

# 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.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1993**

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:**

**1-A. Administrative compliance order.** "Administrative compliance order" means an administrative order that is issued by the commissioner against a public water system in violation of state drinking water laws, regulations or rules.

**1-B. Administrative consent order.** "Administrative consent order" means an order issued by the commissioner pursuant to a bilateral agreement between the commissioner and a public water system in violation of state drinking water laws, regulations or rules.

**1-C. Administrative penalty.** "Administrative penalty" means a fine imposed by the commissioner against a public water system in violation of state drinking water laws, regulations or rules.

**1-D. Administrative remedy.** "Administrative remedy" means an administrative compliance order, an administrative consent order or an administrative penalty.

**4-A. Notice of noncompliance.** "Notice of noncompliance" means a formal written complaint or a notice of violation of state drinking water laws, regulations or rules.

**9-A. Violation.** "Violation" means noncompliance with state drinking water laws, regulations and rules regardless of whether that noncompliance is intentional, negligent or otherwise.

**Sec. 2. 22 MRSA §2617, sub-§1,** as amended by PL 1993, c. 410, Pt. DD, §3, is further amended to read:

**1. Violation of section 2616.** ~~Any person willfully violating section 2616 or subchapter VII, on conviction, must be punished by a fine of not more than \$500. A person that violates section 2616 or subchapter VII commits a civil violation for which a penalty not to exceed \$5,000 may be adjudged. Each day of operation in violation of section 2616 or subchapter VII constitutes a separate offense violation.~~ The District Court or the Superior Court has jurisdiction over violations of section 2616 or subchapter VII.

**Sec. 3. 22 MRSA §2617, sub-§3** is enacted to read:

**3. Administrative remedies.** The commissioner may seek and impose administrative remedies as provided in subchapter II-A for a violation of state drinking water laws, regulations and rules.

**Sec. 4. 22 MRSA c. 601, sub-c. II-A** is enacted to read:

## SUBCHAPTER II-A

### SAFE DRINKING WATER ADMINISTRATIVE ENFORCEMENT

#### §2618. General authorization

In accordance with the process outlined in section 2619, the commissioner may impose one or more of the administrative remedies provided in this subchapter when a violation of this chapter, or rules adopted pursuant to this chapter, occurs or if the commissioner determines that administrative remedies are necessary and appropriate to ensure compliance with state drinking water laws, regulations and rules.

#### §2619. Administrative remedy process

**1. Notice of noncompliance.** Except as otherwise provided in this subchapter, the commissioner shall issue a notice of noncompliance to a public water system within 30 days after the commissioner has determined that the public water system has committed a violation. The notice of noncompliance must contain the following information:

- A. Identification of the violation;
- B. A compliance deadline; and
- C. The possible consequences of noncompliance if the requirements of the notice are not met by the specified date.

**2. Administrative consent order.** If the public water system has failed to correct the violation as specified in the notice of noncompliance by the date specified in the notice, the commissioner and the public water system shall make a good faith effort to agree upon a settlement and, if agreement is reached, the commissioner shall issue an administrative consent order. An administrative consent order may not be changed without written consent by all parties to the agreement. An administrative consent order must include, but is not limited to, compliance schedules and milestones. If the public water system and the commissioner fail to reach an agreement, the commissioner may issue an administrative compliance order under subsection 3 or may refer the case to the Attorney General for relief under section 2617.

**3. Administrative compliance order.** If the public water system and the commissioner fail to reach an agreement under subsection 2, the commissioner may issue an administrative compliance order to the public water system to correct the violation in a manner and within a time frame that the commissioner determines appropriate. The administrative compliance order must contain a schedule that the

public water system must follow to bring it into compliance. An administrative compliance order may include an administrative penalty that takes effect as early as the day that the parties ceased negotiating in good faith under subsection 2. The administrative compliance order must specify an administrative penalty that takes effect if the public water system fails to comply with the administrative compliance order.

**4. Administrative penalty.** If the public water system and the commissioner fail to reach an agreement under subsection 2, the commissioner may impose an administrative penalty that takes effect as early as the day that the parties ceased negotiating in good faith under subsection 2. If the public water system fails to comply with an administrative compliance order by the deadline in the compliance schedule, an administrative penalty may be assessed. A notice of penalty assessment may be issued in conjunction with or separate from an administrative compliance order, and must contain the following:

- A. Identification of the violation for which it is issued;
- B. A citation of the law, rule or order being violated;
- C. The amount of the penalty;
- D. Notice of the right to an adjudicatory hearing pursuant to the Maine Administrative Procedure Act; and
- E. The procedure for paying the penalty.

#### **§2620. Provisions governing administrative penalties**

Administrative penalties imposed under this subchapter are governed by the following provisions.

**1. Maximum penalty.** An administrative penalty may not be greater than \$750 for each violation. Each day that a violation remains uncorrected may be counted as a separate violation.

**2. Schedule of penalties.** The commissioner shall adopt rules in accordance with Title 5, chapter 375 establishing a schedule of administrative penalties. Factors that may be considered include but are not limited to:

- A. The nature and duration of the violation;
- B. The level of assessment necessary to ensure immediate and continued compliance;
- C. Whether steps were taken by the public water system to prevent the violation;

D. Whether steps were taken by the public water system to remediate or mitigate damage resulting from the violation;

E. Whether the public water system has a history of violations;

F. The financial condition of the public water system;

G. Whether or not compliance is less costly than committing the violation;

H. Deterrence of future noncompliance; and

I. The best interest of the public.

**3. Payment of penalty.** Administrative penalties must be paid within 30 days of the issuance of notice of administrative penalty or, if appealed, within 30 days of the appeal decision. The commissioner shall deposit administrative penalties received into the Public Drinking Water Fund established in section 2660-F.

**4. Enforcement.** Further prosecution of a person who fails to pay the full penalty imposed pursuant to this chapter must be referred to the Attorney General for appropriate action. A person who fails to pay the full penalty imposed pursuant to this chapter is liable for all fines and penalties allowed under this subchapter and all costs, interest and fees incurred by the State, including attorney's fees.

#### **§2620-A. Appeals**

Appeal of actions authorized under this section is governed by the following.

**1. Due process generally.** The commissioner shall comply with the Maine Administrative Procedure Act when imposing administrative penalties and issuing administrative compliance orders. A public water system against which an administrative penalty is assessed or an administrative compliance order is issued has a right to a hearing as provided under the Maine Administrative Procedure Act. The decision of a hearing officer is a final agency action subject to review in the Superior Court, as provided in Title 5, chapter 375, subchapter VII.

**2. Effect on penalties.** A public water system has 30 days from the date an administrative penalty is issued against it to pay the full amount of the penalty or to file a request for a hearing with the commissioner. If the public water system waives the right to or fails to request a hearing within 30 days, the administrative penalty is considered final. If a request for a hearing is filed within the 30 days, the following provisions apply.

A. Violations or penalties do not accrue from the date that the public water system files the request for a hearing to the date the hearing officer renders a decision.

B. Notwithstanding paragraph A, if the hearing officer finds that the appeal is frivolous, the violations or penalties accrue throughout the appeal period.

C. If an administrative hearing is held and a penalty is assessed at the conclusion of that hearing, the penalty becomes final 30 days after the decision.

#### **§2620-B. Exception**

Notwithstanding section 2619, if a violation poses a serious risk to public health, the commissioner may issue an administrative compliance order immediately without having issued a notice of non-compliance or having attempted to negotiate an administrative consent order.

#### **§2620-C. Rules**

The commissioner shall adopt rules establishing procedures regarding notice and the issuance, amendment and withdrawal of administrative compliance orders and administrative consent orders.

**Sec. 5. 22 MRSA §2660-C, sub-§4, ¶H,** as enacted by PL 1993, c. 410, Pt. DD, §4, is amended to read:

H. Submit to the department commissioner annually by August 1st a report that must include, but is not limited to, a performance evaluation of the program, including the implementation of administrative remedies, and commission recommendations regarding, but not limited to, administrative remedies, program operations, funding and staffing requirements, funding formulas and fee collection and transfer schedules.

**Sec. 6. 22 MRSA §§2660-D and 2660-F,** as enacted by PL 1993, c. 410, Pt. DD, §4, are amended to read:

#### **§2660-D. Annual work plan on primacy**

Annually, by January 1st, the department commissioner shall submit to the commission a work plan and budget, listing all funding sources including but not limited to appropriations from the General Fund and allocations from the United States Environmental Protection Agency that are used for the purpose of complying with federal requirements for maintaining primacy. The work plan must include goals and objectives relating to the use of administrative reme-

dies that are consistent with other parts of the work plan.

#### **§2660-F. Public Drinking Water Fund**

The Public Drinking Water Fund is established as an interest-bearing dedicated revenue account. All interest earned by the account becomes part of the fund. All fees collected by the ~~department commissioner~~ under this subchapter must be deposited into the fund. Any balance remaining in the fund at the end of the fiscal year does not lapse but is carried forward into subsequent fiscal years. The ~~department commissioner~~ may use the fund only to support the program, including the cost of salaries, benefits, travel, education, technical assistance, capital equipment and other allowable expenses incurred by the program.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 14, 1994.

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## **CHAPTER 679**

**S.P. 616 - L.D. 1714**

### **An Act to Clarify Agency Relationships in Real Estate Transactions**

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

**Sec. 1. 32 MRSA c. 114, sub-c. VII** is enacted to read:

#### **SUBCHAPTER VII**

#### **AGENCY RELATIONSHIPS**

#### **§13271. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Affiliated licensee.** "Affiliated licensee" means a licensee who is authorized to engage in brokerage activity by and on behalf of a brokerage agency.

**2. Appointed agent.** "Appointed agent" means that affiliated licensee who is appointed by the designated broker of the affiliated licensee's real estate brokerage agency to act solely for a client of that brokerage agency to the exclusion of other affiliated licensees of that brokerage agency.