

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

of America or the federal Department of Transportation; and

C. The Director of the Bureau of Public Improvements ensures that consideration is given to minimizing glare and light trespass.

3. Exceptions. Exceptions from the provisions of this section are permitted only when:

A. Federal laws, rules and regulations take precedence over these provisions; or

B. The Director of the Bureau of Public Improvements determines that there is a compelling safety interest that can not be addressed by any other method.

Sec. 2. 23 MRSA §707 is enacted to read:

§707. Highway lighting

1. Definitions. All definitions in Title 5, section 1768, subsection 1 apply in this section. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commissioner" means the Commissioner of Transportation.

B. "Roadway lighting" means lighting that is specifically intended to illuminate roadways for automobiles but does not mean lighting intended to illuminate roadways only for pedestrian purposes.

2. Permanent outdoor luminaires. A person may not use any state funds to install or replace any permanent outdoor luminaire unless:

A. The luminaire is a full cutoff luminaire when the rated output of the luminaire is greater than 1,800 lumens;

B. The illuminance from a luminaire or a system of luminaires does not exceed the minimum illuminance recommended by the federal Department of Transportation for that purpose;

C. For roadway lighting, the commissioner determines that the purpose of the lighting installation or replacement can not be achieved by any of the following means:

(1) Reduction of the speed limit in the area to be lighted; or

(2) Installation of reflectorized roadway markers, lines, warnings or informational signs; and

D. The commissioner ensures that consideration is given to minimizing glare and light trespass.

3. Exceptions. Exceptions from the provisions of this section are permitted only when:

A. Federal laws, rules and regulations take precedence over these provisions; or

B. The commissioner determines that there is a compelling safety interest that can not be addressed by any other method.

Sec. 3. Rules. By January 1, 1992, the Director of the Bureau of Public Improvements shall adopt rules governing section 1 of this Act. By January 1, 1992, the Commissioner of Transportation shall adopt rules governing section 2 of this Act.

See title page for effective date.

CHAPTER 482

S.P. 598 - L.D. 1583

An Act to Create a Preliminary Injunction for Certain Domestic Relations Cases

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

Sec. 1. 19 MRSA §692 is repealed.

Sec. 2. 19 MRSA §692-A is enacted to read:

§692-A. Preliminary injunction, effect; attachment or trustee process

1. Issue of preliminary injunction. In all actions for divorce, for judicial separation or for spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the court, pursuant to order of the District Court or Superior Court, shall issue a preliminary injunction in the following manner.

A. The preliminary injunction must bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and state the name and address of the plaintiff's attorney. The preliminary injunction may be obtained in blank from the clerk and must be filled out by the plaintiff's attorney. The plaintiff's attorney is responsible for serving this preliminary injunction, along with the summons and complaint, on the defendant.

B. The preliminary injunction must be directed to each party to the action and must contain the following orders:

(1) That each party is enjoined from transferring, encumbering, concealing, selling or otherwise disposing of any property of either or

both of the parties, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court;

(2) That each party is enjoined from imposing any restraint on the personal liberty of the other party or of any natural or adopted child of either or both of the parties; and

(3) That each party is enjoined from voluntarily removing the other party or any child or children of the parties from any policy of health insurance that provides coverage for the other party or the child or children of the parties.

C. The preliminary injunction must include the following statement:

“Warning

This is an official court order. If you disobey this order the court may find you in contempt of court.

This court order is effective until the earliest of the following:

(1) The court revokes or modifies it;

(2) A final divorce judgment or decree of judicial separation is entered; or

(3) The action is dismissed.”

D. The preliminary injunction is effective against the plaintiff upon the commencement of the action and against the defendant upon service of a copy of both the complaint and order in accordance with the Maine Rules of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint to be served. The plaintiff shall cause a copy of the preliminary injunction to be served upon the defendant with a copy of the summons and complaint.

E. The preliminary injunction has the force and effect of an order of a Judge of the Probate Court or District Court or Justice of Superior Court and is enforceable by all remedies made available by law, including contempt of court. The order remains in effect until entry of a final decree, until the case is dismissed or until otherwise ordered by the court.

2. Revocation or modification. A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification.

A. Notwithstanding any law to the contrary, on 7 days' notice to the other party or on shorter notice as the court may order, either party subject to an order may appear and move the dissolution or modification of the order, and in that event the court shall proceed to hear and determine the motion as expeditiously as justice requires.

B. Mediation is not required before a hearing on a motion to revoke or modify a preliminary injunction except as directed by the court.

C. A preliminary injunction:

(1) Does not prejudice the rights of the parties or any child that are to be adjudicated at subsequent hearings in the proceeding and does not limit the power of the court to issue other injunctive relief that may be proper under the circumstances; and

(2) Terminates when:

(i) The court revokes or modifies it;

(ii) A final divorce judgment or decree of judicial separation is entered; or

(iii) The action is dismissed.

3. Remedies. The court may enforce a preliminary injunction issued pursuant to this section:

A. By finding a person who disobeys or resists the injunction in contempt of court;

B. By requiring a person who disobeys or resists the injunction to pay the costs and attorney's fees that the other party incurred to enforce the preliminary injunction; and

C. By appropriate processes as in other actions.

The remedies provided in this subsection for enforcement of a preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other remedy.

4. Mutual order of protection or restraint. Orders issued pursuant to this section do not supersede orders issued pursuant to Title 19, chapter 14.

5. Attachment of property; trustee process. Attachment of real or personal property or on trustee process may be used in connection with an action for divorce, judicial separation or spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse.

6. Application. The injunction authorized in this section does not apply to post-divorce actions.

See title page for effective date.

CHAPTER 483

S.P. 625 - L.D. 1629

An Act Relating to Unavoidable Equipment Malfunctions

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

Sec. 1. **38 MRSA §349, sub-§9** is enacted to read:

9. Unavoidable malfunctions. The commissioner may exempt from civil penalty an air emission or a wastewater discharge in excess of license limitations if the emission or discharge results exclusively from an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any discharge or emission and takes corrective action as soon as possible. There may be no exemption if the malfunction is caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition or preventable equipment breakdown. The burden of proof is on the licensee seeking the exemption under this subsection. In the event of an unavoidable malfunction, the licensee shall notify the commissioner in writing within 48 hours. The commissioner shall annually report to the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters with regard to the exercise of this authority.

Sec. 2. **38 MRSA §414-A, sub-§4** is enacted to read:

4. License conditions affecting bypasses. In fashioning license decisions and conditions, the department shall consider the extent to which operation of the licensed facility will require an allowance for bypass of wastewater from any portion of a treatment facility when necessary for essential maintenance to assure efficient operation of the licensed facility and otherwise subject to applicable effluent limitations and standards. When the applicant demonstrates to the department that, consistent with best practical treatment requirements and other applicable standards, reasonably controlled and infrequent bypasses will be necessary for this purpose, the department may fashion appropriate license allowances and conditions.

Sec. 3. **38 MRSA §590**, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §164, is further amended by adding at the end a new paragraph to read:

In fashioning license decisions and conditions, the department shall consider the extent to which operation of

the licensed facility requires an allowance for excess emissions during cold start-ups and planned shutdowns of the facility, as long as that facility is operated to minimize emissions and is otherwise subject to applicable standards. When the applicant demonstrates to the department that, consistent with best practical treatment requirements and other applicable standards, infrequent emissions are unavoidable during these periods, the department may fashion appropriate license allowances and conditions.

See title page for effective date.

CHAPTER 484

H.P. 1272 - L.D. 1843

An Act to Improve Implementation of the Maine Indian Claims Settlement Laws

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

Sec. 1. **4 MRSA §161, first ¶**, as amended by PL 1987, c. 736, §3, is further amended to read:

The Chief Judge of the District Court may authorize any attorney-at-law, who is duly licensed to practice law in the State, to receive complaints and to issue process for the arrest of persons charged with offenses, to issue search warrants and to endorse certificates of commitment of the mentally ill, all in accordance with law, and to perform all other such acts and duties that are or may be authorized by law. The powers to issue process for the arrest of persons charged with offenses and to issue search warrants extend to offenses subject to the exclusive jurisdiction of the Passamaquoddy Tribe or the Penobscot Nation under the terms of Title 30, section 6209. That attorney shall may be known as a justice of the peace.

Sec. 2. **4 MRSA §165**, as amended by PL 1975, c. 430, §6, is further amended to read:

§165. Criminal jurisdiction; fines, penalties and costs paid over

The District Court ~~shall have~~ has jurisdiction, and, except as provided in Title 29, section 2302, concurrent jurisdiction with the Superior Court, of all crimes and offenses including violations of any statute or bylaw of a town, village corporation or local health officer, or breaches of the peace, not punishable by imprisonment in the State Prison, to issue process with respect to any violation over which the Passamaquoddy Tribe or the Penobscot Nation exercises exclusive jurisdiction under Title 30, section 6209 and over complaints for desertion and nonsupport or nonsupport of dependents where either the spouse, dependent or the respondent resides and may for such crimes and offenses impose any of the fines or sentences provided by law to be imposed therefor. All fines, penalties and costs imposed by such courts paid to the jailer after commitment