siren shall have the right-of-way. On the approach of any such vehicle, from any direction, and when such vehicle is sounding a siren and emitting a flashing light, the driver of every other vehicle shall immediately draw ~~his~~ that driver's vehicle as near as practicable to the right-hand curb and parallel thereto, clear of any intersection, and bring it to a standstill until such public service vehicles have passed.

Sec. 2. 29 MRSA §1362, 2nd ¶, as enacted by PL 1987, c. 644, §7, is amended to read:

No signaling device may be unnecessarily sounded nor any braking or acceleration unnecessarily made so as to cause a harsh, objectionable or unreasonable noise. No bell or siren may be installed or used on any motor vehicle, except that fire and police department vehicles and ambulances and vehicles operated by state, city and town fire inspectors, city and town fire chiefs, assistant fire chiefs, police chiefs and assistant police chiefs may be so equipped for use only when responding to emergency calls; motor vehicles used by forest rangers or personnel engaged in forest fire control as may be

designated by the Department of Conservation; motor vehicles used by sheriffs and deputy sheriffs; motor vehicles used by inland fisheries and game wardens as may be designated by the Department of Inland Fisheries and Wildlife; motor vehicles used by coastal wardens as may be designated by the Department of Marine Resources; motor vehicles used by United States Government law enforcement officials; motor vehicles used by a state or municipal department which controls or supervises electrical alarm and communication systems may be so equipped for use as provided by law; and motor vehicles used by corrections personnel as may be designated by the Department of Corrections may be so equipped for use only when responding to ~~prison~~ committed offender escapes or performing high-security transfers of committed offenders.

See title page for effective date.

CHAPTER 33

S.P. 108 - L.D. 163

An Act to Grant Rulemaking Authority to the Maine Arts Commission

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

27 MRSA §409 is enacted to read:

§409. Rules

The Maine Arts Commission may adopt rules pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, to implement this chapter.

See title page for effective date.

CHAPTER 34

S.P. 87 - L.D. 89

An Act to Save Medicaid Funds by Expanding the Ability of the Department of Human Services to Recover Funds from Prior Owners of Boarding and Nursing Homes

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

Whereas, it is necessary to begin recovery of debts from prior owners of boarding and nursing homes immediately, in order to save Medicaid funds; 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:

22 MRSA §1714 is enacted to read:

§1714. Debts owed the department by providers

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Boarding home" means any facility that meets the definition of section 7901-A, subsection 4.

B. "Debt" means any amount of money which is owed to the department as a result of:

(1) Overpayments that have been determined by an audit pursuant to the applicable principles of reimbursement, overpayments as reported by a provider in an unaudited cost report or overpayments that have been discovered in any other manner;

(2) The department's authority to recapture depreciation;

(3) The assessment of fines and sanctions; or

(4) Projected overpayments reported in an interim cost report. If an interim report is not filed at least 30 days prior to the transfer, "debt" also includes 5% of Medicaid reimbursement or cost reimbursement for the last fiscal year or \$50,000, whichever is less.

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

D. "Former provider" means the person reimbursed by the department for the provision of care or services at a nursing home or a boarding home prior to its transfer.

D-1. "Interim cost report" means a cost report which covers the current fiscal year and any prior periods not covered by a previously filed cost report. Costs incurred in the 90 days prior to the transfer need not be covered in the interim cost report.

E. "Nursing home" means any facility that meets the definition of section 1812-A, including an intermediate care facility for the mentally retarded.

F. "Person" means any natural person, partnership, association, corporation or other entity including any county, local or other governmental unit.

G. "Transfer" means any change in the ownership of a nursing home or boarding home, including, but not limited to, a sale, lease or gift of the land, building or operating entity, which results in:

(1) The department reimbursing a person other than the former provider for the provision of care or services; or

(2) The discontinuation of the provision of care or services.

H. "Transferee" means any person to whom a nursing home or boarding home is transferred.

2. Transferee liable unless escrow agreement executed prior to sale. Whenever a nursing home or boarding home is transferred after the effective date of this section, the transferee is liable for debts owed to the department by the former provider unless by the time of sale:

A. All debts owed by the former provider to the department have been paid, except as stated in paragraph B;

B. If the indebtedness is the subject of an administrative appeal, an escrow account has been created and funded in an amount sufficient to cover the debt as claimed by the department; or

C. An interim cost report has:

(1) Been filed, an escrow account has been created and funded in an amount sufficient to cover any overpayment identified in such a report; or

(2) Not been filed, an escrow account has been created and funded in an amount sufficient to cover 5% of Medicaid reimbursement or cost reimbursement for the last fiscal year or \$50,000, whichever is less.

3. Department may offset. The department may offset against current reimbursement any debt it is owed by a nursing home or boarding home, including one owed by a transferee pursuant to this section. In addition, the department may exercise any other remedy available for the collection of a debt.

4. Department to identify debt. Any person who may be affected by subsection 2 may request that the department identify the amount of any debt owed by a nursing home or boarding home. When the department receives such a request, it shall identify the debt within 30 days. Failure to identify the amount of a debt when such a request is made in writing at least 30 days prior to the transfer shall preclude the department from recovering that debt from the transferee.

5. Written notice. The department shall provide written notice of the requirements of this law to the trans-

feree in a letter acknowledging receipt of a request for a certificate of need or waiver of the certificate of need for a nursing home transfer or in response to a request for an application for a license to operate a boarding home following a transfer.

6. Defenses preserved. If a transferee becomes liable for a debt pursuant to subsection 2, the transferee shall succeed to any defenses to the debt that could have been exercised by the former provider.

7. Liability of former provider. Nothing in this section may limit the liability of the former provider to the department for any debts whether or not they are identified at the time of sale. In addition, a transferee shall have a cause of action against a former provider to the extent that debts of the former provider are paid by the transferee, unless the transferee has waived the right to sue the former provider for those debts.

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

Effective April 12, 1989.

CHAPTER 35

H.P. 182 - L.D. 247

An Act Regarding Open Space and Recreational Lands under the Growth Management Act

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

Sec. 1. 30 MRSA §4960-C, sub-§4, ¶C, as enacted by PL 1987, c. 766, §4, is amended to read:

C. A comprehensive plan shall include an implementation strategy section which contains a timetable for the implementation program, including land use ordinances, that ensures that the goals established under this subchapter are met. These implementation strategies shall be consistent with state laws and shall actively promote policies developed during the planning process. The timetable shall identify significant ordinances to be included in the implementation program. Those ordinances shall be adopted within one year of the plan. The strategies shall guide the subsequent adoption of policies, programs and land use ordinances. In developing its strategies and subsequent policies, programs and land use ordinances, each municipality shall employ the following guidelines consistent with the goals of this subchapter:

- (1) Identify and designate at least 2 basic types of geographic areas: Growth areas and rural areas.

(a) Growth areas are those areas suitable for orderly residential, commercial and industrial development forecast over the next 10 years. Each municipality shall:

- (i) Establish standards for such developments;
- (ii) Establish timely permitting procedures;
- (iii) Ensure that needed public services are available within the growth area; and
- (iv) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion.

(b) Rural areas are those areas where protection should be provided for agricultural, forest, open space and scenic lands within the municipality. Each municipality shall adopt land use policies and ordinances to discourage incompatible development.

These policies and ordinances may include, without limitation, density limits; cluster or special zoning; acquisition of land or development rights; or performance standards;

(2) Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development;

(3) Protect, maintain and, where warranted, improve the water quality of each water body pursuant to Title 38, chapter 3, subchapter I, article 4-A;

(4) Ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A municipality may adopt ordinances more stringent than applicable state law;

(5) Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Each coastal municipality shall discourage new development that is incompatible with uses related to the marine resources industry;

(6) Ensure the protection of agricultural and forest resources. Each municipality shall discourage new development that is incom-