

# 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**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FIFTEENTH LEGISLATURE**

**1991**

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B. Money in the fund must be disbursed by the administrator in accordance with allocations approved by the Legislature to legal service providers.

2. Administration. The Supreme Judicial Court, or a person or organization designated by the court, is the administrator and shall administer the fund. The administrator shall report at least annually to the Legislature on the previous year's income and expenditures.

3. Contribution. The Supreme Judicial Court may establish procedures to encourage all attorneys at law licensed to practice in this State to contribute annually a reasonable sum to the fund, which procedures may include automatic contributions as part of a registration or license fee that an individual may avoid by written objection. All fees collected under this subsection must be deposited into the fund on a quarterly calendar basis.

4. Other funds. The fund may receive money from any source, including grants, gifts, bequests and donations. Funds appropriated and money received for the benefit of the fund must be deposited to the fund.

5. Allocation. Each year, the administrator shall allocate from the fund as follows.

A. From funds received as contributions under subsection 3, the administrator shall first allocate to the Volunteer Lawyers Project, as organized and operated by Pine Tree Legal Assistance, Inc. and the Maine Bar Foundation, an amount not less than \$26,500.

B. The administrator shall allocate any funds received as contributions under subsection 3 not allocated under paragraph A and all other funds as follows:

(1) To Pine Tree Legal Assistance, Inc., 60%;

(2) To the Bureau of Elder and Adult Services, Legal Services for the Elderly, 35%; and

(3) To the Legal Aid Clinic of the University of Maine School of Law, 5%.

See title page for effective date.

## CHAPTER 504

H.P. 783 - L.D. 1115

### An Act Establishing Procedures for Notice of Proposed Zoning Changes

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

**Sec. 1. 30-A MRSA §4352, sub-§8**, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

**8. Conditional and contract rezoning.** A zoning ordinance may include provisions for conditional or contract zoning. All rezoning under this subsection must:

A. Be consistent with the local growth management program adopted under this chapter;

B. Establish rezoned areas which that are consistent with the existing and permitted uses within the original zones; and

C. Only include conditions and restrictions which that relate to the physical development or operation of the property.

The municipal reviewing authority shall conduct a public hearing before any property is rezoned under this subsection. Notice of this hearing shall must be posted in the municipal office at least 14 days before the public hearing. Notice shall must also be published at least 2 times in a newspaper having general circulation in the municipality. The date of the first publication must be at least 7 days before the hearing. Notice shall must also be sent to the owner or owners of the property to be rezoned and to the owners of all property abutting the property to be rezoned at the owners' last known addresses. This notice shall must contain a copy of the proposed conditions and restrictions with a map indicating the property to be rezoned.

**Sec. 2. 30-A MRSA §4352, sub-§9** is enacted to read:

**9. Notice and hearing in rezoning.** Before any property is rezoned, the municipal reviewing authority or the municipal officers shall conduct a public hearing as required by subsection 1. Notice of this hearing must:

A. Be posted in the municipal office at least 14 days before the public hearing;

B. Be published at least 2 times in a newspaper having general circulation in the municipality, the date of the first publication must be at least 7 days before the hearing;

C. For each parcel in and abutting the area to be rezoned, be mailed at least 14 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. A municipality shall maintain a list of names and addresses of those persons to whom a notice is mailed under this paragraph. A notice must be sent under this paragraph only if the rezoning is a change of use that permits industrial, commercial or retail development in a zone where such uses were previously prohibited or that prohibits all such uses in a zone where

previously permitted. Notice under this paragraph is not required for any other type of proposed zoning ordinance, including overlay zoning ordinances or any type of zoning ordinances required under section 4343, subsection 1-B; and

D. Contain a copy of a map indicating the property to be rezoned.

Failure of an appellant to receive a notice sent by a municipality in accordance with paragraph C does not invalidate an ordinance or any provision of an ordinance; however, any person entitled to receive a notice of a zone change under paragraph C who does not receive such a notice may appeal the decision of the municipality to adopt the zoning ordinance to the Superior Court within 30 days after the adoption of the zoning ordinance. The Superior Court may invalidate a zoning ordinance or any provision of a zoning ordinance if the appellant demonstrates that the appellant was entitled to receive a notice under paragraph C, that the municipality failed to send the notice as required, that the appellant had no knowledge of the proposed zoning change and that the appellant was materially prejudiced by that lack of knowledge.

See title page for effective date.

## CHAPTER 505

### H.P. 943 - L.D. 1365

#### An Act Concerning Extension of the Notice of Claim Period and Inclusion of Affirmative Defense Consideration in Medical Malpractice Proceedings

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. 827, §1, is repealed and the following enacted in its place:

**1. Notice of claim.** A person may commence an action for professional negligence by:

A. Serving a written notice of claim, setting forth, under oath, the professional negligence alleged and the nature and circumstances of the injuries and damages alleged, on the person accused of professional negligence. The notice of claim must be filed with the Superior Court within 20 days after completion of service; or

B. Filing a written notice of claim, setting forth, under oath, the professional negligence alleged and the nature and circumstances of the injuries and damages alleged, with the Superior Court. The claimant must serve the notice of claim on the person accused of professional negligence. The return of service must

be filed with the court within 90 days after filing the notice of claim.

Service must be made in accordance with the Maine Rules of Civil Procedure, Rule 4.

**Sec. 2. 24 MRSA §2853, sub-§§1-A and 1-B** are enacted to read:

**1-A. Confidentiality.** The notice of claim and all other documents filed with the court in the action for professional negligence during the prelitigation screening process are confidential.

**1-B. Fee.** At the time of filing notice of claim with the court, the claimant shall pay to the clerk a filing fee of \$200 per notice filed.

**Sec. 3. 24 MRSA §2853, sub-§5**, as amended by PL 1989, c. 361, §§6 and 10, is further amended to read:

**5. Lawsuits.** The pretrial screening may be bypassed if all parties agree upon a resolution of the claim by lawsuit. All parties to a claim may, by written agreement, submit a claim to the binding determination of the panel, either prior to or after the commencement of a lawsuit. Both parties may agree to bypass the panel and commence a lawsuit for any reason, or may request that certain preliminary legal affirmative defenses or issues be litigated prior to submission of the case to the panel. The panel has no jurisdiction to hear or decide, absent the agreement of the parties, dispositive legal affirmative defenses, except: compliance with practice parameters or risk management protocols adopted under section 2973 if the defendant is a participant in the medical liability demonstration project established under subchapter IX and intends to introduce evidence of compliance at trial; and comparative negligence. The panel chair may require the parties to litigate, by motion, dispositive legal affirmative defenses in the Superior Court prior to submission of the case to the panel. Any such defense, as well as any motion relating to discovery that the panel chair has chosen not to rule on may be presented, by motion, in Superior Court without the necessity of a complaint having first been filed.

**Sec. 4. 24 MRSA §2853, sub-§7**, as amended by PL 1989, c. 827, §2, is further amended to read:

**7. Extensions of time.** All requests for extension of time under this subchapter must be made to the panel chair. The 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 filing of notice of claim upon the clerk unless extraordinary good cause is shown.

**Sec. 5. 24 MRSA §2855, sub-§1, ¶A-1** is enacted to read: