

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

actual day served at that county correctional facility by:

A. Persons convicted of a Class A, Class B or Class C crime sentenced after March 31, 1987, to serve a term of imprisonment pursuant to Title 17-A, section 1203, subsection 1, or section 1252, subsection 1; and

B. Persons convicted of a Class A, Class B or Class C crime sentenced after December 31, 1988, to serve a term of imprisonment pursuant to Title 17-A, section 1203, subsection 1 or section 1252, subsection 1.

Reimbursement for periods after June 30, 1987 may not be authorized until the reimbursable costs for the operations of the jail are agreed upon by the commissioner and the county commissioners for that county. Reimbursable costs for the operations of the jail must, to the extent practicable, be mutually agreed upon prior to the actual expenditures of funds for those costs. Prior approval of all capital expenditures is required for reimbursement of that expense item. If the commissioner and the county commissioners are unable to agree upon reimbursable costs, they shall jointly select an arbitrator to determine those costs. The arbitrator's decision is final and both the commissioner and the county commissioners are bound by that decision.

The obligation of the Department of Corrections to reimburse counties pursuant to this section may not exceed the actual amount appropriated during fiscal years 1993-94, 1994-95, 1995-96 and 1996-97.

Sec. 2. Effective date. This Act takes effect July 1, 1997.

Effective July 1, 1997.

CHAPTER 450

H.P. 1065 - L.D. 1500

An Act to Reduce Theft in the Forest Products Industry

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

Sec. 1. 14 MRSA §7551-A, as enacted by PL 1983, c. 362, §1, is repealed.

Sec. 2. 14 MRSA §7552, as amended by PL 1989, c. 555, §13, is repealed and the following enacted in its place:

§7552. Injury to lands or property

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

A. "Agricultural product" means crops produced and livestock raised as a result of cultivating the soil and harvesting. Agricultural products include, but are not limited to, vegetables, fruit, forages, grain, nuts, berries, flowers, ornamental plants, nursery crops, milk, dairy products, eggs, domestic livestock and other products in varying degrees of preparation. Agricultural products also include the soil amendments and by-products that are used in cultivation.

B. "Christmas tree" and "evergreen boughs" have the same meanings as provided in Title 12, section 8841.

C. "Forest products" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, evergreen boughs or cones or other seed products.

D. When there is damage to public property, the term "owner" may include a suitable official authorized to act on behalf of the public entity.

For damage to a monument or mark under subsection 2, paragraph C, "owner" may include the entity for whose benefit the monument or mark is maintained.

E. "Professional services" may include:

- (1) The damage estimate of a licensed professional forester;
- (2) A boundary survey;
- (3) A title opinion; and
- (4) Attorney's fees for preparing the claim and bringing a court action.

2. Prohibitions. Without permission of the owner a person may not:

A. Cut down, destroy, damage or carry away any forest product, ornamental or fruit tree, agricultural product, stones, gravel, ore, goods or property of any kind from land not that person's own;

B. Damage or throw down any fence, bar or gate, or leave a gate open, or break glass or do other damage to any structure on property not that person's own; or

C. Disturb, remove or destroy any lawfully established transit point, reference point, stake, plug, hub, guardstake, bench mark, pipe, iron, concrete post, stone post or other monument of any railroad, highway, public utility or other engineering location or survey or any such monument marking the bounds of public or private property.

3. Measure of damages. Paragraphs A and B govern the measurement of damages resulting from a violation of subsection 2.

A. When agricultural or forest products have been destroyed or carried away, the owner's damages may be measured either by the value of the lost products themselves or by the diminution in value of the real estate as a whole resulting from the violation.

B. For lost trees, the owner may claim in lieu of market value the forfeiture amounts in Title 17, section 2510, subsection 2. In addition, the owner's damages may include the costs for regeneration of the stand in accordance with Title 12, section 8869.

4. Damages recoverable. Damages are recoverable as follows.

A. A person who negligently or without fault violates subsection 2 is liable to the owner for 2 times the owner's damages as measured under subsection 3.

B. A person who intentionally or knowingly violates subsection 2 is liable to the owner for 3 times the owner's damages as measured under subsection 3.

5. Costs and fees. In addition to damages, interest and costs, the owner may also recover from the person who violates subsection 2 the reasonable costs of professional services necessary for determining damages and proving the claim, provided that the person first has written notice or actual knowledge that a claim is being asserted.

The amount awarded for professional services may not exceed 50% of the damages recovered pursuant to subsection 4 plus interest on the damages. Interest may be assessed after service of a notice of claim pursuant to section 1602.

6. Offer of settlement. At any time after the violation but more than 10 days before trial begins, the person who violated subsection 2 may make a written offer to settle the owner's claim.

A. For such an offer to be valid, it must by its terms remain open for at least 10 days and the

owner must first be provided with liability and damage information that is:

(1) Available to the person and not reasonably available to the owner; and

(2) Necessary or pertinent to an evaluation of the owner's claim.

B. Notwithstanding the Maine Rules of Civil Procedure, Rule 68, any offer not paid within 10 days of its acceptance is void for purposes of this subsection but may be specifically enforced by the owner, if the owner so elects.

C. If the owner does not accept the offer, the owner may not recover any interest, costs or professional fees incurred following the date of the offer unless the owner later proves that the value of the claim, at the time the offer was made, exceeded the amount of the offer.

7. Issues of fact. The court sitting without a jury shall resolve issues of fact arising under subsections 5 and 6.

Sec. 3. 14 MRSA §7552-A, as repealed and replaced by PL 1977, c. 313, §2, is amended to read:

§7552-A. Land on which 10 acres or more of wood is to be cut

Any person who authorizes the cutting of timber or wood on ~~his~~ the person's own property, when the cutting involves an area of 10 or more acres, shall clearly mark any property lines ~~which~~ that are within 200 feet of the area to be cut. If any such person fails to clearly mark such property lines and if the person or persons who are authorized to cut then cut timber or wood on abutting land without the authorization of the owner of that land, the person who failed to mark ~~his~~ the person's property lines ~~shall be~~ is liable in a civil action, in double damages, to that owner of the abutting land. ~~Such These~~ damages ~~shall be~~ are in addition to any damages to which the owner of the abutting land may be entitled ~~to~~ under section 7552.

Sec. 4. 14 MRSA §§7553, 7554 and 7555 are repealed.

Sec. 5. 17 MRSA §2510, sub-§2, as enacted by PL 1981, c. 355, is amended to read:

2. Forfeitures. The following forfeitures may be adjudged for each tree ~~which~~ over 2 inches in diameter that has been cut or felled:

A. If the tree is no more than 6 inches in diameter, a forfeiture of \$25;

B. If the tree is over 6 and up to 10 inches in diameter, a forfeiture of \$50;

C. If the tree is over 10 and up to 14 inches in diameter, a forfeiture of \$75;

D. If the tree is over 14 and up to 18 inches in diameter, a forfeiture of \$100;

E. If the tree is over 18 and up to 22 inches in diameter, a forfeiture of \$125; and

F. If the tree is greater than 22 inches in diameter, a forfeiture of \$150.

Sec. 6. 17 MRSA §9564, sub-§7, as enacted by PL 1981, c. 43, is amended to read:

7. Damages. Any complaint ~~which~~ that either seeks damages for the wrongful removal of a building or structure or challenges the award of costs must be filed no later than 30 days from the date of the judgment or order ~~which~~ that is the subject of the appeal. The damages ~~which~~ that may be awarded for wrongful demolition are limited to the actual value of the structure at the time of its removal. The provisions of Title 14, section 7552 ~~and section 7555~~ do not apply. If the municipality should prevail, the court may award it its costs in defending any appeal which may include, but are not limited to, reasonable attorney's fees.

See title page for effective date.

CHAPTER 451

S.P. 536 - L.D. 1474

An Act to Establish the Maine Judicial Compensation Commission

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

Sec. 1. 4 MRSA c. 35 is enacted to read:

CHAPTER 35

JUDICIAL COMPENSATION COMMISSION

§1701. Judicial Compensation Commission

1. Commission established. The Judicial Compensation Commission, referred to in this chapter as the "commission," established by Title 5, section 12004-G, subsection 23-A shall study and make recommendations concerning the salary, benefits and retirement to be paid for all justices and judges of the Supreme Judicial Court, the Superior Court, the District Court and the Administrative Court.

2. Members. The commission consists of 3 members selected from among the registered voters of the State; one is appointed by the Governor, one by

the President of the Senate and one by the Speaker of the House. The public official with the power to appoint a member is the person in office on the day that member's term begins. The commission may not contain more than 2 members of the same political party. The initial appointments must be made within 10 days of the effective date of this section.

3. Terms of office. The initial member appointed by the Speaker of the House serves until December 31, 1996. The initial member appointed by the President of the Senate serves until December 31, 1997. The initial member appointed by the Governor serves until December 31, 1998. After the initial appointments, members serve for terms of 4 years, beginning January 1, 1997 for the member appointed by the Speaker of the House, beginning January 1, 1998 for the member appointed by the President of the Senate and beginning January 1, 1999 for the member appointed by the Governor. Members are limited to 2 consecutive terms.

4. Vacancies. A vacancy on the commission is filled promptly for the remainder of the term in the same manner in which the position was originally filled under subsection 2. If a vacancy remains unfilled for more than 90 days, a temporary member of the commission must be appointed by a vote of the remaining commission members to serve with full powers of a commission member. A temporary member of the commission serves until the vacancy is filled by the public official with the power to appoint that member under subsection 2 and this subsection.

5. Prohibition on public service. A member of the commission may not hold any other public office or be an employee or member of any state department, agency, board or commission during the member's tenure on the commission. A violation of this subsection by a member of the commission results in immediate constructive resignation and the resulting vacancy must be filled according to subsection 4.

6. Designation of chair. The members, by majority vote, shall designate a chair from among their number who shall serve for 2 years from the date of election or until a successor is designated by majority vote and assumes the responsibilities.

7. Meeting; quorum; concurrence. The Executive Director of the Legislative Council shall call the first meeting of the commission no later than 5 days after the appointments are made. For all subsequent meetings, the commission shall meet, either in person or by teleconference, on the call of the chair or on the request of at least 2 members. The presence of at least 2 members is required to conduct a meeting. The concurrence of at least 2 members is required for any formal action taken by the commission. The working papers, draft reports and other