

# MAINE STATE LEGISLATURE

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

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

**THIRD SPECIAL SESSION**

October 1, 1992 to October 6, 1992

**FOURTH SPECIAL SESSION**

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

**FIRST REGULAR SESSION**

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR

FIRST REGULAR SESSION

NON-EMERGENCY LAWS IS

OCTOBER 13, 1993

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  
1993

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

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**1993**

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nal mortgage is filed and send to the mortgagee by registered mail, return receipt requested, a written notice limiting the amount of future advances, other than advances made pursuant to a commitment as defined in Title 11, section 9-105, subsection 1, paragraph K, secured by that mortgage to not less than the amount actually advanced as of the end of the 3rd business day following the delivery of the notice.

B. A person who, subsequent to the recording of such a mortgage, acquires any rights in or liens upon the mortgaged real estate and has perfected those rights by all required filings or recordings may send to the mortgagee by registered mail, return receipt requested, a written notice stating that future advances made by the mortgagee after the end of the 3rd business day following receipt of the notice are junior to that person's rights in or liens upon the mortgaged real estate, except that the written notice does not affect the priority of advances made pursuant to a real property construction or improvement financing agreement as defined in the United States Internal Revenue Code of 1986, Section 6323(c) and any amendments as of December 31, 1991.

For purposes of this subsection, an advance made pursuant to a credit card or a negotiable instrument drawn against a credit account secured by a mortgage is deemed to have been made on the earlier of the date on the negotiable instrument or credit card voucher and the date the debtor received value in exchange for the negotiable instrument or credit card voucher.

6. Amount of future advances in excess of mortgage amount. Until repaid, the amount by which a future advance causes the aggregate amount of all debts or obligations secured at any one time, exclusive of protective advances, to exceed the total amount stated in the mortgage does not have priority over persons who, subsequent to the recording of the mortgage, acquire any rights in or liens upon the mortgaged real estate. The mortgagee may credit repayments first to amounts exceeding the total amount of secured debts or obligations stated in the mortgage.

7. Application. This section applies to mortgages that are recorded on or after January 1, 1994.

See title page for effective date

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## CHAPTER 230

H.P. 986 - L.D. 1317

**An Act to Amend the Laws Governing the Recording of Deeds**

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

**Sec. 1. 33 MRSA §651-A**, as amended by PL 1983, c. 530, §8, is further amended to read:

**§651-A. Grantor, grantee names; form of indexing**

No instrument executed on or after October 1, 1983, may be accepted by a register of deeds for recording unless beneath the signature of the grantor, grantee, if it appears on the instrument, and the person taking the acknowledgement, the name of each signer is typed or printed. Names used for indexing ~~shall~~ **must** be indexed as typed or printed under each signature. A name may be typed or printed under a signature at the registry of deeds by the person bringing the instrument to the registry, **provided** as long as the name is typed or printed on the instrument prior to the certification on the instrument under section 653 of the time when the instrument was received. The register of deeds may return documents that are not legible for recording and archival purposes.

See title page for effective date.

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## CHAPTER 231

H.P. 944 - L.D. 1273

**An Act to Amend the Maine Pharmacy Act**

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

**Sec. 1. 32 MRSA §13791**, as enacted by PL 1987, c. 710, §5, is amended to read:

**§13791. Return of drugs**

A drug or pharmaceutical preparation ~~which~~ **that** has been dispensed on prescription ~~shall not~~ **may** be returned to pharmacy stock after being in possession and under the control of another person and ~~shall not~~ **may** be dispensed again, ~~unless if~~ **unless** if the drug is packaged in an unbroken, sealed container or ~~unless if~~ **unless** if, in the case of a hospital, a licensed pharmacist determines that the drug has not been impaired.

See title page for effective date.

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## CHAPTER 232

H.P. 903 - L.D. 1218

**An Act Related to Unavoidable Equipment Malfunctions**

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

**Sec. 1. 38 MRSA §349, sub-§9**, as enacted by PL 1991, c. 483, §1, is amended 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 occurs during start-up or shutdown or 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**, as enacted by PL 1991, c. 483, §2, is amended 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 shall fashion appropriate license allowances and conditions.

**Sec. 3. 38 MRSA §590, sub-§5**, as enacted by PL 1991, c. 658, §1, is amended to read:

**5. License conditions for start-up, shutdown and malfunctions.** In making 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 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 de-

partment may shall establish appropriate license allowances and conditions.

See title page for effective date.

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## CHAPTER 233

### H.P. 993 - L.D. 1335

#### An Act to Bring the State Tipping Wage up to the Federal Tipping Wage

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

**Sec. 1. 26 MRSA §664, 2nd ¶**, as amended by PL 1987, c. 738, §2, is repealed and the following enacted in its place:

An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

**Sec. 2. Posting of notice.** Notwithstanding the Maine Revised Statutes, Title 26, section 701, the Bureau of Labor Standards is not required to modify and redistribute the printed notice required by that section to reflect the changes in the law resulting from this Act. The Bureau of Labor Standards shall modify the printed notice to reflect the changes contained in this Act when it becomes necessary, due to an insufficient supply of such notices or future changes in the law, to print additional notices.

**Sec. 3. Effective date.** This Act takes effect October 1, 1993.

Effective October 1, 1993

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## CHAPTER 234

### H.P. 857 - L.D. 1162

#### An Act to Help Clarify the Application of the Maine Rules of Criminal Procedure to Probation Revocation Proceedings, Including the Appeal Process