

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.

J.S. McCarthy Company
Augusta, Maine
1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

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.

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

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

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

Sec. 1. 17-A MRSA §1206, sub-§§2 to 4, as repealed and replaced by PL 1977, c. 510, §73, are amended to read:

2. The hearing on the motion to revoke probation shall must be held in the court ~~which that~~ sentenced the person to probation in either the county or division in which the person resides or is incarcerated, unless the court orders otherwise in the interests of justice. A motion for revocation of probation need not be heard by the justice or judge who originally imposed probation, but may be heard by any justice or judge.

3. If a hearing is ordered, the person on probation shall must be notified, and the court may issue a summons or may issue a warrant for ~~his the person's~~ arrest and order ~~him the person~~ committed, with or without bail, pending the hearing.

4. If a hearing is held, the person on probation shall must be afforded the opportunity to confront and cross-examine witnesses against ~~him the person~~, to present evidence on ~~his that person's~~ own behalf and to be represented by counsel. If ~~he cannot the person on probation can not~~ afford counsel, the court shall appoint counsel for ~~him the person~~. Assignment of counsel, to the extent not covered in this subsection, and withdrawal of counsel must be in accordance with the Maine Rules of Criminal Procedure.

Sec. 2. 17-A MRSA §1206, sub-§7, as amended by PL 1983, c. 450, §7, is further amended to read:

7. If a person on probation is convicted of a new crime during the period of probation, the court may sentence ~~him that person~~ for ~~such the~~ crime and revoke probation. If the person has been sentenced for the new crime and probation revocation proceedings are subsequently commenced, the court ~~which that~~ conducts the revocation hearing may revoke probation. Sentencing for the multiple offenses ~~shall be is~~ subject to section 1256. If concurrent terms of imprisonment are imposed and the terms do not commence on the same date, any time served as a result of the new conviction shall must be deducted from the time the person is required to serve as a result of the probation revocation.

Sec. 3. 17-A MRSA §1207, as amended by PL 1981, c. 238, §9, is further amended to read:

§1207. Review

Review of a revocation of probation pursuant to section 1206 shall must be by appeal. In a probation revocation proceeding in the District Court, a person whose probation is revoked may appeal, as under Title 15, section 2111 and the applicable Maine Rules of Crimi-

nal Procedure, to the Superior Court and if unsuccessful to the Supreme Judicial Court, sitting as the Law Court, as under Title 15, section 2115 and the applicable Maine Rules of Criminal Procedure. In a probation revocation proceeding in the Superior Court, a person whose probation is revoked may appeal, as under Title 15, section 2115 and the applicable Maine Rules of Criminal Procedure, to the Supreme Judicial Court, sitting as the Law Court. Assignment and withdrawal of counsel must be in accordance with the Maine Rules of Criminal Procedure.

See title page for effective date.

CHAPTER 235

H.P. 793 - L.D. 1079

An Act to Increase the Fee for Taking Fingerprints and Palm Prints of Citizens upon Request

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

Sec. 1. 25 MRSA §1549, first ¶, as repealed and replaced by PL 1977, c. 78, §159, is amended to read:

The State Police, the sheriffs and the chiefs of police in each of the cities and towns ~~shall have the authority to~~ may take or cause to be taken, and upon payment of a ~~\$1 \$3~~ fee, shall take or cause to be taken, the fingerprints or palm prints, or fingerprints and palm prints, of any person who ~~shall request requests~~ that ~~his the person's~~ fingerprints or palm prints, or fingerprints and palm prints, be taken.

See title page for effective date.

CHAPTER 236

H.P. 900 - L.D. 1215

An Act Concerning Repairs Performed by Rental Tenants

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

Sec. 1. 14 MRSA §6026, sub-§2, as enacted by PL 1981, c. 428, §10, is amended to read:

2. **Tenant action if landlord fails to act.** If a landlord fails to maintain a rental unit in compliance with the standards of subsection 1 and the reasonable cost of compliance is less than ~~\$100 \$250~~ or an amount equal to 1/2 the monthly rent, whichever is greater, the tenant shall notify the landlord in writing of ~~his the tenant's~~ intention