

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION

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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

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Sec. 1. 8 MRSA §372, sub-§2, ¶I, as amended by PL 1989, c. 879, §§1 and 2 and affected by §4, is repealed and the following enacted in its place:

I. Carry on a continuous study and investigation of the lotteries throughout the State and the operation and administration of similar laws that may be in effect in other states or countries.

Sec. 2. 17 MRSA §311, sub-§1, as amended by PL 1991, c. 426, §1, is further amended to read:

1. Beano. "Beano" means a specific kind of group game of chance, regardless of whether such a game is characterized by another name. Wherever the term "beano" is used, the word "bingo" or any other word used to characterize such a game may be interchanged. In "beano," each participant is given or sold one or more tally cards, so-called, each of which contains preprinted numbers or letters and may or may not be arranged in vertical or horizontal rows. The participant covers or marks the numbers or letters as objects similarly numbered or lettered are drawn from a receptacle and the winner or winners are determined by the sequence in which those objects are drawn. The manner in which the winner is determined must be clearly announced or displayed before any game is begun. Until July 1, 1994, a game described in this subsection is "beano" and a licensee may conduct such a game regardless of whether the manner of determining the winner is specifically described as a permissible manner of determining the winner in rules adopted by the Chief of State Police.

Sec. 3. 17 MRSA §331, sub-§8-A is enacted to read:

8-A. Special exempt raffles; prizes from \$10,000 to \$75,000. The following rules apply to special exempt raffles licensed under this subsection.

A. The Chief of the State Police may issue one special exempt raffle license per year to any organization, department or class eligible to hold a raffle under subsection 6 without obtaining a license. The special exempt raffle license entitles the licensee to hold one raffle in which the holder of a winning chance receives something of value worth more than \$10,000 but not more than \$75,000. Section 341 does not apply to raffles licensed under this section.

B. The Chief of the State Police may not issue a license under this subsection to hold a raffle in which the holder of a winning chance receives a cash prize worth more than \$10,000.

C. All tickets sold pursuant to a special exempt raffle license must be purchased from a licensed distributor or licensed printer. Tickets must be sequentially numbered and have printed on their faces the following information: the name of the special exempt raffle licensee; a description of the prize or prizes; the price of the ticket; and the date, time and place of the drawing. Any organization, department or class listed in subsection 6 that conducts a raffle under section 331-A shall retain all unsold raffle tickets for 6 months after the raffle drawing and make those tickets available for inspection at the request of the Chief of the State Police.

D. The Chief of the State Police may issue only one special exempt raffle license per year, either under this subsection or subsection 7, to the same organization, department or class listed in subsection 6.

Sec. 4. PL 1989, c. 879, §4 is repealed.

Sec. 5. Effective date. Sections 1 and 4 of this Act take effect June 30, 1992.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective April 3, 1992, unless otherwise indicated.

CHAPTER 797

H.P. 1698 - L.D. 2378

An Act to Eliminate Mandatory Minimum Sentences

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

Sec. 1. 14 MRSA §7559 is repealed and the following enacted in its place:

§7559. Imprisonment for nonpayment

Failure to pay a penalty imposed under section 7556 or 7557 is a Class E crime.

Sec. 2. 17 MRSA §1603 is amended to read:

§1603. Uttering fraudulent receipts

Whoever fraudulently makes or utters a receipt or other written evidence of the delivery or deposit of any grain, flour, pork, wool or other goods, wares or merchandise in any warehouse, mill, store or other building, when the quantity specified therein had not, in fact, been delivered or deposited in such building; or so makes or utters any receipt or other written evidence of the delivery or deposit with ~~him that person~~ of any bonds or other securities or evidences of debt, when the same have not, in fact, been so delivered and deposited, ~~shall be punished by imprisonment for not less than one year nor more than 10 years~~ commits a Class B crime.

Sec. 3. 17 MRSA §§1751 and 1754 are amended to read:

§1751. Fraudulent destruction of vessels

Whoever in any county willfully casts away, burns, sinks or otherwise destroys a vessel, with intent to injure or defraud any owner thereof, the owner of any property on board, or any insurer of either, ~~shall be punished by imprisonment for any term of not less than 5 years~~ commits a Class A crime. If ~~he that person~~ lades, equips or fits out any vessel, or aids in so doing, intending that the ~~same shall~~ vessel must be destroyed in the manner and with the intent aforesaid, ~~he shall that person must~~ be punished by a fine of not more than \$5,000 or by imprisonment for not more than 20 years.

§1754. Aiding sailors to desert

Whoever entices or persuades or attempts to entice or persuade, or aids, assists or attempts to aid or assist, a member of the crew of any vessel arriving in or about to sail from a port in this State to leave or desert such vessel before the expiration of ~~his the crew member's~~ term of service therein ~~shall be punished by a fine of not more than \$100, and by imprisonment for not less than 30 days nor more than 6 months~~ commits a Class E crime. District Courts shall have original jurisdiction in all cases arising under this section.

Sec. 4. 17 MRSA §§2742 and 2744 are amended to read:

§2742. — penalties

Whoever keeps or maintains such nuisance ~~shall be punished by a fine of not less than \$200 nor more than \$1,000, and in addition thereto by imprisonment for not less than 60 days nor more than 11 months, and in default of payment of said fine shall be imprisoned for an additional term of not less than 60 days nor more than 11 months~~ commits a Class E crime. Default in payment of a fine imposed under this section is a separate Class E crime.

§2744. Liability of building owner

Whoever knowingly lets any building or tenement owned by ~~him that person~~, or under ~~his that person's~~ control, for any purpose named in section 2741, or knowingly permits the same or part thereof to be so used, or who, after being notified in writing of such illegal use by an officer or citizen of the county in which the building or tenement is located, omits to take all proper measures either to abate said nuisance or, failing therein, to eject therefrom the person or persons maintaining such nuisance ~~is guilty of aiding in the maintenance of a nuisance and shall be punished by a fine of not less than \$200 nor more than \$1,000, and in addition thereto by imprisonment for not less than 60 days nor more than 11 months, and in default of payment of said fine shall be imprisoned for an additional term of not less than 60 days nor more than 11 months~~ aids in the maintenance of a nuisance, which is a Class E crime. Default in payment of a fine imposed under this section is a separate Class E crime.

Sec. 5. 19 MRSA §661 is amended to read:

§661. False swearing as perjury

Whoever falsely and corruptly swears or affirms to any facts required by this chapter ~~is guilty of~~ commits perjury ~~and shall be punished by imprisonment for not less than 2 years nor more than 10 years under Title 17-A, section 451.~~

Sec. 6. 22 MRSA §47, as amended by PL 1987, c. 774, §1, is further amended to read:

§47. Penalties and jurisdiction; certificate of commissioner as evidence

Whoever hinders, obstructs or interferes with any officer, inspector or duly authorized agent of the department while in the performance of ~~his the officer's, inspector's or agent's~~ duties ~~shall be punished by a fine of not less than \$5 nor more than \$50, or by imprisonment for not less than 10 days nor more than 30 days~~ commits a Class E crime. Any person who violates any order, rule or regulation of the department made for the protection of life or health under law ~~shall be punished by a fine of not less than \$20 nor more than \$200, for each offense~~ commits a Class E crime unless otherwise provided in this Title. Whoever violates any provision of this Title or willfully fails, neglects or refuses to perform any of the duties imposed upon ~~him that person~~ by this Title ~~shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months~~ commits a Class E crime, unless specific penalties are elsewhere provided for. Any certificate of the commissioner in regard to the records of the department ~~shall be~~ is admissible in evidence in all prosecutions under this Title.

Sec. 7. 23 MRSA §6023, as enacted by PL 1987, c. 141, Pt. A, §4, is amended to read:

§6023. Injuring fences or turning animals into railroad enclosure

Whoever takes down or intentionally injures any fence erected to protect the line of any railroad or turns any horse, cattle or other animal upon or within the enclosure of that railroad ~~shall be punished by a fine of not less than \$10 nor more than \$100 or by imprisonment for not less than 10 days nor more than 6 months~~ commits a Class E crime.

Sec. 8. 23 MRSA §§7007 and 7010, as enacted by PL 1987, c. 141, Pt. A, §4, are amended to read:

§7007. Penalty for being on track or bridge or entering track with team

Whoever, without right, stands or walks on a railroad track or bridge or passes over such a bridge except by railroad conveyance forfeits not less than \$5 nor more than \$20, to be recovered by complaint. Whoever, without right, enters upon any railroad track with any team, or any vehicle however propelled or drives any team or propels any vehicle upon any railroad track ~~shall be punished by fine of not less than \$50 or by imprisonment for not less than 30 days~~ commits a Class E crime.

§7010. Changing switch or lights

Whoever, without authority, alters, changes or in any manner interferes with any safety switch or switch lights on any railroad ~~shall be punished by a fine of not less than \$100 or by imprisonment for not less than 60 days~~ commits a Class E crime.

Sec. 9. 24-A MRSA §424, sub-§2, as enacted by PL 1969, c. 132, §11, is amended to read:

2. Any director, officer, agent or employee of any insurer who subscribes to, makes or concurs in making or publishing, any annual or other statement required by law, knowing the same to contain any material statement ~~which that is false, shall be punished by a fine of not more than \$5,000 or by imprisonment for not less than one year, or by both~~ commits a Class D crime.

Sec. 10. 24-A MRSA §4138, last ¶, as enacted by PL 1969, c. 132, §1, is amended to read:

Any person who violates any provision of this section or knowingly receives any compensation or commission by or in consequence of such violation, ~~shall upon conviction be punished by a fine not less than \$100 nor more than \$500, or by imprisonment in the county jail not less than 30 days nor more than 11 months, or both fine and imprisonment~~ commits a Class E crime and shall ~~is in addition, be~~ liable for a civil penalty in the amount of 3 times the sum received by such violator as compen-

sation or commission, which penalty may be sued for and recovered by any person or society aggrieved for ~~his or its~~ that person's or society's own use and benefit in accordance with the provisions of civil practice.

Sec. 11. 24-A MRSA §4143, first ¶, as enacted by PL 1969, c. 132, §1, is amended to read:

Any person who willfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society ~~shall upon conviction be fined not less than \$100 nor more than \$500 or imprisonment in the county jail not less than 30 days nor more than 11 months, or both~~ commits a Class E crime.

Sec. 12. 25 MRSA §2435 is amended to read:

§2435. Kindling fire with intent to injure another

Whoever with intent to injure another causes a fire to be kindled ~~on his own or another's land~~, whereby the property of any other person is injured or destroyed, ~~shall be punished by a fine of not less than \$20 nor more than \$1,000, or by imprisonment for not less than 3 months nor more than 3 years~~ commits a Class D crime.

Sec. 13. 28-A MRSA §2081, sub-§3, as repealed and replaced by PL 1989, c. 293, §4, is amended to read:

3. Penalties. Any person who violates subsection 1, paragraph A or B, commits a Class D crime. Any person who violates subsection 1, paragraph C, commits a Class E crime. In the case of a person who has one previous conviction of a violation of subsection 1, paragraph A or B, within a 6-year period, the fine ~~shall may not be not~~ less than \$500, which penalty ~~shall may~~ not be suspended. In the case of a person who has 2 or more previous convictions of a violation of subsection 1, paragraph A or B, within a 6-year period, the fine ~~shall may not be not~~ less than \$1,000 ~~and the sentence shall include a period of incarceration of not less than 6 months, which penalty shall not be suspended.~~ In the case of a person who has no previous conviction of subsection 1, paragraph A or B, within a 6-year period, the fine ~~shall may~~ not be less than \$500, which penalty ~~shall may~~ not be suspended if that person is convicted of a violation of subsection 1, paragraph A or B, involving a minor less than 14 years old.

Sec. 14. 32 MRSA §§1093 and 1094, as enacted by PL 1967, c. 544, §80, are amended to read:

§1093. Fraudulent sale or alteration of diplomas

Whoever sells or offers to sell a diploma conferring a dental degree or a certificate granted pursuant to the laws of this State, or who procures such certificate or diploma with intent that it ~~shall~~ be used as evidence of the right to practice dentistry by a person other than the one upon whom the diploma or certificate was conferred,

or who with fraudulent intent alters such diploma or certificate, or uses or attempts to use the same when altered, or whoever attempts to bribe a member of the board by the offer or use of money or other pecuniary reward or by other undue influence shall be punished by a fine of not less than \$200 nor more than \$500, or by imprisonment for not less than 30 days nor more than 60 days, or by both commits a Class E crime. A subsequent conviction shall be punished by the maximum penalties prescribed in this section.

§1094. Penalties

Whoever violates any provision of this chapter, for the violation of which no penalty has been prescribed, shall be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment for not less than 10 days nor more than 30 days, or by both commits a Class E crime. A subsequent conviction shall be punished by the maximum penalties prescribed in this section. The several prosecuting officers of this State, on notice from any member of the board, shall institute prosecutions for offenses under this chapter.

Sec. 15. 32 MRSA §2106, as amended by PL 1973, c. 567, §20, is further amended to read:

§2106. Violations; penalties

It shall be is a misdemeanor crime for any person, including any corporation, association or individual to:

1. Fraudulent diploma or record. Sell or fraudulently obtain or furnish any nursing diploma, license, renewal or record or aid or abet therein; or

2. Fraudulent license. Practice nursing as defined by this chapter under cover of any diploma, license or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation; or

3. Practice without license. Practice professional nursing or practical nursing as defined by this chapter unless duly licensed to do so under this chapter; or

4. Implying license. Use in connection with his or her the person's name any designation tending to imply that he or she the person is a licensed registered nurse or a licensed practical nurse unless duly licensed so to practice under this chapter; or

5. License suspended or revoked. Practice professional nursing or practical nursing during the time his or her the person's license issued under this chapter shall be is suspended or revoked; or

6. Violation of chapter. Otherwise violate any provisions of this chapter.

Such misdemeanor shall be punishable by a fine of not more than \$100 for a first offense, or by imprison-

ment of not more than 10 days. Each subsequent offense shall be punishable by a fine of not more than \$200, or by imprisonment of not less than 10 days nor more than 30 days, or by both. A person who violates this section commits a Class E crime.

The District Court shall have has original and concurrent jurisdiction with the Superior Court over all prosecutions for violation of this chapter. All fines and forfeitures collected under this chapter shall must accrue to the county where the offense is prosecuted. It shall be is necessary to prove in any prosecution or hearing under this section only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct, in order to constitute a violation. Such misdemeanors shall be crimes are prosecuted by the district attorney.

Sec. 16. 32 MRSA §2598, as enacted by PL 1973, c. 374, §1, is amended to read:

§2598. Penalty

Any person who attempts to practice osteopathic medicine without proper license or certificate or who holds himself or herself out to the public under circumstances as to induce induces the belief that said person is legally engaged in the practice of osteopathic medicine without having fully complied with all requirements of law shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment for not less than 30 days, nor for not more than 11 months, or by both such fine and imprisonment commits a Class E crime; provided that nothing in this chapter shall may be construed to prohibit any lawfully qualified osteopathic physician in any other state meeting a registered osteopathic physician in this State for consultation.

Sec. 17. 32 MRSA §3270, 2nd ¶, as enacted by PL 1971, c. 591, §1, is amended to read:

Whoever, not being duly registered by said board, practices medicine or surgery or any branch thereof, or holds himself out purports to practice medicine or surgery or any branch thereof in any of the ways aforesaid, or who uses the title "Doctor" or the letters "Dr." or the letters "M.D." in connection with his that person's name, contrary to this section, shall be punished by a fine of not less than \$100 nor more than \$500 for each offense, or by imprisonment for 3 months, or by both commits a Class E crime. The prefixing of the title "Doctor" or the letters "Dr." or the appending of the letters "M.D." by any person to his that person's name or the use of the title of doctor or physician in any way by any person not duly registered as described shall be is prima facie evidence that said person is holding himself out purporting to practice medicine or surgery contrary to this section, provided that nothing contained in this section shall prevent prevents any person who has received the doctor's degree from any reputable college or university, other

than the degree of "Doctor of Medicine" from prefixing the letters "Dr." to his that person's name, if ~~he~~ that person is not engaged, and does not engage, in the practice of medicine or surgery or the treatment of any disease or human ailment. Nothing in this chapter ~~shall~~ may be so construed as to affect or prevent the practice of the religious tenets of any church in the ministrations to the sick or suffering by mental or spiritual means.

Sec. 18. 37-B MRSA §§1005 and 1006, as enacted by PL 1983, c. 460, §3, are amended to read:

§1005. Intentional injury or interference with property

Whoever intentionally destroys, impairs, injures, interferes or tampers with real or personal property with reasonable grounds to believe that ~~their~~ that person's act will hinder, delay or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, or with preparations and plans for civil emergency preparedness, or with the execution thereof under chapter 13 ~~is guilty of~~ commits a Class B crime. ~~If that person acts with the intent to hinder, delay or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, or with preparations and plans for civil emergency preparedness, or with the execution thereof under chapter 13, the minimum sentence shall be imprisonment for not less than one year.~~

§1006. Intentional defects

Whoever intentionally makes or causes to be made or omits to note on inspection any defect in any article or thing with reasonable grounds to believe that the article or thing is intended to be used in connection with the preparation of the United States or any of the states for defense or for war, or for the prosecution of war by the United States, or with preparations and plans for civil emergency preparedness, or with the execution of those preparations and plans under chapter 13, or that the article or thing is one of a number of similar articles or things, some of which are intended so to be used, ~~is guilty of~~ commits a Class B crime. ~~If that person acts or fails to act with the intent to hinder, delay or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, or with preparations and plans for civil emergency preparedness, or with the execution of those preparations or plans under chapter 13, the minimum sentence shall be imprisonment for not less than one year.~~

See title page for effective date.

CHAPTER 798

S.P. 930 - L.D. 2385

An Act to Amend the Process for Collecting for Costs of Services of the Maine Labor Relations Board, the Panel of Mediators and the State Board of Arbitration and Conciliation

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

Whereas, the 90-day period will not terminate until at least July 15, 1992; and

Whereas, the Maine Labor Relations Board is faced with an immediate problem of being unable to make timely payments for services provided by members of the board, the Panel of Mediators and the State Board of Arbitration and Conciliation and clarification is necessary as to whether the Executive Director of the Maine Labor Relations Board is authorized to estimate and collect the costs of these services from the parties using them prior to delivery of the services; 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. 13 MRSA §1958-B, sub-§1, as amended by PL 1991, c. 622, Pt. O, §1, is further amended to read:

1. Voluntary mediation. At any time prior to the commencement of required mediation under subsection 2, a handler and a qualified association may mutually agree to obtain or may unilaterally obtain the services of a mediator. Regardless whether mediation is sought mutually or unilaterally, both parties shall participate in mediation in good faith. The parties must use the services of the State's Panel of Mediators for mediation and must share all costs of mediation equally. Costs of mediation; and any applicable state cost allocation program charges must be paid into a special fund administered by the Maine Labor Relations Board. The Executive Director of the Maine Labor Relations Board shall authorize mediation services and expenditures incurred by members of the panel. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of