

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
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

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

Sec. 1. 33 MRSA §1021, sub-§6 is enacted to read:

6. Transfer. "Transfer" does not include testamentary transfers, which are outside the scope of this chapter.

Sec. 2. 33 MRSA §1023, sub-§§1 and 2, as enacted by PL 1987, c. 699, §1, are amended to read:

1. **Civil action.** A civil action may be brought to obtain relief under this chapter by an elderly dependent person or that person's legal representative.

2. **Relief available; protected transfers.** When a court finds that a transfer of property was the result of undue influence, it shall grant appropriate relief enabling the elderly dependent person to avoid the transfer, including the rescission or reformation of a deed or other instrument, the imposition of a constructive trust on property or an order enjoining use of or entry on property or commanding the return of property. When the court finds that undue influence is a good and valid defense to a transferee's suit on a contract to transfer the property, the court shall refuse to enforce the transfer.

No relief obtained or granted under this section may in any way affect or limit the ~~rights~~ right, title and interest of good faith purchasers, mortgagees, holders of security interests or other 3rd parties who obtain an interest in the transferred property for value after its transfer from the elderly dependent person. No relief obtained or granted under this section may affect any mortgage deed to the extent of value given by the mortgagee.

Sec. 3. 33 MRSA §1025 is enacted to read:

§1025. Title practices

This chapter does not require that language showing compliance with this chapter be included in a deed and does not require that evidence of compliance with this chapter be recorded in the registry of deeds. Any attempt to record such evidence is void and has no effect on title.

Sec. 4. **Application.** This Act applies only to transfers of property that occur on or after the effective date of this Act.

See title page for effective date.

CHAPTER 239

S.P. 299 - L.D. 797

An Act to Impose Civil Penalties for Intentional Violations of the Maine Unfair Trade Practices Act

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

5 MRSA §209, last ¶, as enacted by PL 1987, c. 307, §2, is amended to read:

In any action by the Attorney General brought against the defendant for violating the terms of an injunction issued under this section, the court may make such orders or judgments as may be necessary to restore to any persons who have suffered any ascertainable loss by reason of such conduct found to be in violation of an injunction, any money or property, real or personal, which may have been acquired by means of such conduct. Each intentional violation of section 207 in which the Attorney General establishes that the conduct giving rise to the violation is either unfair or deceptive is a violation for which a civil penalty of not more than \$10,000 shall be adjudged. The Attorney General may seek to recover civil penalties for violations of section 207 which are intentional and are unfair or deceptive. The Attorney General in seeking civil penalties has the burden of proving that the conduct was intentional and was unfair or deceptive notwithstanding any other statute which declares a violation of that statute an unfair trade practice. These penalties shall be applied in the carrying out of this chapter.

See title page for effective date.

CHAPTER 240

H.P. 669 - L.D. 917

An Act to Require Periodic Reports on the Percentage of the Gasoline Tax That Is Due to Boating Use

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

Sec. 1. 36 MRSA §2903-A, as amended by PL 1987, c. 793, Pt. A, §10, is further amended to read:

§2903-A. Finding of fact

The Legislature makes a finding of fact that the percentage relationship of "gasoline tax" paid by that segment of the nonhighway gasoline user, the motorboat user, is not less than 2.00% of the total "gasoline tax" revenue. Based on this legislative "finding of fact" there is set aside 2.00% of the total excise tax, not to exceed \$2,000,000, on internal combustion engine fuel sold or used within the State, but not including internal combustion engine fuel sold for use in the propulsion of aircraft. From this 2.00% allocation shall be deducted the refunds paid out under section 2908 to purchasers and users of internal combustion engine fuel for commercial motorboats; 20% of the balance of 2.00% after paying out such refunds shall be paid to the Treasurer of State to be made available to the Commissioner of Marine Resources for the purpose of conducting research, development and propagation activities by the department, and it is the responsibility of the Commissioner of

Marine Resources to select activities and projects that will be most beneficial to the commercial fisheries of the State as well as the development of sports fisheries activities in the State; the remaining 80% of the balance of 2.00% after paying out such refunds shall be credited to the Boating Facilities Fund, established under Title 38, section 322, within the Maine State Bureau of Parks and Recreation. The State Tax Assessor shall certify to the State Controller, on or before the 15th day of each month, the amounts to be credited under the previous sentence, as of the close of the State Controller's records for the previous month. When refunds paid to purchasers and users of internal combustion engine fuel for commercial motorboats in any month exceed 2.00% of gasoline tax revenues for that month, such excess shall be carried forward in computing amounts to be credited to the Department of Marine Resources and to the Boating Facilities Fund under this section for the succeeding month or months. Funds credited to the Department of Marine Resources shall be allocated by the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. The Bureau of Parks and Recreation, the Department of Marine Resources, the Department of Inland Fisheries and Wildlife and the Department of Transportation shall devise and agree to a system for determining the percentage of the gasoline tax and special fuels tax that results from fuel purchases for boating uses and whether those uses are for pleasure or commerce and for salt or fresh water boating. The Bureau of Parks and Recreation shall assure that proper records are kept to provide input for this system. Beginning February 1, 1991, and every 3 years thereafter on February 1st, the Bureau of Parks and Recreation shall issue to the joint standing committee of the Legislature having jurisdiction over taxation matters a report based on an analysis of data according to this section. The Boating Facilities Fund shall be used to fund the costs of this activity.

Sec. 2. 38 MRSA §321, as amended by PL 1987, c. 674, §1, is further amended by adding at the end a new paragraph to read:

The Director of the Bureau of Parks and Recreation shall conduct the periodic studies of the State's gasoline tax as specified in Title 36, section 2903-A. The director shall seek the advice of the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Department of Transportation relative to these studies and these departments shall cooperate in the design and conduct of these studies.

Sec. 3. Allocation. The following funds are allocated from Boating Facilities Fund to carry out the purposes of this Act.

	1990-91
CONSERVATION, DEPARTMENT OF	
Boating Facilities Fund	
All Other	\$30,000
Provides funds for contractual services to conduct a study for the purpose of establish-	

ing a system to determine the percentage of the gasoline tax that is attributable to boating usage.

See title page for effective date.

CHAPTER 241

H.P. 728 - L.D. 1005

An Act to Prohibit Smoking in Hospitals

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

22 MRSA §1580-B is enacted to read:

§1580-B. Smoking in hospitals

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

A. "Hospital" means any hospital required to be licensed under chapter 405.

B. "Smoking" means carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off or containing any substance giving off tobacco smoke.

2. Prohibition. Beginning November 16, 1989, no person may smoke tobacco or any other substance in any enclosed area of any hospital, except as otherwise provided in this section.

3. Exception. A patient or resident of a hospital may smoke in designated areas within the hospital if a licensed physician has written an order permitting the patient or resident to smoke.

See title page for effective date.

CHAPTER 242

H.P. 782 - L.D. 1094

An Act Providing Conformity with the United States Internal Revenue Code Under the Maine Income Tax Law for 1988

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

Whereas, the 90-day period would delay the processing of the 1988 income tax returns; and

Whereas, legislative action is immediately necessary in order to ensure continued and efficient administra-