

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

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

A. In the event service to any subscriber is interrupted for 24 or more consecutive hours, it will, upon request, grant that subscriber a pro rata credit or rebate.

Sec. 2. 30-A MRSA §3010, sub-§6-B, as amended by PL 1993, c. 513, §1, is further amended to read:

6-B. Late fees. A cable television system operator may not charge a late fee or other penalty or charge for late payment of any bill that exceeds 1.5% per month of the amount due in the bill. ~~If a late fee is charged on more than one level of service, it must be calculated on the total dollar amount of such services, and may not be calculated separately on each service to which it applies and then cumulated. If the bill includes separate charges for different levels of service, a late fee or other penalty or charge must be calculated on the total amount overdue for all levels of service and may not be calculated separately for each level of service.~~ A payment is not late under this subsection until at least 30 days after those services to which the late fee applies have been received by the consumer.

Sec. 3. Introduction of legislation authorized. The joint standing committee of the Legislature having jurisdiction over utilities matters may report out legislation to the First Regular Session or the Second Regular Session of the 117th Legislature that the committee determines necessary to implement the regulatory authority granted to the State under rules adopted by the Federal Communications Commission pursuant to the federal Cable Television Consumer Protection and Competition Act of 1992.

See title page for effective date.

CHAPTER 677

H.P. 1238 - L.D. 1665

An Act Regarding Access to Property via Abandoned Roads

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

Sec. 1. 14 MRSA §6663 is enacted to read:

§6663. Claim of prescriptive easement over abandoned way

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Abandoned way" means a public way abandoned before September 3, 1965.

B. "Landlocked property" means real property that abuts an abandoned way and over which there is no established title to a way of access by land.

C. "Owner of landlocked property" means a person who holds title to the property as the result of a conveyance of the property to that person by gift, devise or the operation of the intestacy laws.

2. Expedited procedure. An owner of landlocked property claiming a prescriptive easement over an abandoned way under this chapter may initiate a proceeding under this section. Except as otherwise provided in this subsection, if the owner of landlocked property claiming a prescriptive easement initiates a proceeding under this section, the expedited procedures of this section must be completed before a party to the action may bring further action under other applicable provisions of this chapter. The parties to the proceeding initiated under this section may agree to forego completion of the action under this section. Any other claims by the parties regarding access to the landlocked property are not diminished by the operation of this section but actions to enforce those claims are stayed until a proceeding under this section is complete.

3. Notice of claim. Notice of a claim under this section must be provided as follows.

A. An owner of landlocked property initiating a proceeding under this section must commence the action by filing a notice claiming a prescriptive easement at the office of the clerk of the District Court or the Superior Court in the district or county, respectively, in which the property against which the claim is asserted is located. The clerk shall provide the claimant with a form on which to place the notice. The claimant shall pay the clerk a filing fee established by the court to cover the court's costs of the action.

B. The claimant shall serve a copy of the notice on the owner of the property against which the claimant asserts a prescriptive easement. The claimant shall serve this notice by certified mail, return receipt requested, within 10 days of the filing of the notice with the court clerk. Within 20 days of receipt of the notice the recipient shall file an appearance with the court clerk.

4. Referee and hearing. The court shall appoint a referee to hear the claim. The claimant or a representative of the claimant shall present the case before the referee. The respondent or a representative of the respondent shall make a responding presentation. The referee shall make all procedural rulings.

and the referee's rulings are final. The Maine Rules of Evidence do not apply to the proceeding. The referee shall admit evidence if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. To prevail, the claimant must prove the existence of a prescriptive easement by a preponderance of the evidence.

5. Settlement. The referee shall attempt to mediate the differences between the parties before making findings.

6. Failure to appear. If the referee finds that a party failed to appear without good cause at a hearing, the referee shall report that finding to the court. The court may impose an appropriate sanction, including dismissing the action, rendering a decree or judgment by default or assessing fees and costs.

7. Finding. Findings under this subsection must be provided as follows.

A. Within 30 days of the conclusion of the hearing, the referee shall make a finding as to the existence of a prescriptive easement and a description of a prescriptive easement found to exist. The referee shall notify the parties in writing by certified mail, return receipt requested, of the finding within 7 days of the date of the finding.

B. If an action is not initiated under subsection 8, the referee shall cause the referee's finding to be filed in the registry of deeds in the county in which is located the property against which the prescriptive easement was claimed. The referee shall make this filing within 7 days of the expiration of the time period for instituting an action under subsection 8.

8. Subsequent proceeding. A subsequent proceeding under this subsection must be in accordance with the following.

A. Within 30 days of a party's receipt of a finding under subsection 7, paragraph A, the party may institute a court proceeding on the matter to which the finding pertains under other applicable provisions of this chapter. The finding of the referee must be admitted into that proceeding.

B. If the party that initiated the proceeding under this subsection does not prevail, and the court's finding is in agreement with the referee's finding under subsection 7, the court shall order the party that does not prevail to pay all fees and costs of the prevailing party incurred under subsections 2 to 7 and this subsection.

See title page for effective date.

CHAPTER 678

H.P. 1329 - L.D. 1792

An Act to Authorize Use of Civil Administrative Penalty Authority and Administrative Order Authority Against Violation of Federal and State Drinking Water Laws, Regulations and Rules

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

Whereas, current law does not authorize the Department of Human Services to impose civil administrative penalties or administrative orders against public water systems found in violation of federal and state drinking water laws, regulations and rules; and

Whereas, the Administrator of the United States Environmental Protection Agency has reviewed the Maine Drinking Water Program and found it to have inadequate authority to enforce the federal Safe Drinking Water Act; and

Whereas, the Administrator of the United States Environmental Protection Agency has previously initiated procedures to withdraw primary enforcement authority, or primacy, originally delegated to the Department of Human Services in 1977. One condition placed on the retention is the enactment of appropriate administrative penalty and administrative order authority; and

Whereas, the revocation of primacy and implementation of the Safe Drinking Water Act regulations by the Federal Government would be more costly to the State, to public water systems and to individuals served by them. Additional costs incurred through the loss of primacy could include construction of additional treatment facilities, increased monitoring requirements, federal enforcement actions and the need to obtain technical and administrative services and assistance from consultants and contractors rather than from the agency having primacy; 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. 22 MRSA §2601, sub-§§1-A, 1-B, 1-C, 1-D, 4-A and 9-A are enacted to read: