

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

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

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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J.S. McCarthy Company
Augusta, Maine
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

4-A, are governed by the time-limit requirements contained in the Department of Human Services rules for the licensure of shelters for homeless children.

Sec. 5. 22 MRSA §4033, sub-§3, ¶B, as enacted by PL 1979, c. 733, §18, is amended to read:

B. Service in accordance with the ~~District Court~~ ~~Maine Rules of Civil Rules Procedure~~. Notwithstanding the ~~Maine Rules of Civil Rules Procedure~~, the court may waive service by publication of a preliminary protection order ~~shall be complete 5 days after a single publication for a party whose whereabouts are unknown if the department shows by affidavit that diligent efforts have been made to locate the party; or~~

Sec. 6. 22 MRSA §4089, sub-§1, ¶E is enacted to read:

E. The child welfare services ombudsman, appointed in accordance with section 4087, shall serve as a permanent member.

See title page for effective date.

CHAPTER 820

S.P. 891 - L.D. 2267

An Act to Strengthen the Laws Regarding the Casual Disposal of Solid Waste

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

Whereas, the First Regular Session of the 114th Legislature enacted laws providing for a comprehensive solid waste management program; and

Whereas, some individuals engage in illegal "back roads" dumping which is in direct contrast to the comprehensive solid waste management goals; and

Whereas, current littering penalties for so-called "back roads" dumping do not reflect the severity of the violation; and

Whereas, the intent of this legislation is to strengthen existing litter control laws in an effort to encourage compliance with the solid waste management program; and

Whereas, effective enforcement by the Department of Environmental Protection will be enhanced by the addition of penalty options; 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:

Sec. 1. 15 MRSA §5821, sub-§4-A is enacted to read:

4-A. Conveyances used in violation of litter laws. All conveyances, including aircraft, watercraft, vehicles, vessels, containers or cranes that are used, or attempted to be used, to dump more than 500 pounds or more than 100 cubic feet of litter in violation of Title 17, section 2264;

Sec. 2. 17 MRSA §2263, sub-§1-C is enacted to read:

1-C. Commercial purpose. "Commercial purpose" means for the purpose of economic gain.

Sec. 3. 17 MRSA §2263, sub-§4-A is enacted to read:

4-A. Commercial vehicle. "Commercial vehicle" means a vehicle owned or used by a business, corporation, association, partnership, or the sole proprietorship of any entity conducting business for a commercial purpose.

Sec. 4. 17 MRSA §2264, as amended by PL 1989, c. 97, §§1 and 2, is repealed and the following enacted in its place:

§2264. Littering prohibited

No person may throw, drop, deposit, discard, dump or otherwise dispose of litter in any manner or amount:

1. Public property. In or on any public highway, road, street, alley, public right-of-way or other public lands, except in containers, receptacles or on property that is designated for disposal of garbage and refuse by the State or its agencies or political subdivisions;

2. Waters. In any fresh water lake, river, stream, tidal or coastal water or on ice over the water. When any litter is thrown or discarded from a watercraft, both the operator of the watercraft, unless it is a watercraft being used for the carriage of passengers for hire, and the person actually disposing of the litter are in violation of this section. This subsection does not prohibit persons who fish, lobster or otherwise harvest from the water from returning to the water harvested products, bait and similar materials that naturally originate in the water;

3. Private property. In or on any private property, unless prior consent of the owner has been given and unless the litter is not a public nuisance or in violation of any state law or local rule;

4. Vehicle or trailer. From a trailer or vehicle that is constructed, loaded or uncovered in such a way that the load may drop, sift, leak or otherwise escape. This subsection applies to vehicles or trailers carrying trash,

rubbish or other materials that may be construed as "litter"; or

5. Vehicle operator. From a vehicle. When any litter is thrown or discarded from a vehicle, both the operator of the vehicle, unless it is a vehicle being used for the carriage of passengers for hire, and the person actually disposing of the litter are in violation of this section. The violation is punishable as a traffic infraction under Title 29, chapter 19. This penalty is in addition to any penalty under section 2264-A.

A record of a violation of this subsection must be forwarded to the Secretary of State who, in accordance with Title 29, section 2304, shall add the violation to the department's point system and the violation is counted in determining an individual's total points under the point system of the Division of Motor Vehicles.

For the purposes of this chapter, if a person dumps litter from a commercial vehicle, that person is presumed to have dumped the litter for a commercial purpose.

Sec. 5. 17 MRSA §§2264-A to 2264-C are enacted to read:

§2264-A. Penalties

Unless otherwise indicated, a person who disposes of litter in violation of this chapter commits a civil violation for which the following forfeitures apply.

1. Disposal of less than 15 pounds or less than 27 cubic feet of litter. A person who disposes of less than 15 pounds or less than 27 cubic feet of litter is subject to a forfeiture of not more than \$200 nor less than \$25 for the first violation and a forfeiture of not more than \$500 nor less than \$100 for a subsequent violation.

2. Disposal of more than 15 pounds or more than 27 cubic feet of litter. A person who disposes of more than 15 pounds or more than 27 cubic feet of litter is subject to a forfeiture of not more than \$500 nor less than \$200 for the first violation and not more than \$1,000 nor less than \$500 for a subsequent violation.

3. Disposal of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose. A person who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose is subject to the penalties under Title 38, section 349.

§2264-B. Penalty options

In addition to the forfeitures imposed in section 2264-A, the court may order a person adjudicated to have violated section 2264 to:

1. Removal of litter. Remove the litter dumped in violation of section 2264;

2. Cost of cleanup. Pay the owner of the property treble the owner's cost of clean up or removal of the litter;

3. Damages. Pay the person sustaining damages arising out of a violation of this subsection treble the actual damages or \$200, whichever amount is greater, plus the injured party's court costs and attorney's fees if action results in a civil proceeding;

4. Public service. Perform public service relating to the removal of litter, or to the restoration of an area polluted by litter, dumped in violation of section 2264; and

5. License suspension. Surrender motor vehicle operator's license for a period not exceeding 30 days. The court may suspend an operator's license for any violation of section 2264 which involves the use of a motor vehicle.

§2264-C. Forfeiture

All conveyances, including aircraft, watercraft, vehicles, vessels, containers or cranes that are used, or attempted to be used, to dump more than 1,000 pounds or more than 100 cubic feet of litter in violation of section 2264 are subject to forfeiture as provided in Title 15, chapter 517.

Sec. 6. 17 MRSA §2265, as amended by PL 1977, c. 564, §83, is repealed.

Sec. 7. 17 MRSA §2266, as amended by PL 1977, c. 93, §3, is repealed.

Sec. 8. 17 MRSA §2267, as amended by PL 1977, c. 93, §4, is repealed.

Sec. 9. 38 MRSA §349, sub-§1, as amended by PL 1989, c. 282, §2, is further amended to read:

1. Criminal penalties. Any person who violates any provisions of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264, 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 may not 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. 10. 38 MRSA §349, sub-§2, as amended by PL 1989, c. 282, §3, is further amended to read:

2. Civil penalties. Any person who violates any provision of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, shall be or who disposes of more than 500 pounds or more than 100 cubic

feet of litter for a commercial purpose, in violation of Title 17, section 2264, is 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.

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

Effective April 10, 1990.

CHAPTER 821

S.P. 958 - L.D. 2422

An Act to Allow Certain School Secretaries to Elect Not to Be Members of the Maine State Retirement System

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

PL 1989, c. 550, §3 is amended by adding at the end a new paragraph to read:

Notwithstanding other provisions of this section, employees of public schools on June 30, 1989, who were employed as school secretaries and who, due to error or oversight, were not members of the Maine State Retirement System on June 30, 1989, or for any period of time prior to that date, may elect not to be members by giving written notice to the Executive Director of the Maine State Retirement System on or before January 1, 1991. This election is irrevocable.

See title page for effective date.

CHAPTER 822

H.P. 1645 - L.D. 2278

An Act to Amend the Definition of Public Way

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

Sec. 1. 29 MRSA §530, sub-§1, ¶A, as enacted by PL 1977, c. 692, §3, is amended to read:

A. ~~No~~ A resident of the State ~~shall~~ may not operate a motor vehicle on any way or parking area unless licensed by the State to operate that motor vehicle. ~~No~~ A license ~~shall~~ may not be issued until the Secretary of State is satisfied that the applicant is a proper person to receive it. For the purposes of this section, the term "parking area" means any area designed for use as access or parking for patrons and customers of establishments to which the public is invited.

Sec. 2. 29 MRSA §2184, sub-§1, as amended by PL 1987, c. 791, §25, is further amended to read:

1. **Offense; penalty.** ~~No~~ A person may not operate a motor vehicle on any public way or parking area in this State at a time when ~~his~~ that person's license or permit to operate, ~~his~~ right to operate or ~~his~~ right to apply for or obtain a license or permit has been suspended or revoked, except for a revocation as an habitual offender under chapter 18-A or former chapter 18, when that person:

A. Has received written notice of a suspension or revocation pursuant to section 1312-D, subsection 1, or section 2241-H or other written notice from the Secretary of State;

B. Has been orally informed of the suspension or revocation by a law enforcement officer who is aware of the information as a result of records maintained by the Secretary of State, including those obtainable by telecommunications;

C. Has actual knowledge of ~~his~~ the suspension or revocation;

D. Is a person to whom written notice was sent by ordinary mail at the last known address shown by the records maintained by the Secretary of State; or

E. Has failed to appear in court pursuant to any notice or order specified in section 2301-A.

For the purposes of this section, the term "parking area" means any area designed for use as access or parking for patrons and customers of establishments to which the public is invited.

Violation of this section is a Class D crime, provided that, notwithstanding Title 17-A, section 1301, the maximum fine ~~shall be~~ is \$2,500.

See title page for effective date.

CHAPTER 823

S.P. 886 - L.D. 2262

An Act Relating to Pharmacy Services to Nursing Home Residents

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

22 MRSA §1829 is enacted to read:

§1829. Pharmaceutical services in nursing homes

1. Notice. Each nursing home must post a notice in a place within the nursing home where notices for residents are ordinarily posted stating that each resident