

# 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.

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J.S. McCarthy Company  
Augusta, Maine  
1989

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FOURTEENTH LEGISLATURE**

**1989**

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the opposing party pursuant to the Maine Rules of Civil Procedure.

Sec. 12. 19 MRSA §779 is enacted to read:

**§779. Effect and implementation of health insurance obligations; failure of responsible party to comply**

**1. Failure to obtain insurance.** If an obligated parent fails to acquire health insurance coverage as required under section 214, subsection 9; section 581, subsection 9; or section 752, subsection 10, that parent shall be liable for any expenses incurred for that parent's dependent children that would have been paid by the insurance coverage, regardless of who has incurred the expenses. Incurred liability may be enforced as a child support debt under chapter 7, subchapter V, or by judicial action.

**2. Direct payment; parental authorization.** Upon receipt of a written authorization from an obligated parent to an insurer to make health insurance payments for that parent's dependent children to the obligee, the insurer shall make all payments directly to the obligee until the authorization is withdrawn. Upon receipt of such authorization from the obligated parent, the obligee shall be deemed subrogated to the rights of the obligated parent under the insurance policy for the children.

**3. Direct payment; court order.** Upon receipt of a copy of the court order establishing the obligation of an obligated parent to provide health insurance coverage for that parent's dependent children, and of a demand in writing for the health insurance coverage from the obligee, the insurer shall make all health insurance payments for the children directly to the obligee until otherwise notified by the obligee. In all such cases, the obligee shall be deemed subrogated to the rights of the obligated parent under the insurance policy for the children.

See title page for effective date.

## CHAPTER 338

H.P. 668 - L.D. 910

### An Act to Amend the Law Relating to Submerged Land

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

Sec. 1. 12 MRSA §558-A, sub-§1, ¶¶C and D are enacted to read:

**C. "Commercial fishing activity"** means any activity involving the landing or processing of shellfish, finfish or other natural products of the sea or other activities directly related to landing or processing shellfish, finfish or natural sea products, including fueling, loading or selling these products.

**D. "Submerged land"** means:

(1) All land from the mean low-water mark or a maximum of 1,650 feet seaward of the mean high-water mark, whichever is closer to the mean high-water mark, out to the seaward boundary of coastal waters as defined in section 6001;

(2) All land below the mean low-water mark of tidal rivers upstream to the farthest natural reaches of the tides;

(3) All land below the natural mean low-water mark of ponds which in their natural state are 10 or more acres in size; and

(4) The river bed of international boundary rivers, defined as all land lying between defined banks, created by the action of surface water and characterized by a lack of terrestrial vegetation and devoid of topsoil, and the international boundary line.

Sec. 2. 12 MRSA §558-A, sub-§2, as amended by PL 1987, c. 765, §1, is further amended to read:

**2. Leases.** The director may lease, for a term of years not exceeding 30 and with conditions the director deems reasonable, the right to dredge, fill or erect permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures on submerged and intertidal land owned by the State.

A. For fill, permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures and for nonpermanent structures that occupy a total of 500 square feet or more of submerged land or occupy a total of 2,000 square feet or more of submerged land if used exclusively for commercial fishing activities:

(1) The director shall charge the lessee a base rent that practically approximates the fair market rental value of the land; Fair market rental value shall be the municipally assessed value per square foot for the adjacent upland multiplied by a reduction factor based on the use of the leased submerged land. The reduction factors for use categories shall be as follows:

(a) A reduction factor of 0%, or no rental fee, for nonprofit organizations or publicly owned facilities that offer free public use or public use with nominal user fees. Public uses include, but are not limited to, municipal utilities and facilities that provide public access to the water, town wharves, walkways, fishing piers, boat launches, parks, nature reserves,

swimming or skating areas and other projects designed to allow or enhance public recreation, fishing, fowling and navigation and for which user fees are used exclusively for the maintenance of the facility;

(b) A reduction factor of 1% for commercial fishing uses of renewable aquatic resources. Commercial uses of renewable aquatic resources include, but are not limited to, facilities which are directly involved in commercial fishing activities. Such facilities shall include, but not be limited to, fish piers, lobster impoundments, fish processing facilities, berthing for fishing boats and floats or piers for the storage of gear. To qualify as a commercial use of renewable aquatic resources, a marina must have at least 50% of its slips in use by commercial fishing boats year round;

(c) A reduction factor of 2% for water dependent commerce, industry and private uses. Water dependent commerce, industry and private uses other than commercial uses of renewable aquatic resources include, but are not limited to, all facilities that are functionally dependent upon a waterfront location, cannot reasonably be located or operated on an upland site or are essential to the operation of the marine industry. Such facilities shall include, but not be limited to, privately owned piers and docks, cargo ports, private boat ramps, shipping and ferry terminals, tug and barge facilities, businesses that are engaged in watercraft construction, maintenance or repair, aquariums and marinas that have less than 50% of their slips in use by commercial fishing boats year round; and

(d) A reduction factor of 10% for upland uses and fill. Upland uses include, but are not limited to, all uses that can operate in a location other than on the waterfront or which are not essential to the operation of the marine industry. Such facilities shall include, but not be limited to, residences, offices, restaurants and parking lots. Fill shall include the placement of solid material other than pilings or other open support structures upon submerged lands.

When the director determines that the municipally assessed value of the adjacent upland is not an accurate indicator of the value of submerged land, the director may require the applicant to provide an appraisal of the submerged land. The appraisal must be approved by the director;

~~(2) The director may adjust the base rent, decreasing it for desirable uses or increasing it for undesirable ones. In determining the desirability of uses, the director shall consider the extent to which the use does not impair the future use of the submerged or intertidal land for fishing, fowling or navigation, needs to be located on the submerged land, and exploits natural renewable resources of the water;~~

~~(3) The director may revalue rents every 5 years. For leases entered into before and after July 1, 1984, rents shall not exceed 4¢ per square foot increased by 10% cumulatively for each year that has elapsed since July 1, 1984, further adjusted by the cumulative increase in the United States Consumer Price Index. Notwithstanding this limit, if an appraisal of the value of the land under a new or existing lease is performed, the director may charge a rent based on subparagraphs (1) and (2). After October 1, 1990, the director may revalue all existing rents to full fair market rental value. Rents may be adjusted annually until the full fair market rental value is reached. Thereafter, the director may revalue rents every 5 years;~~

~~(4) The director may also lease, for a period of not more than 5 years, a buffer zone of not more than 30 feet in width around a permanent structure located on submerged or intertidal land, provided the lease is necessary to preserve the integrity and safety of the structure and the Commissioner of Marine Resources consents to that lease;~~

~~(5) No portion of any Any existing or proposed lease may be subleased after August 1, 1988, for a the period of time of more than 5 years the original lease for the purpose of providing berthing space for any boat or vessel. This subparagraph shall not apply to any existing sublease or assignments thereof or to any subleasing plan or arrangement approved by the director prior to April 15, 1988. This subparagraph is repealed 91 days after the adjournment of the First Regular Session of the 114th Legislature; and~~

(5-A) No portion of an existing or proposed lease may be transferred from a person subleasing that portion to provide berthing space for any boat or vessel except for a

transfer to heirs upon death of the sublessee holder or a transfer to the original leaseholder subject to terms agreed to by the lessor and sublessee at the time of the sublease. This subparagraph shall not apply to any subleasing arrangements entered into prior to June 15, 1989; and

(6) The director may grant the proposed lease if the director finds that, in addition to any other findings that the director may require, the proposed lease:

(a) Will not unreasonably interfere with navigation;

(b) Will not unreasonably interfere with fishing or other existing marine uses of the area; and

(c) Will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities; and

(d) Will not unreasonably interfere with ingress and egress of riparian owners.

~~This subparagraph is repealed 91 days after the adjournment of the First Regular Session of the 114th Legislature.~~

The bureau shall promulgate rules pertaining to this subparagraph by March 15, 1990.

B. For dredging, impounded areas and underwater cables and pipelines, the director shall develop such terms and conditions as ~~he~~ the director deems reasonable.

C. The director shall charge an administrative fee of ~~\$25~~ \$100 for each lease in addition to any rent.

D. The director may establish a reasonable minimum rent to which any lease is subject, but it shall not exceed \$75 per year.

**Sec. 3. 12 MRSA §558-A, sub-§3**, as enacted by PL 1983, c. 819, Pt. A, §10, is amended to read:

**3. Easements.** The director may grant, upon such terms and conditions as ~~he~~ the director deems reasonable, ~~but without valuable consideration, except for a one-time administrative fee of \$15,~~ assignable easements for a term of years not exceeding 30 for the use of submerged and intertidal lands for the purposes permitted in subsection 2, ~~provided that that use.~~ The lessee shall pay an administrative fee of \$50 for each easement at the time of processing and a registration fee of \$25 due every 5 years. The director may refuse to grant an easement for the use of submerged lands if the director determines the easement will unreasonably interfere with customary or traditional public access ways to,

or public trust rights in, on or over the intertidal or submerged lands and the waters above those lands. The director may grant an easement for submerged lands if a structure:

A. Is for the exclusive benefit of the abutting upland owner for charitable purposes as defined in the United States Internal Revenue Code, Section 501, (c) (3);

B. Occupies a total of not more than 500 square feet of ~~state-owned~~ submerged land for any lawful purpose and is permanent; or

C. Occupies a total of not more than 2,000 square feet of ~~state-owned~~ submerged land for the exclusive purpose of ~~landing or processing shellfish, finfish or other natural products of the sea or for other activities directly related to the purpose of landing or processing shellfish, finfish or natural sea products, including fueling, loading or selling these products; or~~ commercial fishing activities and is permanent.

~~D. Is for harbor improvement by the Federal Government.~~

**Sec. 4. 12 MRSA §558-A, sub-§6**, as enacted by PL 1983, c. 819, Pt. A, §10, is repealed and the following enacted in its place:

**6. Constructive easements.** The owners of all structures actually upon submerged and intertidal lands on October 1, 1975, shall be deemed to have been granted a constructive easement for a term of 30 years on the submerged land directly underlying the structure. Beginning on January 1, 1991, the bureau shall undertake a registration program for all structures granted constructive easements. Constructive easements shall be subject to administrative and registration fees for easements pursuant to subsection 3. The director shall develop procedures, rules and registration forms necessary to accomplish the purposes of this subsection. The bureau shall complete the registration of constructive easements on or before December 31, 1995.

**Sec. 5. 12 MRSA §558-A, sub-§9** is enacted to read:

**9. Public compensation.** When the director determines that the public should be compensated for the loss or diminution of traditional and customary public uses resulting from the activities proposed by the lessee, the director may negotiate with the lessee to provide, as a condition of the lease, walkways, boat launching ramps, parking space or other facilities. The determination of loss or diminution of traditional and customary public uses and appropriate public compensation shall be made in consultation with local municipal officials.

**Sec. 6. Report required.** The Director of the Bureau of Public Lands shall study the issue of equitable lease fees for submerged lands for great ponds that cross several municipal boundaries or cross into the jurisdiction of the Maine Land Use Regulation Commission. The director shall report back to the Joint Standing Committee on Energy

and Natural Resources by February 10, 1990, with the director's findings and any recommendations for legislative changes.

**Sec. 7. Allocation.** The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1989-90                      1990-91

CONSERVATION, DEPARTMENT OF

Bureau of Public Lands

Public Lands Management Fund

Positions	(1)	(1)
Personal Services	\$26,250	\$36,000
All Other	18,000	21,500
Capital Expenditures	4,000	4,000

Provides funds for a Submerged Lands Coordinator, contractual services and general operating expenses to administer the submerged land program.

DEPARTMENT OF  
CONSERVATION  
TOTAL

\$48,250                      \$61,500

See title page for effective date.

**CHAPTER 339**

**S.P. 340 - L.D. 901**

**An Act to Require Labeling of Produce Treated with Post-harvest Treatments**

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

**Sec. 1.** 22 MRSA §2157, sub-§14 is enacted to read:

14. Post-harvest treatments. If it is fresh produce that is sold or offered for sale at a retail outlet, whether or not it is packaged or in a container, and has been treated with a post-harvest treatment, without meeting the requirements in paragraphs A, B and C.

For purposes of this section, "post-harvest treatment" means a treatment added or applied to fresh produce after harvest and identified by rule as a post-harvest treatment and waxes that contain one or more post-harvest treatments.

A. The owner or manager of a retail outlet shall ensure that one conspicuous sign is displayed that shall read: "Produce in this store may have been treated after harvest with one or more post-harvest treatments."

B. The owner or manager of a retail outlet shall ensure that information identifying the specific post-harvest treatments used, and the specific items of produce that were treated, is available to the public within 48 hours of a request.

C. The owner or manager of a retail outlet shall ensure that produce without post-harvest treatment, as determined by the commissioner, shall be identified by a sign contiguous to the specific produce.

This subsection is repealed effective July 1, 1991.

**Sec. 2. Effective date.** This Act shall take effect January 1, 1990.

Effective January 1, 1990.

**CHAPTER 340**

**S.P. 297 - L.D. 795**

**An Act to Amend the Wrongful Death Laws to Encompass Associated Claims**

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

**18-A MRSA §2-804, sub-§(b)**, as amended by PL 1981, c. 213, is further amended to read:

(b) Every such action shall be brought by and in the name of the personal representative of the deceased person, and the amount recovered in every such action, except as otherwise provided, shall be for the exclusive benefit of the surviving spouse, if no minor children, and of the children if no surviving spouse, and one-half for the exclusive benefit of the surviving spouse and one-half for the exclusive benefit of the minor children to be divided equally among them, if there are both surviving spouse and minor children, and to the deceased's heirs to be distributed as provided in section 2-106, if there is neither surviving spouse nor minor children. The jury may give such damages as it shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death to the persons for whose benefit the action is brought, and in addition thereto shall give such damages as will compensate the estate of the deceased person for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses, and in addition thereto may give damages not exceeding ~~\$50,000~~ \$75,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought, provided that the action shall be commenced within 2 years after the decedent's death. If a claim under this section is settled without an action having been commenced, the amount paid in settlement shall be distributed as provided in this subsection. No settlement on