

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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

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,

if the violation relates to hazardous waste, of not more than \$25,000 for each day of the violation.

Sec. 4. 38 MRSA §349, sub-§3, as amended by PL 1987, c. 491, §3, is further amended to read:

3. Falsification and tampering. Notwithstanding Title 17-A, section 4-A, any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by the department, or by any order, rule, regulation, license, permit, approval or decision of the board or commissioner, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule, regulation, license, permit, approval or decision of the board or who fails to comply with any information submittal required by the commissioner pursuant to section 568, subsection 3, or section 1364, subsection 3, shall, upon conviction, be subject to a fine of not more than \$10,000, or by imprisonment for not more than 6 months, or both.

Sec. 5. 38 MRSA §349, sub-§8 is enacted to read:

8. Economic benefit. If the economic benefit resulting from the violation exceeds the applicable penalties under subsection 2, 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.

See title page for effective date.

CHAPTER 283

S.P. 479 - L.D. 1277

An Act to Protect the State's Ownership of Public Records

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

5 MRSA §95-A is enacted to read:

§95-A. Protection and recovery of public records

1. Notice and demand of return. Whenever the State Archivist has reasonable grounds to believe that documents or records belonging to the State or any agency of the State or to which the State or its agencies have a lawful right of possession are in the possession of the person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those documents or records, the State Archivist may issue a written notice and demand to that person or entity for the immediate return of the documents

or records. The notice and demand shall be sent by certified or registered mail, return receipt requested. The notice and demand shall identify the documents or records claimed to belong to the State with reasonable specificity. Upon receipt of the notice and demand, the person or entity in the possession of documents or records claimed to belong to the State shall not destroy, alter, transfer, convey or otherwise alienate those documents or records unless authorized in writing by the State Archivist or by an order issued by a court of competent jurisdiction. The notice and demand shall specifically state that any transfer, conveyance or other alienation of the documents or records after receipt of the notice and demand shall constitute a Class E crime in violation of section 97.

2. Petition; hearing. Following the issuance of a notice and demand in accordance with subsection 1, the State Archivist, with the assistance of the Attorney General, may petition the Superior Court of Kennebec County or the Superior Court in the county in which documents or records are located, for the return of state documents or records that are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those documents or records. After hearing, the court shall order the state documents or records to be delivered to the State Archivist, or other custodian designated by the State Archivist, upon a finding that the materials in question are state documents or records and that the documents or records are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or provision of law to possess the documents or records. The court may issue all orders necessary to protect state documents or records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the materials and may also order the person or entity in possession of the material to surrender the documents or records into the custody of the State Archivist pending the court's decision on the petition.

3. Presumption. In any proceeding pursuant to subsection 2, there shall be a rebuttable presumption that documents or records that were once in the custody of the State were not lawfully alienated from that custody.

4. Definition. For the purpose of this section, "records" means all documentary material, regardless of media or characteristics, made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business. This term shall not include extra copies of printed or processed material of which official or record copies have been retained, stocks of publications and processed documents intended for distribution or use or records relating to personal matters that may have been kept in an office for convenience.

See title page for effective date.