

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.

J.S. McCarthy Company
Augusta, Maine
1991

PUBLIC LAWS
OF THE
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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Sec. 1. 24 MRSA §2853, sub-§1, as amended by PL 1989, c. 827, §1, is repealed and the following enacted in its place: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:

A-1. If the defendant is a participant in the medical liability demonstration project established under subchapter IX and has raised as an affirmative defense compliance with the practice parameters or risk management protocols adopted under section 2973, whether the defendant complied with an applicable parameter or protocol establishing the applicable standard of care;

Sec. 6. 24 MRSA §2903, sub-§1, ¶A, as amended by PL 1989, c. 827, §5, is further amended to read:

~~A. Served and filed 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 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 in accordance with section 2853;~~

See title page for effective date.

CHAPTER 506

S.P. 606 - L.D. 1610

An Act to Remove Sunset Provisions on Laws Relating to the Labeling of Produce, Potato Variety Labeling and Blueberry Theft

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

Whereas, current laws that require country of origin labeling on fresh produce and labeling of produce treated with post-harvest treatments are due to be repealed on July 1, 1991; and

Whereas, current law that provides for a potato variety labeling program is due to be repealed on July 1, 1991; and

Whereas, continuance of these laws is essential to consumer knowledge and consumer choice; and

Whereas, current law that provides appropriate penalties for theft of blueberries is due to be repealed on July 1, 1991; and

Whereas, this law is essential to deter blueberry theft this summer; 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. 7 MRSA §530, sub-§4, as enacted by PL 1989, c. 527, §1, is amended to read:

4. Educational program. ~~The~~ Subject to available funding, the department shall institute an educational program designed to inform the general public about this section. This program shall must include, but not be limited to, dissemination of information about the countries and produce affected and the pesticides, residues and known and potential adverse health effects of those pesticides. This dissemination shall must be made by at least the following:

A. Brochures to be made available to consumers through retail outlets; and

B. Media coverage, such as public service announcements, press releases and press conferences.

Sec. 2. 7 MRSA §530, sub-§7, as enacted by PL 1989, c. 527, §1, is repealed.

Sec. 3. 7 MRSA §1033, sub-§2, ¶I, as enacted by PL 1989, c. 459, §2, is amended to read:

I. To promote, in cooperation with the commissioner, a voluntary program of variety labeling for Maine bags and other consumer packs of potatoes. ~~This paragraph is repealed July 1, 1991.~~

Sec. 4. 7 MRSA §1034-A, sub-§4, as enacted by PL 1989, c. 459, §3, is repealed.

Sec. 5. 22 MRSA §2157, sub-§14, as enacted by PL 1989, c. 339, §§1 and 2, is amended to read:

14. Post-harvest treatments. If it is fresh produce that is sold or offered for sale at a retail outlet, whether or not it is packaged or in a container, and has been treated with a post-harvest treatment, without meeting the requirements in paragraphs ~~A, B and~~ to C.

For purposes of this section, "post-harvest treatment" means a treatment added or applied to fresh produce after harvest and identified by rule as a post-harvest treatment and waxes that contain one or more post-harvest treatments.

A. The owner or manager of a retail outlet shall ensure that one conspicuous sign is displayed that ~~shall read~~ reads: "Produce in this store may have been treated after harvest with one or more post-harvest treatments.";