

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

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
1995

regeneration and succession, sufficient to ensure a 75% survival rate; and

(2) The planting of all material results in permanent 90% ground cover.

Vegetative cover used in reclamation must consist of grasses, legumes, herbaceous or woody plants, shrubs, trees or a mixture thereof.

C. All structures, once no longer in productive use, and all access roads, haul roads and other support roads must be reclaimed.

D. All affected lands must be reclaimed within 2 years after final grading.

E. Topsoil that is stripped or removed must be stockpiled for use in reclaiming disturbed land areas.

14. **Blasting.** The applicant must ensure the blasting is conducted in accordance with Title 25, section 2441.

A. The owner or operator shall use sufficient stemming, matting or natural protective cover to prevent flyrock from leaving property owned or under control of the owner or operator, or from entering protected natural resources or natural buffer strips.

B. The maximum allowable airblast at any inhabited building not owned or controlled by the developer may not exceed 129 decibels peak when measured by an instrument having a flat response (+ or - 3 decibels) over the range of 5 to 300 hertz;

C. The maximum allowable airblast at an uninhabited building not owned or controlled by the developer may not exceed 140 decibels peak when measured by an instrument having a flat response (+ or - 3 decibels) over the range of 5 to 300 hertz.

D. The blast site must be at least 2,000 feet away from the nearest building not owned or controlled by the developer.

E. The peak particle velocity may not exceed one inch per second.

The department may not grant a variance for the performance standards of this section.

§490-T. Inspections

The department may periodically inspect a site, examine relevant records of the owner or operator of the quarry, take samples and perform tests necessary

to determine compliance with the provisions of this article.

§480-U. Enforcement and penalties

The department shall administer and enforce the provisions of this article.

1. Stop-work order. The department may order the owner or operator of a quarry that is not operating in compliance with this article to cease operations until the noncompliance is corrected or until the owner or operator of the quarry obtains a permit under article 6.

2. Penalty. A person who violates a provision of this article commits a civil violation and is subject to the penalties established under section 349. Penalties assessed for enforcement actions taken by the State are payable to the State.

§490-V. Repeal

This article is repealed December 31, 1995.

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

Effective June 23, 1995.

CHAPTER 288

S.P. 359 - L.D. 479

An Act to Provide Merchants Greater Recourse to Combat Deceptive and Illegal Practices

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

Sec. 1. 14 MRSA §6071, as amended by PL 1989, c. 502, Pt. D, §8, is further amended to read:

§6071. Civil penalties for bad checks

1. Recovery of costs. In any action against a person who makes, issues or draws any ~~liable for a dishonored check, draft or order for the payment of money which has been dishonored for lack of funds or credit to pay the check, draft or order, or because the maker, issuer or drawer has no account with the drawee,~~ the holder may recover from the maker, issuer or drawer the amount of the check, draft or order, plus the court costs, service costs, collection costs and the processing charges incurred by the holder. ~~The amount of the check, draft or order, plus the enumerated costs, may be recovered only, plus interest at the rate of 12% per annum from the date of dishonor if:~~

A. The holder gives notice pursuant to section 6073 for payment of the check, ~~draft or order~~; and

B. The ~~maker, issuer or drawer~~ person liable fails to tender ~~an amount equal to~~ the amount of the check, ~~draft or order~~, plus bank fees and mailing costs, within 10 days of receiving the notice set forth in section 6073.

2. Attorney's fees. ~~If a judgment is made against a maker, issuer or drawer pursuant to subsection 1, paragraphs A and B and that person fails to make restitution on the date of judgment, the maker, issuer or drawer shall pay to the holder interest at the rate of 12% per annum from the date of dishonor and collection costs not to exceed \$40 or the face amount of the check, whichever is less. In the event of court action, the person liable does not pay the amount of the check, plus costs and interest, before the hearing, then the court may award reasonable attorney's fees to the prevailing party. In addition, the court may award to the holder of the check a civil penalty, not to exceed \$50, to be paid by the person liable for the check.~~

3. Written agreement. ~~Nothing in this chapter may be construed to limit the rights of parties to~~ supersedes the terms of a written agreement between the parties.

4. Check defined. As used in this chapter, "check" means a check, draft or order for the payment of money.

Sec. 2. 14 MRSA §6072, as enacted by PL 1989, c. 357, is repealed.

Sec. 3. 14 MRSA §6073, as enacted by PL 1989, c. 357, is amended to read:

§6073. Notice for nonpayment

The notice ~~shall~~ must be in substantially the following form.

~~"A- Your check, draft or order by you and~~ made payable to in the amount of has not been accepted for payment by which is the drawee bank designated on your check. The check is dated and it is numbered

You are CAUTIONED that unless you pay the amount of this check within 10 days after the date this letter is postmarked, you may have to pay the following additional costs:

- 1. ~~Attorney~~ Attorney's fees;
- 2. ~~Services~~ Service costs;
- 3. Processing charges; ~~and~~

4. Interest; ~~and~~

5. A penalty not to exceed \$50.

You are advised to make payment to at the following address "

Sec. 4. 14 MRSA c. 749 is enacted to read:

CHAPTER 749

CIVIL RECOVERY FOR RETAIL THEFT

§8301. Short title

This chapter may be known and cited as the "Maine Civil Recovery for Retail Theft Act."

§8302. Civil recovery

1. Liability. Any person who unlawfully takes or attempts to take merchandise from a merchant is liable to the merchant in accordance with provisions of this chapter.

2. No limitation. The provisions of this chapter may not be construed to prohibit or limit any other cause of action that a merchant may have against a person who unlawfully takes merchandise from the merchant.

3. Civil recovery. Any person who unlawfully takes or attempts to take merchandise from a merchant is civilly liable to the merchant in an amount consisting of:

A. Damages equal to the retail price of the merchandise if the item is not returned in a merchantable condition; and

B. A civil penalty equal to 3 times the retail price of the merchandise, but not less than \$50 or more than \$500.

4. Written demand. The fact that an action may be brought against an individual as provided in this chapter does not limit the right of a merchant to make a written demand that a person who is liable for damages and penalties under this chapter remit the damages and penalties prior to the commencement of any legal action.

A. If a person to whom demand is made complies with the demand, that person incurs no further civil liability for that specific act of retail theft.

B. Any demand under this section must be accompanied by a copy of this chapter.

5. Criminal prosecution. A criminal prosecution under Title 17-A, chapter 15 is not a prerequisite to an action under this chapter and such a criminal prosecution does not bar civil action. An action under this chapter does not bar a criminal prosecution under Title 17-A, chapter 15.

6. Failure to prosecute. If a merchant files suit to recover damages and penalties pursuant to this chapter, and the merchant fails to appear at a hearing in such proceedings without excuse from the court, the court shall dismiss the suit without prejudice and award costs to the defendant.

7. Fraudulent prosecution. Any person who knowingly uses provisions of this chapter to demand or extract money from a person who is not legally obligated to pay a penalty may be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year or by both.

See title page for effective date.

CHAPTER 289

S.P. 594 - L.D. 1578

An Act to Create the Workers' Compensation Residual Market Deficit Resolution and Recovery Act

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

Whereas, by October 1987, virtually all insurers filed and had approved applications to withdraw from the Maine workers' compensation market, and the market faced complete collapse; and

Whereas, the Legislature convened a special session in October 1987, which ultimately resulted in the enactment of emergency legislation that overhauled the Maine workers' compensation system and included the so-called "Fresh Start" law, the Maine Revised Statutes, Title 24-A, sections 2386 and 2386-A and their predecessor statutes, sections 2366 and 2367. In response to the enactment of the Fresh Start law a core group of major insurers had formally rescinded their withdrawals from the Maine workers' compensation market; and

Whereas, due to various forces beyond the Legislature's control, the Fresh Start law did not resolve many of the major problems at which the statute was aimed; and

Whereas, the Legislature created the Maine Employers Mutual Insurance Company, or "MEMIC," to oversee and operate the workers' compensation

residual market in the State as of January 1, 1993, and workers' compensation rates in this State have decreased in each of the last 2 years, largely due to MEMIC's effectiveness; and

Whereas, the "Fresh Start" statute requires the Superintendent of Insurance to adopt rules establishing a plan of operation for the residual market mechanism to govern the operation of the State's workers' compensation insurance residual market; and

Whereas, the Superintendent of Insurance in bureau rules promulgated the "Plan of Operation for the Workers' Compensation Residual Market Mechanism," pursuant to which a residual market pool was created to collect funds and pay obligations of the residual market mechanism; and

Whereas, the residual market mechanism wrote workers' compensation insurance policies through participating insurers during the period January 1, 1988 to December 31, 1992, ceased writing new business as of December 31, 1992, and now conducts only operations limited to running off business written during that period; and

Whereas, the workers' compensation residual market in the State has generated substantial funding deficits and is projected to experience cash inadequacies that could render the residual market pool incapable of satisfying its obligations as they become due; and

Whereas, disputes concerning the operation of the residual market mechanism and the funding of residual market pool deficits have resulted in extensive and protracted litigation involving the Bureau of Insurance, employer representative groups, the Board of Governors of the residual market pool and many significant workers' compensation insurers in the State; and

Whereas, the current and continued operation of the residual market mechanism under existing law will hamper economic growth and development in the State by placing a substantial and undue financial burden on Maine employers, the residual market pool, the Bureau of Insurance and the former and current workers' compensation insurers, thereby fostering and perpetuating litigation and attendant uncertainty within the State; and

Whereas, a new funding scheme is necessary to enable the residual market pool to satisfy outstanding, ongoing and future obligations and to remove the financial burden and uncertainty attributable to the current and continued operation of the residual market mechanism; and