

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

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1989

has received notification from the chief law enforcement officer of the other municipality of that officer's intentions to terminate.

Sec. 3. Application. Nothing in this Act may be construed to invalidate any official act performed prior to the effective date of this Act by any law enforcement officer in the course and scope of that officer's employment.

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

Effective June 14, 1989.

CHAPTER 280

H.P. 971 - L.D. 1349

An Act Concerning Insurance Required of Wreckers

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

29 MRSA §2708, as repealed and replaced by PL 1987, c. 781, §§9 and 15, is amended to read:

§2708. Indemnity bonds

The Secretary of State shall not register any motor vehicle required to obtain an operating permit subject to this chapter nor issue a permit covering the operation of any such motor vehicle or vehicles, until the applicant for that permit has procured a good and sufficient insurance policy or indemnity bond, in such amount as the Secretary of State prescribes, having as surety, a surety company authorized to transact business in this State or 2 responsible individuals, which bond shall be approved by the Secretary of State, or a declaratory judgment issued by the Interstate Commerce Commission authorizing the motor carrier to self insure. The insurance policy or bond shall adequately provide for cargo or garage keeper's insurance and for the collection of damages for which the holder of a permit may be liable by reason of the operation of any motor vehicle or vehicles subject to the operation of this chapter. Notwithstanding this section, any person, firm or corporation transporting logs or pulpwood, garbage, refuse, sludge, junk or unserviceable vehicles, manure, wood chips, bark or hogged fuel is not required to provide cargo insurance. Any wrecker service that has garage keeper's insurance and tows serviceable vehicles is not required to provide cargo insurance. Any person, firm or corporation transporting freight between points within this State and points without the State or between points without the State, but passing through this State, is not required to provide cargo insurance.

See title page for effective date.

CHAPTER 281

H.P. 944 - L.D. 1312

An Act to Allow Intervenor Funding in Public Utilities Proceedings

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

35-A MRSA §1310, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed and the following enacted in its place:

§1310. Funding of intervenors by the commission

1. Intervenor funding. Intervenor funding may be provided as follows.

A. In any commission proceeding in which standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., are implemented, the commission may order the utility to compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that:

(1) The position of the intervenor is not adequately represented by the Office of the Public Advocate or the Public Utilities Commission staff;

(2) The intervenor substantially contributed to the approval, in whole or in part, of a position advocated by the intervenor in the commission proceeding; and

(3) Participation in the proceeding by the intervenor would impose a significant financial hardship on the intervenor.

B. In any proceeding in which the commission does not implement standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., the commission may compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that requirements of paragraph A, subparagraphs (1) to (3), are satisfied. Compensation may be provided from the commission's regulatory fund and filing fees subject to the commission's determination of the availability of the funds.

2. Determination of eligibility. A determination that an intervenor is eligible for an award of compensation pending the outcome of the proceeding shall be made by the commission at the earliest practicable time in the commission proceeding.

3. Rules. The commission may, after notice and hearing, adopt rules as are necessary for the implementation of this section.

See title page for effective date.

CHAPTER 282

H.P. 929 - L.D. 1295

An Act to Amend the Penalties for Violations of Laws Administered by the Department of Environmental Protection and of Municipal Planning and Zoning Laws

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

Sec. 1. 30-A MRSA §4506, sub-§3, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106; and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

3. Civil penalties. The following provisions apply to violations of the laws and ordinances set forth in subsection 5. All monetary penalties Monetary penalties shall be assessed on a per day basis and are civil penalties.

A. The minimum penalty for starting construction or undertaking a land use activity without a required permit is \$100, and the maximum penalty is \$2,500.

B. The minimum penalty for a specific violation is \$100, and the maximum penalty is \$2,500.

C. The violator may be ordered to correct or abate the violations. Where the court finds that the violation was willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction will:

- (1) Result in a threat or hazard to public health or safety;
- (2) Result in substantial environmental damage; or
- (3) Result in a substantial injustice.

D. If the municipality is the prevailing party, it shall be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees and costs as provided by court rule.

E. In setting a penalty, the court shall consider, but is not limited to, the following:

- (1) Prior violations by the same party;
- (2) The degree of environmental damage that cannot be abated or corrected;
- (3) The extent to which the violation continued following a municipal order to stop; and
- (4) The extent to which the municipality contributed to the violation by providing the violator with incorrect information or by failing to take timely action.

F. The maximum penalty may exceed \$2,500, but may not exceed \$25,000, when it is shown that there has been a previous conviction of the same party within the past 2 years for a violation of the same law or ordinance.

G. The penalties for violations of waste discharge licenses issued by the municipality pursuant to Title 38, section 413, subsection 8, is as prescribed in Title 38, section 349.

H. If the economic benefit resulting from the violation exceeds the applicable penalties under this subsection, the maximum civil penalties may be increased for each day of the violation. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. The court shall consider as economic benefit, without limitation, the costs avoided or enhanced value accrued at the time of the violation by the violator not complying with the applicable legal requirements.

Sec. 2. 38 MRSA §349, sub-§1, as amended by PL 1987, c. 517, §3, is further amended to read:

1. Criminal penalties. Any person who violates any provisions of the laws administered by the department ~~or~~, including without limitation a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board ~~or commissioner~~, is guilty of a Class E crime and may be punished accordingly, except notwithstanding Title 17-A, section 1301, subsection 1, paragraph C, or subsection 3, paragraph E, the fine for such a violation shall not ~~exceed~~ be less than \$100 nor more than \$25,000 for each day of the violation.

This subsection does not apply to actions subject to the criminal penalties set forth in section 1319-T.

Sec. 3. 38 MRSA §349, sub-§2, as amended by PL 1983, c. 796, §18, is further amended to read:

2. Civil penalties. Any person who violates any provision of the laws administered by the department ~~or~~, including without limitation a violation of the terms or conditions of any order, regulation rule, license, permit, approval or decision of the board ~~or commissioner~~, shall be subject to a civil penalty, payable to the State, of not less than \$100 nor more than \$10,000 for each day of that violation or,