

# 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 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  
July 14, 1990

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  
1990

---

**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**

---

6. Restitution. The superintendent may order restitution for any insured or applicant for insurance injured by a violation for which a civil penalty may be assessed pursuant to this section.

See title page for effective date.

## CHAPTER 827

H.P. 1409 - L.D. 1957

### An Act to Clarify the Laws Governing Prelitigation Screening Panels

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

Whereas, questions have arisen regarding how to terminate cases pending before medical malpractice prelitigation screening panels created by Public Law 1985, chapter 804; and

Whereas, questions have also emerged regarding how to commence an action before the panels when the person accused of professional negligence is not available for service; and

Whereas, these questions must be clarified immediately in order to facilitate the movement of numerous cases currently pending before the panels; 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. 24 MRSA §2853, sub-§1**, as amended by PL 1989, c. 361, §§4 and 10, is further amended to read:

**1. Notice of claim; filing fee.** Any person serving a notice of claim of professional negligence pursuant to section 2903 shall also serve a copy ~~upon~~ with return of service on the clerk of the Superior Court in the county where a complaint based on the claim would be filed ~~or was filed~~ within 10 days of serving the notice of claim under section 2903, with ordinary mail notice of service to the person or persons accused of professional negligence in the notice. The notice of claim and all other documents filed with the clerk in the matter during the prelitigation screening process shall be confidential. At the time of filing the notice, the claimant shall also pay to the clerk a filing fee of \$200 per notice filed.

**Sec. 2. 24 MRSA §2853, sub-§7**, as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

**7. Extensions of time.** All requests for extension of time under this subchapter ~~shall~~ must be made to the panel ~~chairman~~ chair. The ~~chairman~~ chair may extend any time period under this subchapter for good cause, except that the chair may not extend any time period that would result in the hearing being held more than one year from the service of notice of claim upon the clerk unless extraordinary cause is shown.

**Sec. 3. 24 MRSA §2853, sub-§8** is enacted to read:

**8. Dismissal.** Cases pending before the panels may be dismissed as follows.

A. Voluntary dismissal will be governed as follows.

(1) Any action before the panel may be dismissed by the plaintiff by filing a notice of dismissal at any time prior to the appointment of the panel or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal, stipulation or order, the dismissal is without prejudice.

(2) Except as provided in subparagraph (1), an action shall not be dismissed on the plaintiff's motion except on order of the chair of the panel and on terms and conditions the chair deems proper.

B. Involuntary dismissal will be governed as follows.

(1) On failure of the plaintiff to prosecute or to comply with rules or any order of the chair, and on motion by the chair or any defendant, after notice to all parties has been given, and in the absence of the showing of good cause, the chair may dismiss the action.

(2) Unless the chair of the panel in its order for dismissal otherwise specifies, a dismissal under this paragraph shall be a dismissal with prejudice. A dismissal with prejudice shall be deemed the equivalent of a finding for the defendant on all issues before the panel.

**Sec. 4. 24 MRSA §2859**, as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

#### §2859. Statute of limitations

The applicable statute of limitations concerning actions for professional negligence ~~shall be~~ is tolled from the date upon which notice of claim is served or filed in Superior Court until 30 days following the day upon which the claimant receives notice of the findings of the panel pursuant to section 2856 ~~or 175 days after service of the notice of claim pursuant to section 2903, whichever first occurs.~~ After the passage of 175 days, the claimant may bring suit if the panel has not rendered a decision, but

~~after the claimant's filing of a complaint all further proceedings in the case shall be stayed until a decision of the panel is made.~~

**Sec. 5. 24 MRSA §2903, sub-§1, ¶A**, as enacted by PL 1985, c. 804, §§14 and 22, is amended to read:

A. Served written notice of claim setting forth, under oath, the professional negligence alleged and the nature and circumstances of the injuries and damages alleged, personally or by registered or certified mail ~~upon~~ on the person accused of professional negligence. Personal service or service by registered or certified mail shall be completed on the person accused within 30 days of filing. In the event service cannot be obtained within 30 days, the plaintiff may file a motion in Superior Court for an extension on a showing of good cause, including the efforts that have been made for service. In addition to granting the extension, the court may provide for alternate service in accordance with the Maine Rules of Civil Procedure, Rule 4;

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

Effective April 10, 1990.

---



---

## CHAPTER 828

H.P. 1541 - L.D. 2126

### An Act to Establish Licensing Requirements and a Cooperative Monitoring Program for Mahogany Quahogs

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

**Sec. 1. 12 MRSA §6731, sub-§1**, as enacted by PL 1981, c. 297, §4, is amended to read:

**1. License required.** ~~It~~ Except as provided in subsection 3, it is unlawful for any person to engage in the activities authorized under this section without a current seahog mahogany quahog license or other license issued under this Part authorizing the activities.

**Sec. 2. 12 MRSA §6731, sub-§2**, as enacted by PL 1981, c. 297, §4, is repealed and the following enacted in its place:

**2. Licensed activities.** The holder of a mahogany quahog license may:

A. Fish for or take mahogany quahogs in any harvesting area indicated on the license;

B. Possess, ship or transport mahogany quahogs within the State; or

C. Sell mahogany quahogs that the holder has taken.

**Sec. 3. 12 MRSA §6731, sub-§§4 and 5** are enacted to read:

**4. Fee.** The fee for a mahogany quahog license is \$53. Fees collected pursuant to this section must be deposited in the General Fund.

**5. Conditions.** Each licensee may participate in the monitoring program established in section 6731-A within the harvest area indicated on the license. The holder of a mahogany quahog license shall comply with all other conditions of licensing established by the commissioner.

**Sec. 4. 12 MRSA §6731-A** is enacted to read:  
**§6731-A. Mahogany quahog monitoring program**

The department shall establish a program to protect the public health by monitoring the levels of paralytic shellfish toxin in mahogany quahogs. The department shall identify harvesting areas, sampling areas and stations needed to achieve this goal in accordance with the following provisions.

**1. Harvesting areas.** The department shall establish harvesting areas that reflect the demand for taking mahogany quahogs by harvesters from the various regions of the State and the relative location of mahogany quahog beds.

**2. Industry groups.** For each harvesting area the department shall establish a volunteer industry-based group to select mahogany quahog harvesters to collect samples and transport department personnel to and from sampling areas. Each group shall select and notify the department of the mahogany quahog harvesters who have volunteered for each month's sampling duty in the harvesting area.

**3. Sampling.** The department shall schedule all sampling runs. A department observer shall be on board each vessel engaged in the sampling activity. The department shall notify the harvester in advance as to the time, location and number of samples to be collected. In the event weekly collection of samples is not feasible, an alternative sampling date may be established by the department. The department shall test for the presence of paralytic shellfish toxin in the samples.

**4. Rules.** The commissioner may adopt rules, in accordance with the Maine Administrative Procedure Act, necessary to achieve the intent of this section.

See title page for effective date.

---



---