

# 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  
July 14, 1990

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  
1990

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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**

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a period not to exceed one month, whereupon at the expiration of that period the person may reapply for assistance and his the person's eligibility may be redetermined.

**Sec. 5. 22 MRSA §4309, sub-§§1-A and 1-B** are enacted to read:

**1-A. Determination of eligibility; applicant's responsibilities.** Applicants for general assistance are responsible for providing to the overseer all information necessary to determine eligibility. If further information or documentation is necessary to demonstrate eligibility, the applicant must have the first opportunity to provide the specific information or documentation required by the overseer. When information required by the overseer is unavailable, the overseer must accept alternative available information, which is subject to verification.

**1-B. Determination of eligibility; overseer's responsibilities.** In order to determine an applicant's eligibility for general assistance, the overseer first must seek information and documentation from the applicant. Once the applicant has presented the necessary information, the overseer is responsible for determining eligibility. The overseer may seek verification necessary to determine eligibility. In order to determine eligibility, the overseer may contact sources other than the applicant for verification only with the specific knowledge and consent of the applicant, except that the overseer may examine public records without the applicant's knowledge and consent. Assistance may be denied or terminated if the applicant is unwilling to supply the overseer with necessary information, documentation, or permission to make collateral contacts, or if the overseer can not determine that eligibility exists based on information supplied by the applicant or others.

**Sec. 6. 22 MRSA §4309, sub-§2,** as enacted by PL 1983, c. 577, §1, is amended to read:

**2. Redetermination of eligibility.** The overseer may redetermine a person's eligibility at any time during the period that person is receiving assistance if the overseer is notified of any change in the recipient's circumstances which that may affect the amount of assistance to which the recipient is entitled or which that may make the recipient ineligible, provided that once a determination of eligibility has been made for a specific time period, no a reduction in assistance for that time period may not be made without prior written notice to the recipient with the reasons for the action and an opportunity for the recipient to receive a fair hearing upon the proposed change.

~~The overseer shall seek the facts necessary to establish eligibility first from the applicant. Facts sought from other sources, with the exception of public records, shall be gathered only with the knowledge of the applicant.~~

~~When available information is inconclusive or conflicting regarding a fact which is material and necessary to determine eligibility, the applicant will be advised as to what~~

~~questions remain. To be considered inconclusive or conflicting, the information on the application must be inconsistent with statements made by the applicant, inconsistent with other information on the application or previous applications, or inconsistent with information received by the overseer. Assistance may be denied or terminated if the applicant is unwilling to supply the overseer with necessary verification or permission to make collateral contacts or if the administrator cannot determine that eligibility exists after contact with the applicant or the applicant's collateral contacts.~~

**Sec. 7. 22 MRSA §4323, sub-§3,** as enacted by PL 1983, c. 577, §1, is amended to read:

**3. Departmental assistance.** Whenever the department finds that a person in immediate need of general assistance have has not received that assistance as a result of a municipality's failure to comply with the requirements of this chapter, the department shall, within 24 hours of receiving a request to intervene and after notifying the municipality, grant this assistance in accordance with regulations adopted by it. The expense of that assistance granted, including a reasonable proportion of the state's State's administrative cost as that can be attributed to that assistance, shall be billed by the department to the municipality. Should that bill remain unpaid 30 days after presentation to the municipality, the department shall refer the bill to the Treasurer of State for payment from any taxes, revenue, fines or fees due from the State to the municipality.

A municipality may not be held responsible for reimbursing the department for assistance granted under this subsection if the department failed to intervene within 24 hours of receiving the request to intervene or if the department failed to make a good faith effort, prior to the intervention, to notify the municipality of the department's intention to intervene.

See title page for effective date.

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## CHAPTER 841

H.P. 1386 - L.D. 1916

### An Act to Increase Penalties for Violation of the Pesticide Laws

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

**Sec. 1. 7 MRSA §602,** as amended by PL 1979, c. 731, §19, is further amended to read:

#### §602. Enforcing official

This subchapter shall be is administered by the Commissioner of Agriculture, Food and Rural Resources Board of Pesticides Control, hereinafter referred to as the "commissioner." "board."

**Sec. 2. 7 MRSA §616**, as amended by PL 1977, c. 696, §65, is repealed.

**Sec. 3. 7 MRSA §616-A** is enacted to read:

**§616-A. Penalties**

**1. Informal hearing.** When the staff proposes that the board take action on a possible violation, the board shall notify the alleged violator before discussing the alleged violation. The alleged violator may choose to address the board and may also choose to be represented by legal counsel. This requirement does not constitute and is not subject to the same procedures as an adjudicatory hearing, as defined under the Maine Administrative Procedure Act.

**2. Violations.** Except as provided in subsection 4, a person violating any provisions of this subchapter or Title 22, chapter 258-A or rules adopted pursuant to this subchapter or Title 22, chapter 258-A commits a civil violation for which the following forfeitures may be adjudged:

A. For the first violation, a forfeiture not to exceed \$1,500; and

B. For each subsequent violation within a 4-year period, a forfeiture not to exceed \$4,000.

**3. Continuation.** Each day that the violation continues is considered a separate offense.

**4. Exceptions.** A forfeiture against a private applicator, as defined in Title 22, section 1471-C, may not exceed \$500 for a first violation, or \$1,000 for any subsequent violation within a 4-year period, of:

A. Title 22, section 1471-Q or any rule adopted pursuant to Title 22, section 1471-Q; or

B. Any rule regarding records maintained pursuant to section 606, subsection 2, paragraph G.

**5. Criminal violations.** Any person who intentionally or knowingly violates any provision of this subchapter or Title 22, chapter 258-A, any rules adopted under this subchapter or Title 22, chapter 258-A or any restriction of a registration issued pursuant to this subchapter commits a crime punishable by a fine not to exceed \$7,500 and is subject to imprisonment not to exceed 30 days, or both, for each violation. Prosecution under this subsection is by summons and not by warrant. A prosecution under this subsection is separate from any action pursued under subsections 2 and 4.

**6. Other relief.** Notwithstanding Title 22, section 1471-D, subsections 6 to 8 and in addition to other sanctions provided under this section, the court may order that a violator obtain recertification credits through board-approved meetings or courses as a condition of retaining, maintaining or renewing a certification or license required under Title 22, chapter 258-A.

**7. Considerations.** In setting a penalty under this section, the court shall consider, without limitation:

A. Prior violations by the same party;

B. The degree of harm to the public and the environment;

C. The degree of environmental damage that has not been abated or corrected;

D. The extent to which the violation continued following the board's notice to the violator;

E. The importance of deterring the same person or others from future violations; and

F. The cause and circumstances of the violation, including:

(1) The foreseeability of the violation;

(2) The standard of care exercised by the violator; and

(3) Whether or not the violator reported the incident to the board.

**8. Injunction.** The board may bring an action to enjoin the violation or threatened violation of any provision of this subchapter or any rule made pursuant to this subchapter in a court of competent jurisdiction of the district in which the violation occurs or is about to occur.

**9. No damages from administrative action if probable cause exists.** A court may not allow the recovery of damages from administrative action taken, or for a stop sale, use or removal order, if the court finds that there was probable cause for the administrative action.

**10. Sunset.** Subsections 2 to 5 are repealed on January 1, 1993.

**Sec. 4. 22 MRSA §1471-B, sub-§2**, as amended by PL 1981, c. 632, §1, is further amended to read:

**2. Organization of the board.** The board shall elect its own chairman a chair and such any other officers as it deems determines necessary from among the membership. The board shall meet at the call of the chairman chair or at the request of any 3 members. Four members shall constitute a quorum and, except as otherwise provided in this subsection, any action shall require requires the affirmative vote of the greater of either a majority of those present and voting or at least 2 members. Any action by the board requesting that the Attorney General pursue a court action against an alleged violator of any law or rule requires an affirmative vote by 3 members or a majority of those present and voting, whichever is greater. The chairman chair and the any other officers shall serve in such those capacities for a period of one year following their elections.

**Sec. 5. 22 MRSA §1471-B, sub-§5**, as amended by PL 1979, c. 731, §19, is further amended to read:

**5. Staff.** The board ~~may~~ must establish standards for the delegation of its authority to the director and staff. Any person aggrieved by a decision of the director and staff has a right to a review of the decision by the board. The Commissioner of Agriculture, Food and Rural Resources shall provide the board with administrative services of the department, including assistance in the preparation of the board's budget. ~~He~~ The commissioner may require the board to reimburse the department for these services.

**Sec. 6. 22 MRSA §1471-B, sub-§8** is enacted to read:

**8. Meetings.** The board shall periodically meet in various geographic regions of the State. When considering an enforcement action, the board shall attempt to meet in the geographic region where the alleged violation occurred.

**Sec. 7. 22 MRSA §1471-H**, as enacted by PL 1975, c. 397, §2, is further amended to read:

#### §1471-H. Inspection

~~For the purpose of carrying out the provisions of this chapter~~ Upon presentation of appropriate credentials, the chairman chair or any member of the board or any authorized employee or consultant of the board may enter upon any public or private premises at reasonable times for the purpose of inspecting any equipment, device or apparatus used in applying pesticides; inspecting storage and disposal areas; inspecting or investigating complaints of injury to persons or land from pesticides; observing the use and application of pesticides; sampling pesticides in use or storage; and sampling pesticide residues on crops, foliage, soil, water or elsewhere in the environment. Upon denial of access to the board or its agents, the board or its agents may seek an appropriate search warrant in a court of competent jurisdiction. Notwithstanding other provisions of this section, a board member or any authorized employee or consultant of the board may enter public or private premises without notification if an emergency exists. The need to take a residue sample in a timely manner constitutes an emergency under this section.

**Sec. 8. 22 MRSA §1471-J**, as repealed and replaced by PL 1975, c. 770, §§91 and 92, is amended to read:

#### §1471-J. Penalties

~~Any~~ A person who violates any provision of this chapter or any order, ~~regulation rule~~, decision, certificate or license issued by the board or ~~does~~ commits any act constituting a ground for revocation, except ~~in~~ acts punishable under section 1471-D, subsection 8, paragraphs A and H ~~shall be punished by a fine of not more than \$500 for the first offense, and not less than \$500 for~~

~~each subsequent offense, commits a civil violation subject to the penalties established in Title 7, section 616-A. Each day that any person so operates shall be considered a separate offense.~~

**Sec. 9. 22 MRSA §1471-M, sub-§§5 and 6** are enacted to read:

**5. Disclosure of rights.** When issuing a license, the board shall provide to each licensee a written statement outlining the enforcement process and the process of negotiating agreements in lieu of court action that may occur in the event enforcement action is pursued. The Department of the Attorney General and the Department of Agriculture, Food and Rural Resources shall assist the board in developing an appropriate written statement. The board shall make this information available to all existing licensees within 30 days of the effective date of this section.

**6. Notification.** Whenever the board or its staff investigates a complaint alleging a violation of rules adopted pursuant to Title 7, section 606, subsection 2, paragraph G, the staff shall make all reasonable efforts to notify the alleged violator, if identity is known, prior to collecting samples.

**Sec. 10. 22 MRSA §1471-W, sub-§4**, as enacted by PL 1989, c. 93, §2, is repealed.

See title page for effective date.

## CHAPTER 842

S.P. 926 - L.D. 2337

### An Act Relating to Health Maintenance Organizations

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

**Sec. 1. 24-A MRSA §4202, sub-§§1-A and 1-B** are enacted to read:

**1-A. Capitated basis.** "Capitated basis" means fixed per member per month payment or percentage of premium payment pursuant to which the provider assumes the full risk for the cost of contracted services without regard to the type, value or frequency of services provided. For purposes of this definition, capitated basis includes the cost associated with operating staff model facilities.

**1-B. Carrier.** "Carrier" means a health maintenance organization, an insurer, a nonprofit hospital and medical service corporation, or other entity responsible for the payment of benefits or provision of services under a group contract.

**Sec. 2. 24-A MRSA §4202, sub-§6**, as enacted by PL 1975, c. 503, is repealed.