

# 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  
OCTOBER 9, 1991

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  
1991

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

**AS PASSED AT THE**  
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**1991**

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

See title page for effective date.

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## 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.

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## 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

of a respondent ~~shall~~ must be paid over by ~~him~~ the respon-  
dent monthly.

**Sec. 3. 5 MRSA §4573, sub-§4**, as amended by PL 1991, c. 99, §11, is further amended to read:

**4. Discharge of or refusal to hire employee with physical or mental disability.** Nothing in this Act prohibits an employer from refusing to hire or discharging an employee with physical or mental disability, or subjects an employer to any legal liability resulting from the refusing to employ or the discharge of an employee with physical or mental disability, where the employee, because of the physical or mental disability, is unable to perform the duties or perform those duties in a manner ~~which~~ that would not endanger the health or safety of the employee or the health or safety of others or to be at, remain or go to or from the place where the duties of employment are to be performed; or

**Sec. 4. 5 MRSA §4573, sub-§5** is enacted to read:

**5. Federal Indian policy.** Nothing in this Act may be construed to prohibit any employment policy or action that is permitted under 42 United States Code, Section 2000e-2(i) (1982) of the federal Equal Employment Opportunity Act governing employment of Indians.

**Sec. 5. 15 MRSA §55**, as amended by PL 1987, c. 736, §20, is further amended to read:

**§55. Search warrants; issuance by district judge or justice of the peace**

A judge of the District Court or a justice of the peace shall issue search warrants for any place in the State for such purposes as the Constitution of the United States and the Constitution of Maine permit, including with respect to any violation over which the Passamaquoddy Tribe or the Penobscot Nation exercises exclusive jurisdiction under Title 30, section 6209. The evidence presented to the magistrate in support of the search warrant may consist of affidavits and other evidence under oath or affirmation ~~which~~ that is capable of being reduced to a record for purposes of review. The Supreme Judicial Court shall by rule provide the procedure of the application for and issuance of search warrants; provided, that where no procedure is specified, the judge or justice of the peace shall proceed in any reasonable manner ~~which~~ that will allow the issuance of a search warrant for any constitutional purpose.

**Sec. 6. 15 MRSA §702**, as amended by PL 1987, c. 736, §21, is further amended to read:

**§702. Justices, judges and justices of the peace may issue processes**

The Justices of the Supreme Judicial Court and of the Superior Court, Judges of the District Court and justices of the peace may issue processes for the arrest of

persons charged with offenses. For purposes of this section and section 706, full faith and credit must be given to offenses subject to the exclusive jurisdiction of the Passamaquoddy Tribe or the Penobscot Nation under the terms of Title 30, section 6209.

**Sec. 7. 15 MRSA §706, 2nd ¶**, as amended by PL 1987, c. 736, §23, is further amended to read:

When a complaint charging a person with the commission of an offense, or a duly authenticated arrest warrant issued by the Tribal Court of the Passamaquoddy Tribe or the Penobscot Nation, is made presented to any Judge of the District Court, to a justice of the peace or to any other officer of the District Court authorized to issue process ~~charging a person with the commission of an offense, such~~ the judge, justice of the peace or other officer shall issue a warrant in the name of the District Court for the arrest of such person, in ~~such~~ that form and under ~~such~~ the circumstances ~~as that~~ the Supreme Judicial Court ~~shall~~ by rule ~~provide~~ provides. ~~Such~~ The justice of the peace or other officer ~~shall~~ does not have authority to preside at any trial, and ~~neither~~ shall ~~may not~~ appear as counsel in any criminal case in which ~~he~~ that officer has heard the complaint. A clerk of the District Court may accept a guilty plea upon payment of fines as set by the judge.

**Sec. 8. 30 MRSA §6209, sub-§2**, as enacted by PL 1979, c. 732, §§1 and 31, is amended to read:

**2. Definitions of crimes; tribal procedures.** In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the respective tribe or nation ~~shall be~~ is deemed to be enforcing tribal law, ~~provided, however, the~~ The definitions of the criminal offenses and the juvenile crimes; and the punishments applicable ~~thereto, to those~~ criminal offenses and juvenile crimes over which the respective tribe or nation has exclusive jurisdiction under this section, ~~shall be~~ are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purpose of this section ~~shall be~~ are governed by any and all federal statutes, including but without limitation the provisions of the United States Code, Title 25, sections 1301 -- 03 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

**Sec. 9. Effective date.** That portion of this Act that amends the Maine Revised Statutes, Title 30, section 6209, subsection 2 is not effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification from the Governor of the Penobscot Nation and the Penobscot Reservation Tribal Council that the Penobscot Nation has agreed to the provisions of that portion of this Act that amends Title 30, section 6209, subsection 2 and written certification from the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of that portion of this Act that amends Title 30, section 6209, subsection 2 pursuant

to 25 United States Code, Section 1725(e)(1), copies of which must be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives, except that in no event does this Act become effective until 90 days after the adjournment of the Legislature.

See title page for effective date, unless otherwise indicated.

## CHAPTER 485

### S.P. 594 - L.D. 1579

#### An Act to Limit Major Third-party Payor Status to Governmental Payors and Make Other Technical Changes in the Laws Affecting Hospital Financing

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

**Sec. 1. 22 MRSA §304-A, sub-§3-A**, as enacted by PL 1989, c. 919, §6 and affected by §18, is repealed and the following enacted in its place:

**3-A. Hospital capital expenditures.** The obligation, by or on behalf of a hospital, of any capital expenditure of \$1,000,000 or more, except that:

A. A capital expenditure for the purpose of acquiring major medical equipment is reviewable only to the extent provided in subsection 2; and

B. Any transfer of ownership of a hospital is reviewable.

**Sec. 2. 22 MRSA §304-D, sub-§1, ¶A**, as enacted by PL 1985, c. 661, §2, is amended to read:

A. The offering or development of any new health services involving:

(1) No capital expenditure or a capital expenditure of less than \$300,000; and

(2) Third-year annual operating costs of ~~at least the expenditure minimum for operating costs, but~~ less than \$250,000; ~~or.~~

**Sec. 3. 22 MRSA §382, sub-§§9 and 10**, as enacted by PL 1983, c. 579, §10, are repealed.

**Sec. 4. 22 MRSA §386, sub-§7**, as enacted by PL 1983, c. 579, §10, is amended to read:

**7. Audits.** The commission may, during normal business hours and upon reasonable notification, audit, examine and inspect any records of any health care facility to the extent that the activities are necessary to carry out its responsibilities. To the extent feasible, the commission shall

avoid duplication of audit activities regularly performed by ~~major 3rd-party payors.~~

**Sec. 5. 22 MRSA §396, sub-§3**, as repealed and replaced by PL 1989, c. 588, Pt. A, §9, is amended to read:

**3. Average revenue per case payment system.** The commission shall establish an average revenue per case payment system.

The per case system ~~shall~~ must have ~~2~~ 3 components.

A. The commission shall establish and approve limits on the average revenue per case mix adjusted in-patient admission, exclusive of the capital-related revenues subject to the component established under paragraph C.

B. For payment years beginning or deemed to begin on or after October 1, 1992, the commission shall regulate outpatient services by setting the rate per unit of service by department, exclusive of the capital-related revenues subject to the component established under paragraph C. For payment years beginning or deemed to begin before October 1, 1992, the commission shall establish revenue limits for outpatient services using methods consistent with those used in setting gross patient service revenue limits for payment years beginning prior to October 1, 1990, except that the capital-related revenues subject to the component established under paragraph C must be excluded. Nothing in this paragraph prohibits the commission from refining or modifying the method of adjusting for outpatient volume.

C. The commission shall establish and approve a separate gross patient service revenue limit component for those revenues necessary to provide a reasonable opportunity for each hospital to recover its total allowance for facilities and equipment as determined under section 396-D, subsection 3. This component must limit total revenues rather than revenues per admission or unit of service.

D. For payment years beginning before October 1, 1992, the commission may combine all or part of the component established under paragraph C with the component established under paragraph B.

**Sec. 6. 22 MRSA §396-D, sub-§1**, as amended by PL 1989, c. 588, Pt. A, §10, is further amended to read:

**1. Economic trend factor.** In determining payment year financial requirements, the commission shall include an adjustment for the projected impact of inflation on the prices paid by hospitals for the goods and services required to provide patient care. In order to measure and project the impact of inflation, the commission shall establish and use the following data: