

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 1997**

**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**  
**1997**

the voter's address were open to public inspection, that voter's address is not a public record and the registrar shall exclude that voter's address from public inspection. The voter's name, political party affiliation and electoral division remain a public record. The voter's signed statement is also a public record.

**4. Disclosure of address.** A voter's address that is excluded from public inspection pursuant to subsection 3 must be made available for public inspection by:

A. A law enforcement agency, if requested by that agency; or

B. A person identified in a court order, if directed by that order.

See title page for effective date.

## CHAPTER 249

S.P. 144 - L.D. 423

### An Act to Require That Headlights Be on during Inclement Weather

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

**Sec. 1. 29-A MRSA §2067, sub-§1,** as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is repealed and the following enacted in its place:

**1. Display of headlights.** A vehicle located on a way must be equipped with headlights as described in section 1904. The headlights must be illuminated:

A. During the period 1/2 hour after sunset to 1/2 hour before sunrise;

B. At any time when, due to insufficient light or unfavorable atmospheric conditions, including, but not limited to, rain, freezing rain, fog or snow, persons or vehicles on the way are not discernible for a distance of 1,000 feet ahead; and

C. At any time when windshield wipers are in constant use.

This subsection does not apply to a vehicle that is parked or standing off the main traveled portion of the way.

See title page for effective date.

## CHAPTER 250

H.P. 1063 - L.D. 1501

### An Act to Amend the Lobster Laws and Study the Issuance of Lobster and Crab Fishing Licenses Based on Income Derived from Commercial Fishing

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

**Sec. 1. 12 MRSA §6421, sub-§5, ¶A,** as amended by PL 1995, c. 568, §1, is repealed and the following enacted in its place:

A. Possessed a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year;

**Sec. 2. 12 MRSA §6421, sub-§5, ¶B,** as amended by PL 1995, c. 568, §1, is repealed.

**Sec. 3. 12 MRSA §6421, sub-§5, ¶D,** as amended by PL 1995, c. 568, §1, is repealed and the following enacted in its place:

D. Did not possess a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included the previous calendar year; or

**Sec. 4. 12 MRSA §6421, sub-§5, ¶E,** as amended by PL 1995, c. 568, §1, is repealed.

**Sec. 5. 12 MRSA §6421, sub-§5, ¶F,** as amended by PL 1995, c. 568, §1, is further amended to read:

F. Is 65 years of age or older and has held a lobster and crab fishing license; ~~or~~.

**Sec. 6. 12 MRSA §6421, sub-§5, ¶G,** as enacted by PL 1995, c. 568, §1, is repealed.

**Sec. 7. 12 MRSA §6422, sub-§4, ¶¶A and B,** as enacted by PL 1995, c. 468, §4, are amended to read:

A. Documents to the commissioner that the person obtained practical lobster fishing experience as a sternman employed by the holder of a Class II or Class III license issued under section 6421; or

B. Documents to the commissioner that the person obtained practical lobster fishing experience as a holder of a student license issued under section 6421; ~~or~~.

**Sec. 8. 12 MRSA §6422, sub-§4, ¶D**, as enacted by PL 1995, c. 568, §2, is repealed.

**Sec. 9. Report.** The Commissioner of Marine Resources shall, by January 15, 1998, report to the joint standing committee of the Legislature having jurisdiction over marine resource matters on the feasibility of basing categories of lobster and crab fishing licenses on the percentage of income an applicant derives from commercial fishing. The report may include legislation proposed by the commissioner. The report must include an evaluation of methods of determining and reporting the percentage of an applicant's income that is derived from commercial fishing. The joint standing committee of the Legislature having jurisdiction over marine resource matters may report out legislation during the Second Regular Session of the 118th Legislature regarding lobster and crab fishing licenses.

**Sec. 10. Effective date.** Those sections of this Act that affect the Maine Revised Statutes, Title 12, section 6421 take effect January 1, 1998.

See title page for effective date, unless otherwise indicated.

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**CHAPTER 251**

**H.P. 382 - L.D. 527**

**An Act to Strengthen the Mandatory Child Abuse Reporting Laws**

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

**Sec. 1. 22 MRSA §4011, sub-§1**, as amended by PL 1989, c. 819, §2, is further amended to read:

**1. Reasonable cause to suspect.** When, while acting in a professional capacity, an adult who is a medical or osteopathic physician, resident, intern, emergency medical services person, medical examiner, physician's assistant, dentist, dental hygienist, dental assistant, chiropractor, podiatrist, registered or licensed practical nurse, teacher, guidance counselor, school official, social worker, court appointed special advocate or guardian ad litem for the child, homemaker, home health aide, medical or social service worker, psychologist, child care personnel, mental health professional, law enforcement official, state fire inspector, municipal code enforcement official, municipal fire inspector, commercial film and photographic print processor, clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications or chair of a professional

licensing board that has jurisdiction over mandated reporters knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected, that person shall immediately report or cause a report to be made to the department.

A. Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person shall immediately notify either the person in charge of the institution, agency or facility, or a designated agent, who shall then cause a report to be made. The staff may also make a report directly to the department.

B. Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected.

D. When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child, the person shall immediately report or cause a report to be made to the appropriate district attorney's office.

See title page for effective date.

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**CHAPTER 252**

**H.P. 967 - L.D. 1347**

**An Act Regarding Residency and Motor Vehicle Registration**

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

**Sec. 1. 29-A MRSA §514**, as amended by PL 1995, c. 454, §3, is further amended by adding a new 3rd paragraph to read:

In enforcing this section, the Secretary of State may determine whether a minor child of a person required to register a motor vehicle in the State is enrolled in a public school within the State or a person required to register a motor vehicle in this State has declared Maine residency on a form, document or application.

See title page for effective date.

**CHAPTER 253**

H.P. 888 - L.D. 1205

**An Act to Amend Certain Provisions  
Regarding the Presumption of  
Negotiating a Worthless Instrument****Be it enacted by the People of the State of  
Maine as follows:****Sec. 1.** 17-A MRSA §708, sub-§2-A is enacted to read:**2-A.** The following evidentiary provisions apply.

A. It is presumed that the person who issued or negotiated the instrument had no account with the drawee at the time the instrument was issued or negotiated if there is a purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument that states "no account," "account closed" or some other terminology indicating that the instrument was not honored because no account existed.

B. It is presumed that the person who issued or negotiated the instrument had insufficient funds with the drawee at the time the instrument was issued or negotiated if there is a purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument that states "insufficient funds," "NSF" or some other terminology indicating that the instrument was not honored due to lack of funds.

C. The purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying a negotiable instrument is admissible in evidence in any court of the State, unless the defendant requests in writing at least 10 days before trial that the prosecution provide a qualified witness to testify as to why the instrument was not honored.

See title page for effective date.

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**CHAPTER 254**

S.P. 538 - L.D. 1657

**An Act to Establish the Interstate  
Economic Development Commission  
for the Northern New England States****Be it enacted by the People of the State of  
Maine as follows:****Sec. 1.** 5 MRSA c. 557 is enacted to read:**CHAPTER 557****INTERSTATE ECONOMIC DEVELOPMENT  
COMMISSION FOR THE NORTHERN NEW  
ENGLAND STATES****§21301. Commission**

**1. Establishment.** The Interstate Economic Development Commission for the Northern New England States, referred to in this chapter as the "commission," is created to examine and promote economic development throughout the member states set forth in subsection 2.

**2. Member states.** The member states are Maine, New Hampshire and Vermont to the extent that these states have enacted legislation substantially the same as this chapter.

**3. Members.** The commission consists of the following 15 members:

A. The governor of each member state, or the governor's designee;

B. The commissioner of the state department of each member state with jurisdiction over economic development, or the commissioner's designee;

C. Three public members, one appointed by each governor of each member state; and

D. Six legislative members, appointed by the presiding officer of each House of the Legislature of each member state.

**4. Terms.** Members of the commission who are governors, commissioners or legislative members serve during the term of office for which they were elected or appointed. Public members serve 4-year terms. A vacancy must be filled in the same manner as the original appointment.

**5. Chair.** The position of chair rotates among the governors of the member states, or their designees, on an annual basis. Before or at the first meeting of the commission, the governors shall establish the order of rotation.

**6. Compensation.** Members are not entitled to compensation.

**7. Meetings.** The commission shall meet at least 6 times each year.

**§21302. Duties of the commission**

**1. Economic development.** The commission shall gather and review information regarding economic development and methods of enhancing

economic development in member states. The information may be gathered from any source, including the governors' offices and the departments with jurisdiction over economic development of each member state.

**2. Tourism.** The commission shall gather and review information regarding the promotion of tourism and methods of expanding access to travel opportunities among the member states.

**3. Legislation.** The commission may develop and recommend legislation for introduction in each member state that promotes economic development and tourism.

**Sec. 2. Effective date.** This Act takes effect when the Attorney General notifies the Office of the Revisor of Statutes that New Hampshire and Vermont have enacted concurrent legislation establishing the Interstate Economic Development Commission for the Northern New England States. Initial members of the commission must be appointed within 30 days after this Act takes effect. The governors of the member states shall set the date for the first meeting of the commission.

See title page for effective date, unless otherwise indicated.

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**CHAPTER 255**

**H.P. 199 - L.D. 252**

**An Act Regarding Destruction of Fish Populations**

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

**Sec. 1. 12 MRSA §7771, sub-§3,** as enacted by PL 1979, c. 420, §1, is amended to read:

**3. Taking of certain fish.** After hearing pursuant to section 7035, subsection 1, the commissioner may permit the taking of pickerel, perch and other fish in specified waters, subject to such conditions as ~~he~~ the commissioner may prescribe, whenever it appears that those fish seriously injure the propagation of or the fishing for any game fish. The commissioner shall solicit bids prior to issuing a permit under this subsection to take fish for reclamation purposes and may solicit bids prior to issuing any other permit issued under this subsection.

See title page for effective date.

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**CHAPTER 256**

**H.P. 569 - L.D. 760**

**An Act to Increase Penalties for Subsequent Violations of the Laws Prohibiting Indecent Conduct**

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

**Sec. 1. 17-A MRSA §854, sub-§3,** as amended by PL 1995, c. 72, §2, is further amended to read:

**3. Indecent conduct** is a Class E crime, except that it is a Class D crime and the authorized probationary period may be doubled if the defendant has 2 or more prior convictions for violation of this section or section 256. For purposes of this subsection, the dates of the prior convictions may not precede the commission of the offense by more than 10 years, although the prior convictions may have occurred on the same date. The date of a conviction is deemed to be the date that sentence is imposed, even though an appeal is taken. The date of commission of the offense being enhanced is presumed to be that date stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent.

See title page for effective date.

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**CHAPTER 257**

**H.P. 120 - L.D. 144**

**An Act Regarding the Duties of Guardian Ad Litem**

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

**Sec. 1. 19 MRSA §752-A, sub-§1-A,** as enacted by PL 1995, c. 405, §11, is repealed.

**Sec. 2. 19-A MRSA §1507, sub-§2,** as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

**2. Qualifications.** A guardian ad litem appointed on or after September 1, ~~1997~~ 1998 must meet the qualifications established by the Supreme Judicial Court.

**Sec. 3. 19-A MRSA §1507, sub-§3, ¶A,** as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

**3. Duties.** The guardian ad litem has both mandatory and optional duties.

A. A guardian ad litem shall:

(1) Interview the child face-to-face with or without another person present; and

~~(2) Have face to face contact with the child within 7 days of appointment by the court and at least once every 3 months after appointment; and~~

(3) Make a written report of investigations, findings and recommendations ~~every 6 months or~~ as ordered by the court, with copies of the report to each party and the court.

**Sec. 4. 19-A MRSA §1507, sub-§4**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

**4. Best interest of the child.** The guardian ad litem shall use the standard of the best interest of the child as set forth in section 1653, subsection 3. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem. ~~If the child and the child's guardian ad litem are not in agreement, the court shall evaluate the need for appointing special counsel for the child to serve as the child's legal advocate concerning the issues and during the proceedings as the court determines to be in the best interest of the child and shall appoint a legal advocate if the court determines that such an appointment is necessary.~~

**Sec. 5. 22 MRSA §4005, sub-§1, ¶A**, as amended by PL 1995, c. 405, §18, is further amended to read:

A. The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child. The guardian ad litem's reasonable costs and expenses must be paid by the District Court. The appointment must be made as soon as possible after the proceeding is initiated. Guardians ad litem appointed on or after September 1, ~~1997~~ 1998 must meet the qualifications established by the Supreme Judicial Court.

**Sec. 6. Effective date.** Those sections of this Act that amend the Maine Revised Statutes, Title 19-A, section 1507, take effect October 1, 1997.

See title page for effective date, unless otherwise indicated.

**CHAPTER 258**

**H.P. 465 - L.D. 636**

**An Act to Cap the Fees Responsible Parties Pay for the Transportation of Hazardous Waste from Superfund Sites**

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

**Sec. 1. 38 MRSA §1319-I, sub-§2**, as repealed and replaced by PL 1987, c. 491, §25, is amended to read:

**2. Fees for action taken off site of generation.**

Any person who transports hazardous waste in the State shall pay a fee as follows:

A. For hazardous waste ~~which~~ that is transported off the site to a licensed hazardous waste disposal facility for disposal, 2.0¢ a pound; and

B. For hazardous waste ~~which~~ that is transported off the site to a licensed hazardous waste treatment facility for treatment, storage facility for storage or other licensed facility for handling, including beneficial reuse, reclamation or recycling, 1.5¢ a pound.

Fees required under this subsection for hazardous waste that is transported off a federally declared Superfund site that was added to the national priorities list by the United States Environmental Protection Agency pursuant to 40 Code of Federal Regulations, Part 300 on or before January 1, 1997 may not exceed \$200,000 per site in any calendar year.

See title page for effective date.

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**CHAPTER 259**

**S.P. 243 - L.D. 812**

**An Act to Require the Public Utilities Commission to Align Telecommunications Carrier Access Rates with Costs to Foster Economic Development and Competition throughout the State**

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

**Sec. 1. 35-A MRSA §7101-B** is enacted to read:

**§7101-B. Access rates**

**1. Definitions.** As used in this section, the term "intrastate access rates" means rates that a telecommunications service provider pays for access to a local exchange carrier's facilities and services in order to provide intrastate interexchange service.

**2. Access rates.** Notwithstanding any other provision of law, the commission by May 30, 1999 shall establish and every 2 years reestablish intrastate access rates that are less than or equal to interstate access rates established by the Federal Communications Commission.

**3. Consumer rates.** If the commission finds that effective competition in the intrastate interexchange market does not exist, the commission shall require all persons providing intrastate interexchange service to reduce their intrastate long-distance rates to reflect net reductions in intrastate access rates ordered by the commission pursuant to subsection 2.

**Sec. 2. Report.** By January 1, 1998, the Public Utilities Commission shall submit to the Joint Standing Committee on Utilities and Energy a report detailing its plan and schedule for aligning intrastate access rates with interstate access rates pursuant to the Maine Revised Statutes, Title 35-A, section 7101-B. The report must also include:

1. A discussion of progress made in aligning intrastate access rates with interstate access rates;
2. Issues raised by this alignment and how these issues will be addressed; and
3. Whether adjustments in other rates may be made in consequence of this alignment and why those adjustments should be made.

The report may be included in the commission's annual report submitted pursuant to Title 35-A, section 120, as long as the report is submitted by January 1, 1998.

**Sec. 3. Authority to report legislation.** The Joint Standing Committee on Utilities and Energy may report out legislation on intrastate access rates to the Second Regular Session of the 118th Legislature.

See title page for effective date.

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## CHAPTER 260

S.P. 484 - L.D. 1492

### An Act to Provide Recipients of All Assisted Living Programs and Services Residents' Rights and Equivalent Reporting and Enforcement Opportunities

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

**Sec. 1. 22 MRSA §7902-A, sub-§6** is enacted to read:

**6. Applicability of residents' rights rules.** Any rules adopted pursuant to this section pertaining to residents' rights are applicable to both licensed and unlicensed assisted living service programs.

**Sec. 2. 22 MRSA §7924, sub-§1**, as corrected by RR 1995, c. 2, §45, is amended to read:

**1. Alleged violations reported and investigated.** Any person who believes that any of those ~~regulations~~ rules governing the licensure of long-term care facilities ~~duly promulgated~~ or the operation of assisted living programs and services authorized pursuant to section 7901-B adopted by the Department of Human Services pertaining to residents' rights and conduct of resident care has been violated may report the alleged violation to the protection and advocacy agency designated pursuant to Title 5, section 19501; the long-term care ombudsman pursuant to section 5106, subsection 11-C and section 5107-A; the Office of Advocacy pursuant to Title 34-A, section 1203; and any other agency or person whom the Commissioner of Human Services and the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services may designate.

**Sec. 3. 22 MRSA §7948, sub-§1**, as enacted by PL 1991, c. 637, §2, is amended to read:

**1. Generally.** Any resident whose rights have been violated as described in this section may commence a civil action in the Superior Court on that resident's own behalf for injunctive and declaratory relief against any long-term care facility or provider of assisted living programs and services that is alleged to be in violation of any rule described in section 7924 or 7902-A or in violation of the rights enumerated in 42 United States Code, Section 1396r, Subsection (c). In order to grant a preliminary or permanent injunction under this section, the Superior Court must find that:

- A. The plaintiff will suffer irreparable injury if the injunction is not granted;
- B. The irreparable injury outweighs any harm that granting the injunctive relief would inflict on the defendant;
- C. The plaintiff has exhibited a likelihood of success on the merits of the case; and

D. The public interest will not be adversely affected by granting the injunction.

See title page for effective date.

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## CHAPTER 261

H.P. 504 - L.D. 695

### An Act to Amend Security Deposit Provisions for Residential Rental Units

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

**Sec. 1. 14 MRSA §6031, sub-§1**, as amended by PL 1981, c. 428, §11, is further amended to read:

**1. Normal wear and tear.** "Normal wear and tear" means ~~that~~ the deterioration ~~which~~ ~~that~~ occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenant or members of ~~his~~ the tenant's household or their invitees or guests. The term "normal wear and tear" does not include sums or labor expended by the landlord in removing from the rental unit articles abandoned by the tenant such as trash. If a rental unit was leased to the tenant in a habitable condition or if it was put in a habitable condition by the landlord during the term of the tenancy, normal wear and tear does not include sums required to be expended by the landlord to return the rental unit to a habitable condition, which may include costs for cleaning, unless expenditure of these sums was necessitated by actions of the landlord, events beyond the control of the tenant or actions of someone other than the tenant or members of ~~his~~ the tenant's household or their invitees or guests.

See title page for effective date.

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## CHAPTER 262

S.P. 228 - L.D. 797

### An Act to Create Equity in the Taxation of Special Fuels

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

**Sec. 1. 36 MRSA §3203**, as repealed and replaced by PL 1995, c. 271, §5, is amended to read:

### §3203. Tax levied; consignment sales; credited to Highway Fund

Except as provided in section 3204-A, an excise tax is levied and imposed on all suppliers of special fuel sold and on all users of special fuel used in this State for each gallon of distillate at the rate of 20¢ per gallon and for each gallon of low-energy fuel at the rate of 18¢ per gallon. When special fuel is delivered by a supplier on a consignment basis to a consumer or to a retail outlet, whether or not the retail outlet is wholly owned by the supplier, it is considered to have been "sold" within the meaning of this Act. All taxes and fines collected under this chapter must be credited to the Highway Fund. An allowance of not more than 1% from the amount of propane received by the distributor, plus 1% on all transfers in vessels, tank care or full tank truck loads by a distributor in the regular course of business from one of the distributor's places of business to another of the distributor's places of business within the State, may be allowed by the State Tax Assessor to cover the loss through shrinkage, evaporation or handling sustained by the distributor.

See title page for effective date.

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## CHAPTER 263

S.P. 361 - L.D. 1220

### An Act to Require Economic Impact Criteria on State Procurement Procedures

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

**Sec. 1. 5 MRSA §1825-B, sub-§7**, as amended by PL 1991, c. 780, Pt. Y, §70, is further amended to read:

**7. Awards to best-value bidder.** Except as otherwise provided by law, orders awarded or contracts made by the Director of the Bureau of General Services or by any department or agency of the State must be awarded to the ~~lowest-responsible best-value~~ best-value bidder, taking into consideration the qualities of the goods or services to be supplied, their conformity with the specifications, the purposes for which they are required, the date of delivery and the ~~ultimate cost to best interest~~ of the State. If the bidder that was initially awarded the order or contract does not perform, the Director of the Bureau of General Services may cancel the contract and award a new contract to the 2nd ~~lowest-responsible best-value~~ best-value bidder. The order or contract may not be awarded to a bidder that the Director of the Bureau of General

Services determined was not in compliance at the time the initial bid was submitted.

**Sec. 2. 5 MRSA §1825-B, sub-§§9 and 10,** as enacted by PL 1995, c. 387, §1, are amended to read:

**9. Determination of best-value bidder.** In determining the ~~lowest responsible~~ best-value bidder, the Director of the Bureau of General Services or any department or agency of the State shall, for the purpose of awarding a contract, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.

**10. List of state preferences published.** The Director of the Bureau of General Services on or before January 1st of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each such state. The Director of the Bureau of General Services or any department or agency of the State may rely on the names of states and percentages as published in determining the ~~lowest responsible~~ best-value bidder without incurring any liability to any bidder.

**Sec. 3. 5 MRSA §1825-D, sub-§1-A** is enacted to read:

**1-A. Request for information.** For requesting information from bidders that includes, but is not limited to, the degree to which the bidder meets or exceeds various state and federal regulatory requirements and any other state fiscal impact;

See title page for effective date.

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**CHAPTER 264**

**H.P. 577 - L.D. 768**

**An Act to Clarify the Right of a Real Estate Broker to a Lien on Land, Improvements or Structures**

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

**Sec. 1. 10 MRSA §3251,** as amended by PL 1993, c. 137, §1, is further amended to read:

**§3251. Lien established**

Whoever performs labor or furnishes labor or materials, including repair parts of machines used, or performs services as a surveyor, an architect or an engineer, or as a real estate licensee, or as an owner-renter, owner-lessor, or owner-supplier of equipment used in erecting, altering, moving or repairing a house,

building or appurtenances, including any public building erected or owned by any city, town, county, school district or other municipal corporation, or in constructing, altering or repairing a wharf or pier, or any building thereon, including the surveying, clearing, grading, draining, excavating or landscaping of the ground adjacent to and upon which any such objects are constructed, or in selling any interest in land, improvements or structures, by virtue of a contract with or by consent of the owner, has a lien thereon and on the land on which it stands and on any interest such owner has in the same, to secure payment thereof, with costs. If the owner of the building has no legal interest in the land on which the building is erected or to which it is moved, the lien attaches to the building, and if the owner of the wharf or pier has no legal interest in the land on which the wharf or pier is erected, the lien attaches to the wharf or pier, and in either case may be enforced as provided. If the owner of such land, building, wharf or pier, so contracting, is a minor or married woman, such lien exists and such minority or coverture does not bar a recovery in any proceeding brought to enforce it.

See title page for effective date.

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**CHAPTER 265**

**S.P. 424 - L.D. 1345**

**An Act to Amend the Public Accountancy Laws**

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

**Sec. 1. 32 MRSA §12201, first ¶,** as enacted by PL 1987, c. 489, §2, is amended to read:

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

**Sec. 2. 32 MRSA §12228, sub-§3,** as enacted by PL 1987, c. 489, §2, is amended to read:

**3. Education requirement.** The education requirement for a certificate, which must be met ~~no later than 120 days after~~ before an applicant ~~sits~~ is eligible to apply for the examination prescribed in subsection 4, ~~shall be a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board.~~ is as follows:

A. During the 5-year period immediately following October 1, 1997, a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board; and

B. After October 1, 2002, at least 150 semester hours of education, including a minimum 4-year baccalaureate or higher degree conferred by a college or university acceptable to the board, the total educational program to include basic courses in accounting and auditing determined to be appropriate under board rules. Rules adopted by the board pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**Sec. 3. 32 MRSA §12228, sub-§4**, as amended by PL 1995, c. 353, §23, is further amended to read:

**4. Examination; administration.** The examination to be passed as a condition for the granting of a certificate must be in writing, must be held twice a year and must be the ~~Uniform Certified Public Accountant Examination prepared by the Board of Examiners of the American Institute of Certified Public Accountants or any other examination approved by the board~~ test the applicant's knowledge of the subjects of accounting and auditing and such other related subjects as the board may specify by rule. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II-A. The time for holding the examination must be fixed by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate, except that the board, to the extent possible, shall see to it that the grading of the examination and the passing grades are uniform with those applicable in all other states. The board may make the use of all or any part of the Uniform Certified Public Accountant Examination and the Advisory Grading Service of the American Institute of Certified Public Accountants or any other examination approved by the board and may contract with 3rd parties to perform such administrative services with respect to the examination as it considers appropriate to assist it in performing its duties under this section.

**Sec. 4. 32 MRSA §12228, sub-§5**, as amended by PL 1995, c. 353, §24, is repealed and the following enacted in its place:

**5. Examination; passing.** An applicant is required to pass all sections of the examination provided for in subsection 4 in order to qualify for a certificate. The passing grade for each section is 75%. If, at a given sitting of the examination, an applicant passes 2 or more but not all sections, then the applicant is given credit for those sections that the applicant has passed and need not sit for reexamination in those sections, if:

A. At that sitting the applicant wrote all sections of the examination for which the applicant does not have credit;

B. The applicant attained a minimum grade of 50% on each section taken at that sitting;

C. The applicant passes the remaining sections of the examination within 6 consecutive examinations given after the one at which the first sections were passed;

D. At each subsequent sitting at which the applicant seeks to pass any additional sections, the applicant writes all sections for which the applicant does not have credit; and

E. In order to receive credit for passing additional sections in any such subsequent sitting, the applicant attains a minimum grade of 50% on sections taken at that sitting.

**Sec. 5. 32 MRSA §12228, sub-§§7 and 8**, as enacted by PL 1987, c. 489, §2, are amended to read:

**7. Waiver.** The board may, in particular cases, waive or defer any of the requirements of subsections 5 and 6 regarding the circumstances in which the various ~~parts~~ sections of the examination must be passed upon a showing that, by reason of circumstances beyond the applicant's control, ~~he~~ the applicant was unable to meet that requirement.

**8. Administration fee.** The board may charge, or provide for a 3rd party administering the examination to charge, each applicant a fee in an amount prescribed by the board by rule for each ~~part~~ section of the examination or reexamination taken by the applicant.

**Sec. 6. 32 MRSA §12228, sub-§10**, as amended by PL 1993, c. 634, Pt. C, §1, is further amended by amending the first paragraph to read:

**10. Experience.** ~~The~~ During the 5-year period immediately following October 1, 1997, the applicant shall show that the applicant has had 2 years of experience in the practice of public accountancy or its equivalent, meeting requirements prescribed by the board by rule; or, if the applicant's educational qualifications ~~comprise a baccalaureate degree meeting the requirements set out in subsection 3~~ include, a ~~master's~~ masters degree conferred by a college or university approved by the board ~~and one year of experience~~, then only one year of experience in that practice or its equivalent is required. After October 1, 2002, for initial issuance of a certificate under this subsection, an applicant shall demonstrate 2 years of experience that was under the direction of a licensee under this subchapter and shall meet the other

requirements prescribed by the board by rule. The applicant's experience must include the use of accounting or auditing skills, including the issuance of reports on financial statements, and at least one of the following: the provision of management advisory, financial advisory or consulting services; the preparation of tax returns; the furnishing of advice on tax matters; or equivalent activities defined by the board by rule. Board rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. To the extent the applicant's experience is as an auditor engaged in the examination of financial statements for the Department of Audit or as a revenue agent or similar position engaged in the examination of personal and corporate income tax returns for the Bureau of Taxation, the applicant receives credit at the rate of 50% toward the experience required by this subsection. To the extent the applicant's experience is as an examiner engaged in financial examinations for the Bureau of Insurance, the applicant receives credit under this subsection if that experience meets the following standards:

See title page for effective date.

**CHAPTER 266**

**S.P. 416 - L.D. 1337**

**An Act to Amend the Laws Relating to Education**

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

**Sec. 1. 5 MRSA §937**, as amended by PL 1995, c. 560, Pt. F, §§2 and 3, is further amended to read:

**§937. Department of Education**

**1. Major policy-influencing positions.** The following positions are major policy-influencing positions within the Department of Education. Notwithstanding any other provision of law, these positions and their successor positions are subject to this chapter:

- A. Deputy Commissioner;
- ~~B. Deputy Commissioner;~~
- F. Director, Planning and Management Information;
- G. Federal and State Education Program Coordinator; and

~~H. Executive Director, Interdepartmental Council, with the approval of the other commissioners of the Interdepartmental Council.~~

J. Director of Special Projects and External Affairs.

**Sec. 2. 20-A MRSA §203, sub-§1**, as amended by PL 1995, c. 560, Pt. F, §§9 and 10, is further amended to read:

**1. Commissioner's appointments.** The following officials are appointed by and serve at the pleasure of the commissioner:

- A. Deputy Commissioner;
- ~~B. Deputy Commissioner;~~
- F. Director, Planning and Management Information;
- G. Federal and State Education Program Coordinator; and
- ~~H. Executive Director, Interdepartmental Council, with the approval of the other commissioners of the Interdepartmental Council.~~

J. Director of Special Projects and External Affairs.

**Sec. 3. 20-A MRSA §1407, sub-§2**, as amended by PL 1983, c. 364, §5, is further amended to read:

**2. Expense of keeping the school open.** If the voters vote to keep the school open, the member municipality ~~shall be~~ is liable for ~~any some~~ additional expense for actual local operating costs, and transportation costs, ~~and minor capital costs as defined in section 15503, 15603 which exceed by 10% the expense of the district for the operating costs, transportation costs, and minor capital costs as compared on a per pupil basis in the base year.~~ The determination of costs ~~shall be~~ is subject to the approval of the commissioner. The cost to be borne by the town voting to keep an elementary school open is the amount that would be saved if the school were closed less the state operating subsidy for the students that attend the elementary school. Any additional costs ~~which that~~ must be borne by the member municipality ~~shall~~ must be part of the article presented to the voters at the meeting to determine whether the school should remain open.

**Sec. 4. 20-A MRSA §2902, sub-§6, ¶E**, as amended by PL 1985, c. 797, §23, is further amended to read:

- E. Maintain adequate, safely protected records; ~~and~~

**Sec. 5. 20-A MRSA §2902, sub-§7**, as amended by PL 1985, c. 797, §24, is further amended to read:

**7. Approval rules.** Meet the requirements applicable to the approval of private schools for attendance purposes adopted jointly by the state board and the commissioner; ~~and~~

**Sec. 6. 20-A MRSA §2902, sub-§8** is enacted to read:

**8. Release of student records.** Upon the request of a school unit, release copies of all student records for students transferring from the private school to the school unit.

**Sec. 7. 20-A MRSA §2951, sub-§5**, as amended by PL 1985, c. 797, §26, is further amended to read:

**5. Additional requirements.** Complies with the reporting and auditing requirements in sections 2952 and 2953 and the requirements adopted pursuant to section 2954; ~~and~~

**Sec. 8. 20-A MRSA §2951, sub-§6**, as enacted by PL 1985, c. 797, §27, is amended to read:

**6. Student assessment.** Any school ~~which that~~ enrolls 60% or more ~~publicly-funded~~ publicly funded students, as determined by the previous year's October and April average enrollment, shall participate in the statewide assessment program to measure and evaluate the academic achievements of students; ~~and~~

**Sec. 9. 20-A MRSA §2951, sub-§7** is enacted to read:

**7. Release of student records.** Upon the request of a school unit, release copies of all student records for students transferring from the private school to the school unit.

**Sec. 10. 20-A MRSA §5805, sub-§2**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

**2. Maximum allowable tuition.** The maximum allowable tuition charge by a public secondary school ~~shall be is~~ the rate computed under subsection 1 or the state average per public secondary student cost as adjusted, whichever is lower. The school board of the sending unit may vote to pay a higher tuition rate.

**Sec. 11. 20-A MRSA §9501, sub-§2**, as amended by PL 1995, c. 402, Pt. A, §47 and c. 505, §9 and affected by §22, is further amended to read:

**2. Exemptions.** Educational programs related to the real estate professions that are subject to approval under Title 32, chapter 59, commercial driver

education schools subject to approval by the Secretary of State under Title 29-A, chapter 11, subchapter III, schools of barbering and schools of cosmetology subject to approval by the Board of Barbering and Cosmetology under Title 32, chapter 126, educational programs offered by any Maine nonprofit corporation, any educational programs offered by any professional or trade association primarily for the benefit of its own members and any educational institution authorized by the laws of this State to grant a degree are exempt from the requirements of this chapter.

**Sec. 12. 20-A MRSA §9502, sub-§§1 and 2**, as repealed and replaced by PL 1983, c. 862, §62, are amended to read:

**1. Application requirements; licensing; bonding and revocation of license.** The application for a license required by this chapter ~~shall~~ must be made on forms furnished by the commissioner and ~~shall~~ be accompanied by a fee of \$100, ~~except as provided in section 9505 for schools of barbering and cosmetology~~, and a surety bond in the penal sum of \$10,000.

A. A license is valid for the calendar year in which it is issued.

B. The bond ~~shall~~ must be continuous and ~~shall~~ must provide indemnification to any student suffering loss as a result of any fraud or misrepresentation. The bond ~~shall~~ must provide for written notification by the surety to the commissioner in the event of cancellation. Cancellation of the bond by the surety ~~shall result~~ results in the revocation of the license.

**2. Renewal fee.** A fee of \$50 ~~shall be is~~ charged for the renewal of a license, ~~except as otherwise provided in section 9505 for schools of barbering and cosmetology.~~

**Sec. 13. 20-A MRSA §9505**, as enacted by PL 1983, c. 841, §6, is repealed.

**Sec. 14. 20-A MRSA §13005**, as enacted by PL 1981, c. 693, §§5 and 8, is repealed.

**Sec. 15. 20-A MRSA §13012, sub-§1**, as amended by PL 1991, c. 682, §1, is further amended to read:

**1. Definition.** A provisional teacher certificate is the entry level certificate issued to an individual who has not taught previously in the State, except as provided in section 13013, subsection 2-A, ~~paragraph~~ paragraphs B and D.

**Sec. 16. 20-A MRSA §13013, sub-§1**, as amended by PL 1991, c. 682, §2, is further amended to read:

**1. Definition.** A professional teacher certificate is a renewable certificate issued to an individual who has held a provisional certificate and has met the qualifications of this section, except as provided in subsection 2-A, ~~paragraph~~ paragraphs B and D.

**Sec. 17. 20-A MRSA §13013, sub-§2-A,** as amended by PL 1995, c. 320, §§3 and 4, is further amended to read:

**2-A. Qualifications.** State board rules governing the qualifications for a professional teacher certificate must require that the certificate may only be issued to an applicant who, at a minimum, either:

A. Holds a provisional teacher certificate and has taught in a classroom for 2 academic years or has held a professional teacher certificate that has lapsed within the last 5 years. In this case, an applicant must receive a recommendation to the commissioner by an approved support system pursuant to section 13015;

B. Is a teacher with 5 or more years of experience teaching within the 7 years prior to application in the State under a valid certificate in another state and who has graduated from a state-approved preparation program that utilizes the standards of a national association of state directors of teacher education and certification or a national council for accreditation of teacher education or, with the exception of the national teachers exam, meets entry-level standards for the endorsement; ~~or~~

C. Holds a provisional teacher certificate issued under section 13012, subsection 2, paragraph D and has taught for at least one year under a provisional teacher certificate; ~~or~~

D. Is seeking to hold only adult education or from birth to under age 6 endorsements.

**Sec. 18. 32 MRSA c. 126, sub-c. IV** is enacted to read:

#### **SUBCHAPTER IV**

#### **REGULATION OF SCHOOLS OF BARBERING AND SCHOOLS OF COSMETOLOGY**

##### **§14245. License required; penalties**

**1. Requirement of license.** Any person, partnership, association or corporation located either within or outside the State must obtain a license as specified under section 14246 from the board before operating or maintaining any school of barbering or school of cosmetology within the State or before collecting any tuition, fee or other charge for operating or maintaining such a school within the State.

**2. Penalties.** Any person, partnership, association or corporation that operates or maintains a school of barbering or school of cosmetology in violation of this subchapter, or represents itself as operating and maintaining such a school, is subject to a civil penalty of not more than \$5,000, payable to the State, to be recovered in a civil act.

**3. Enforcement actions.** The State may bring an action in Superior Court to enjoin any person from violating this subchapter, regardless of whether proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted.

##### **§14246. License application form; fee; bond**

**1. Application requirements; licensing; bonding and revocation of license.** The application for a license required by this subchapter must be made on forms furnished by the board and be accompanied by an application fee not to exceed \$100 and a surety bond in the penal sum of \$10,000.

A. A license is valid for the calendar year in which it is issued.

B. The bond must be continuous and must provide indemnification to any student suffering loss as a result of any fraud or misrepresentation. The bond must provide for written notification by the surety to the board in the event of cancellation. Cancellation of the bond by the surety results in the revocation of the license.

**2. License fee; renewal fee.** A fee not to exceed \$500 is charged for the initial license and for the annual renewal of a license.

##### **§14247. Rules**

The board shall adopt rules for the licensing of persons, partnerships, associations or corporations to maintain and operate schools of barbering and schools of cosmetology. The rules must include standards relating to educational programs, instructor qualifications, records and recordkeeping, health and sanitation, safety and physical facilities. Rules adopted pursuant to this subchapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

##### **§14248. On-site evaluations**

The board shall conduct biennial on-site evaluations of schools to ensure compliance with this subchapter and applicable rules. The expense of the on-site evaluation must be borne by the school examined. This expense includes only the reasonable, necessary and proper hotel and travel expenses of the board member evaluators and staff and board member per diem. A school evaluated pursuant to this section

must promptly pay to the board the expenses of the evaluation upon presentation of a reasonably detailed written statement of the expenses.

**§14249. Complaints; license; refusal to renew; suspension; revocation**

The board may investigate complaints involving a school including any allegation of noncompliance with or violation of this subchapter and applicable rules. After a hearing in conformance with Title 5, chapter 375, subchapter IV, the board may amend or modify any license and may suspend or refuse to renew a license as provided in Title 5, section 10004.

A board member may not participate in any on-site evaluation, complaint, hearing or license-related action that involves a school of barbering or a school of cosmetology with which the board member has or has had a direct relationship as a student, instructor, administrator or director or the board member has a direct pecuniary interest in the school.

The Administrative Court may suspend or revoke the license of any person, partnership, association or corporation found to have violated any provision of this subchapter or any lawful order or rule issued by the board.

**§14250. Hearings**

The board may not refuse to renew a license for any reason other than failure to pay the required renewal fee, unless the licensee has been given an opportunity for a hearing.

Hearings may also be conducted by the board at the board's discretion to assist with investigations of complaints to determine whether grounds exist for suspension, revocation, denial or nonrenewal of any license, or as otherwise determined necessary to fulfill the responsibilities under this subchapter.

The board may subpoena witnesses, records and documents in any hearing conducted pursuant to this subchapter.

**Sec. 19. Allocation.** The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1997-98	1998-99
<b>PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF</b>		
<b>Licensing and Enforcement</b>		
Personal Services	\$3,000	\$3,000
All Other	4,000	3,000

Provides funds for the Board of Barbering and Cosmetology to approve and license barbering and cosmetology schools.

**DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**  
**TOTAL**

\$7,000      \$6,000

See title page for effective date.

**CHAPTER 267**

**S.P. 359 - L.D. 1218**

**An Act to Expand the Harassment Laws**

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

**Sec. 1. 17-A MRSA §506-A, sub-§1**, as amended by PL 1993, c. 475, §4, is further amended to read:

**1.** A person is guilty of harassment if, without reasonable cause, that person engages in any course of conduct with the intent to harass, torment or threaten another person, after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace or by a court in a protective order issued under Title 5, section 4654 or 4655 or Title 19, section 765 or 766 or, if the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to do so by the Commissioner of Corrections, the chief administrative officer of the facility, the regional correctional administrator for the region or their designees.

**Sec. 2. 17-A MRSA §506-A, sub-§1**, as amended by PL 1995, c. 694, Pt. D, §24 and affected by Pt. E, §2, is further amended to read:

**1.** A person is guilty of harassment if, without reasonable cause, that person engages in any course of conduct with the intent to harass, torment or threaten another person, after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace or by a court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, section 4006 or 4007 or, if the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to do so by the Commissioner of Corrections, the chief administrative officer of the facility,

the regional correctional administrator for the region or their designees.

**Sec. 3. Effective date.** Section 2 of this Act takes effect October 1, 1997.

See title page for effective date, unless otherwise indicated.

**CHAPTER 268**

**S.P. 254 - L.D. 823**

**An Act to Amend the Membership of the Maine Tourism Commission**

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

**Sec. 1. 5 MRSA §13090-F, sub-§1,** as reallocated by RR 1995, c. 2, §11 and corrected by §12, is amended to read:

**1. Maine Tourism Commission.** The Maine Tourism Commission, established by section 12004-I, subsection 87 and referred to in this section as the "commission," shall assist and advise the Office of Tourism and Community Development to achieve its purpose under section 13090-C. The commission consists of 9 members of major tourism trade associations ~~and~~ 8 public members who must represent their respective regions and have experience in the field or have demonstrated concern for the travel industry and 3 persons representing the outdoor sporting interests of the State, consisting of one person representing a statewide organization of hunters, anglers and trappers, one person representing the interests of large landowners and one person representing a statewide organization of licensed Maine guides. The terms of the members are for 4 years each, except that, for the members first appointed, 4 members are appointed for terms of 4 years, 4 members for terms of 3 years, 4 members for terms of 2 years and 5 members for terms of one year. The members are appointed by the Governor, who shall fill a vacancy in the membership for the unexpired term. The commissioner, director or a designee of the following state departments or offices shall serve as ex officio, nonvoting members of the commission: the department; the State Planning Office; the Department of Conservation; the Department of Transportation; the Department of Inland Fisheries and Wildlife; the Department of Agriculture, Food and Rural Resources; the Department of Education; the Bureau of Public Improvements; and the Canadian Affairs Coordinator. A chair and vice-

chair must be elected annually from the appointed membership.

See title page for effective date.

**CHAPTER 269**

**H.P. 896 - L.D. 1213**

**An Act to Create a Family Division within the State's District Court**

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

**Sec. 1. 4 MRSA §183** is enacted to read:

**§183. Family Division of District Court**

There is established within the District Court a Family Division that has jurisdiction over family matters filed in District Court. The Family Division shall provide a system of justice that is responsive to the needs of families and the support of their children. The Supreme Judicial Court may adopt administrative orders and court rules governing the practice, procedure and administration of the Family Division. These practices and procedures must include, but are not limited to, education for the parties, case management and referral services to mediation and other alternate dispute resolution techniques.

**1. Family case management officers.** The Chief Judge of the District Court, with the approval of the Chief Justice of the Supreme Judicial Court, shall employ family case management officers. In selecting family case management officers, the Chief Judge shall give proper consideration to achieving statewide geographical representation in the Family Division.

A. Family case management officers must be members of the Bar of this State and must have experience in the area of family law. Other qualifications may include interest, training or experience in mediation and other alternate dispute resolution techniques, domestic violence, child development, family dynamics and case management.

B. Family case management officers shall devote themselves solely to the official duties of the position. They may not engage in the private practice of law or in any employment, occupation or business interfering with or inconsistent with the discharge of their duties. The Chief Judge of the District Court shall determine the salary of the family case management officers.

C. Family case management officers are governed by the Maine Code of Judicial Conduct.

Family case management officers serve at the pleasure of the Chief Judge of the District Court.

D. Family case management officers shall employ appropriate case management techniques and have jurisdiction to hear and dispose of the following matters:

(1) Interim orders in actions involving the establishment, modification or enforcement of child support;

(2) Interim orders in actions involving divorce, legal separation, paternity or parental rights, including interim orders in post-judgment proceedings arising out of these actions, except that a contested motion concerning interim parental rights and responsibilities, excluding interim child support orders, may be determined by the family case management officer only if both parties consent to determination of the issue or issues in dispute by the family case management officer;

(3) Final orders in any of the matters included in subparagraphs (1) and (2) when the proceeding is uncontested;

(4) Final orders in a contested proceeding when child support is the only contested issue; and

(5) Other actions assigned by the Chief Judge of the District Court.

E. Interim orders in any of the matters included in paragraph D, subparagraphs (1) and (2) are effective immediately and are subject to de novo review by a judge at the final hearing. Final orders in any of the matters included in paragraph D, subparagraphs (3) and (4) are subject to appellate review in the same manner as any final order of the District Court. The family case management officer shall inform the parties of the rights of review established in this paragraph.

2. Additional staff. The State Court Administrator shall provide other necessary staff to the Family Division, within the limits of funds available, and shall seek to take full advantage of federal funding, including reimbursements.

3. Reports. The State Court Administrator shall keep statistical records relating to the cases handled by the Family Division and report this information to the Supreme Judicial Court annually and to the joint standing committee of the Legislature having jurisdiction over judiciary matters by January 15th of each odd-numbered calendar year.

A. The State Court Administrator shall evaluate the functioning of the family case management officers in providing a system of justice that is responsive to the needs of families and the support of their children in light of the jurisdiction given to the family case management officers under this section. The State Court Administrator shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than January 15, 1999 with recommendations, if any, for changing the duties provided in subsection 1, paragraph D.

B. The State Court Administrator shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters by January 15, 1999 explaining the justification for the particular geographic assignments of the family case management officers.

**Sec. 2. Effective date.** This Act takes effect January 1, 1998.

Effective January 1, 1998.

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## CHAPTER 270

H.P. 546 - L.D. 737

### An Act to Create a Helper Registration Category, to Exempt Certain Persons from Licensure under the Propane and Natural Gas Act and to Eliminate the Tagging Requirement

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

**Sec. 1. 32 MRSA §14802, sub-§6-A** is enacted to read:

**6-A. Highway transport driver.** "Highway transport driver" means a driver of a tractor-trailer commercial motor vehicle that has a cargo tank with a water capacity of 9,000 gallons or more.

**Sec. 2. 32 MRSA §14807, sub-§§6 and 7** are enacted to read:

**6. Propane and natural gas helper.** A person may not assist a licensed person unless that person first registers with the board as a propane and natural gas helper. A helper may work only under the direct and continuous supervision of a licensed person on-site. A licensed person may supervise no more than 2 helpers at any time.

The board may set a fee for the propane and natural gas helper registration, not to exceed \$40 biennially.

A licensed propane and natural gas technician who does not have the appropriate endorsement specified under this chapter or a person holding a temporary registration as a plant operator or delivery technician, is not required to register as a propane and natural gas helper when assisting a licensed propane and natural gas technician who has the appropriate endorsement to perform a function.

**7. Exceptions.** The licensing provisions of this section do not apply to a highway transport driver who delivers propane to bulk plants or industrial customers.

**Sec. 3. 32 MRSA §14808, sub-§4,** as enacted by PL 1995, c. 389, §4, is amended to read:

**4. Limited operator's license; training.** The on-site owner or operator of a dispensing station must hold a limited operator's license issued biennially by the board. The board shall set by rule the requirements for obtaining the limited license. The holder of the limited license is responsible for training other dispensing station employees and documenting that training.

The training for the limited license must include a manual prepared by a regional propane gas association, a video prepared by a national propane gas association or equivalent materials approved by the board. The training documentation must be kept at the station. ~~The on-site owner or operator of the dispensing station is responsible for compliance and is subject to section 14809.~~

**Sec. 4. 32 MRSA §14809,** as enacted by PL 1995, c. 389, §4, is repealed.

See title page for effective date.

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**CHAPTER 271**

**H.P. 394 - L.D. 539**

**An Act to Clarify the Laws  
Regarding the Board of Licensure in  
Medicine and Ensure That Physician  
Discipline Is Reported to the  
Appropriate Licensing Board**

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

**Sec. 1. 5 MRSA §9057, sub-§6,** as amended by PL 1989, c. 175, §1, is further amended to read:

**6. Confidential information.** Information may be disclosed ~~which~~ that is confidential pursuant to Title 22, chapters 958-A and 1071 and sections 7703 and 1828; Title 24, section 2506; and Title 34-A,

except for information, the disclosure of which is absolutely prohibited under Title 34-A, section 3003. Disclosure may be only for the determination of issues involving unemployment compensation proceedings relating to a state employee, state agency personnel actions and professional or occupational board licensure, certification or registration.

A. For the purpose of this subsection, "hearing officer" means presiding officer, judge, board chairman, arbitrator or any other person ~~deemed~~ considered responsible for conducting a proceeding or hearing subject to this subsection. In the case of the Civil Service Appeals Board, the presiding officer ~~shall be~~ is the entire board. "Employees of the agency" means employees of a state agency or department or members, agents or employees of a board who are directly related to and whose official duties involve the matter at issue.

B. The confidential information disclosed pursuant to this subsection is subject to the following limitations:

(1) The hearing officer determines that introduction of the confidential information is necessary for the determination of an issue before the hearing officer;

(2) During the introduction of confidential information, the proceeding is open only to the hearing officer, employees of the agency, parties, parties' representatives, counsel of record and the witness testifying regarding the information, and access to the information is limited to these people. Disclosure is limited to information directly related to the matter at issue;

(3) Witnesses ~~shall be~~ are sequestered during the introduction of confidential information, except when offering testimony at the proceeding;

(4) The names or identities of reporters of confidential information or of other persons ~~shall~~ may not be disclosed, except when disclosure is ~~deemed~~ determined necessary and relevant by the hearing officer; and

(5) After hearing, the confidential information is sealed within the record and ~~shall~~ may not be further disclosed, except upon order of court.

**Sec. 2. 24 MRSA §2502, sub-§§1-B and 2-A** are enacted to read:

**1-B. Carrier.** "Carrier" has the same meaning as in Title 24-A, chapter 56-A.

**2-A. Managed care plan.** "Managed care plan" has the same meaning as in Title 24-A, chapter 56-A.

**Sec. 3. 24 MRSA §2506**, as amended by PL 1989, c. 462, §1, is further amended to read:

**§2506. Provider and carrier reports**

A health care provider shall, within 60 days, report in writing to the disciplined practitioner's board or authority the name of any licensed, certified or registered employee or person privileged by the provider whose employment or privileges have been revoked, suspended, limited or terminated or who resigned while under investigation or to avoid investigation for reasons related to clinical competence or unprofessional conduct, together with pertinent information relating to that action. Pertinent information includes a description of the adverse action, the date, the location and a description of the event or events giving rise to the adverse action. Upon request, the following information must be released to the board or authority: medical records relating to the event or events; written statements signed or prepared by any witness or complainant to the event; and related correspondence between the practitioner and the provider. The report ~~shall~~ **must** include situations in which employment or privileges have been revoked, suspended, limited or otherwise adversely affected by action of the health care practitioner while the health care practitioner was the subject of disciplinary proceedings, and it also ~~shall~~ **must** include situations where employment or privileges have been revoked, suspended, limited or otherwise adversely affected by act of the health care practitioner in return for the health care provider terminating such proceeding. Any reversal, modification or change of action reported pursuant to this section ~~shall~~ **must** be reported immediately to the practitioner's board or authority, together with a brief statement of the reasons for that reversal, modification or change. The failure of any such health care provider to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.

Carriers providing managed care plans are subject to the reporting requirements of this section when they take adverse actions against a practitioner's credentials or employment for reasons related to clinical competence or unprofessional conduct that may adversely affect the health or welfare of the patient.

**Sec. 4. 24 MRSA §2511, first ¶**, as amended by PL 1993, c. 600, Pt. A, §19, is further amended to read:

Any person acting without malice, any physician, podiatrist, health care provider, or professional society ~~or~~ any member of a professional competence

committee, or professional review committee ~~or~~ any board or appropriate authority ~~is~~ and any entity required to report under this chapter are immune from civil liability:

**Sec. 5. 32 MRSA §2594-B, sub-§1**, as amended by PL 1993, c. 600, Pt. A, §185, is further amended to read:

**1. License required.** A physician assistant may not practice under the supervision of an osteopathic physician until the physician assistant has applied for and obtained a license issued by the Board of Osteopathic Licensure, which must be renewed ~~annually~~ biennially.

**Sec. 6. 32 MRSA §2599**, as amended by PL 1993, c. 600, Pt. A, §192, is further amended by adding at the end a new paragraph to read:

Provision of information protected by this section to the board pursuant to Title 24, section 2506 does not waive or otherwise affect the confidentiality of the records or the exemption from discovery provided by this section for any other purpose.

**Sec. 7. 32 MRSA §3270-B**, as amended by PL 1993, c. 600, Pt. A, §206, is further amended by repealing the headnote and replacing it with the following:

**§3270-B. License and regulation**

**Sec. 8. 32 MRSA §3270-B, first ¶**, as amended by PL 1993, c. 600, Pt. A, §206, is further amended to read:

A physician assistant is not permitted to practice until the physician assistant has applied for and obtained a ~~certificate of qualification~~ license issued by the Board of Licensure in Medicine, which must be renewed biennially, and a certificate of registration, ~~which must be renewed biennially~~. All applications for certificate of qualification registration must be accompanied by an application by the proposed supervisory physician, ~~which application that~~ must contain a statement that that physician is responsible for all medical activities of the physician assistant. The Board of Licensure in Medicine is authorized to adopt rules regarding the training and ~~certification~~ licensure of physician assistants and the agency relationship between the physician assistant and the supervising physician. Those rules may pertain, but are not limited, to the following matters:

**Sec. 9. 32 MRSA §3270-B, sub-§1**, as enacted by PL 1975, c. 680, §1, is amended to read:

**1. Application information.** The information to be contained in the application for a certificate of ~~qualification~~ registration;

**Sec. 10. 32 MRSA §3270-B, sub-§11**, as amended by PL 1993, c. 600, Pt. A, §206, is further amended to read:

**11. Fees for biennial license renewal.** Fees for the biennial ~~registration~~ license renewal of physician assistants in an amount not to exceed \$100.

**Sec. 11. 32 MRSA §3286, 2nd ¶**, as amended by PL 1993, c. 600, Pt. A, §219, is further amended to read:

For the purpose of this ~~section~~ chapter, by practicing or by making and filing a biennial license to practice medicine in this State, every physician licensed under this chapter who accepts the privilege to practice medicine in this State is deemed to have given consent to a mental or physical examination when directed in writing by the board and to have waived all objections to the admissibility of the examining physicians' testimony or examination reports on the grounds that the testimony or reports constitute a privileged communication.

**Sec. 12. 32 MRSA §3296**, as amended by PL 1993, c. 600, Pt. A, §223, is further amended by adding at the end a new paragraph to read:

Provision of information protected by this section to the board pursuant to Title 24, section 2506 does not waive or otherwise affect the confidentiality of the records or the exemption from discovery provided by this section for any other purpose.

See title page for effective date.

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## CHAPTER 272

H.P. 1049 - L.D. 1466

### An Act to Provide Flexibility and Costs-savings in Department of Transportation Property Acquisition Procedures

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

**Sec. 1. 23 MRSA §153-B, sub-§2**, as enacted by PL 1993, c. 536, §2, is amended to read:

**2. Survey and appraisal.** When property is to be purchased or taken over and held for the State, unless the department determines that an adequate description already exists, the department shall first cause the property or interest in the property to be acquired to be surveyed and described, and a plan of the property made, and to be appraised by one or more appraisers. The owner or the owner's designated representative must be given an opportunity to

accompany the appraisers during the appraiser's inspection of the property. All persons employed by the department are authorized, to the extent necessary for surveys, appraisals and preliminary engineering, to enter and cross all lands within, adjoining and adjacent to the area ~~to be surveyed~~ proposed for acquisition in carrying out the objectives of this section. The department may prescribe ~~a procedure~~ procedures to waive the appraisal in cases involving the acquisition by sale or donation of property or interest in property. The department may prescribe procedures to waive the appraisal in cases in which the fair market value of the property or interest in the property to be taken is estimated at \$5,000 or less and valuation can be established by another method. In any case in which the department and the owner do not reach an agreement about the value of property or interest in property to be acquired, or if the owner requests, the department shall perform an appraisal.

**Sec. 2. 23 MRSA §154**, as amended by PL 1987, c. 395, Pt. A, §§94 and 95, is further amended to read:

#### §154. Condemnation proceedings

If the department determines that public exigency requires the taking of ~~such~~ property or any interest ~~therein~~ forthwith in property, or is unable to purchase ~~such a property and or any interest therein~~ in a property, or the necessary ways and access ~~thereto~~ to a property at what it ~~deems~~ considers a reasonable valuation, or if the title in a property is defective, it shall file in the registry of deeds for the county or registry district where the land is located a notice of condemnation which ~~shall~~ must contain a description of the project specifying the property and the interest ~~therein~~ taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The department may prescribe procedures for the reasonable determination of the owner or owners of record. The department may join in the ~~same~~ notice one or more separate properties whether in the same or different ownership and whether or not taken for the same use.

~~A-~~ The department shall serve a check in the amount of the determined net damage and offering price and a copy of the notice of condemnation shall be served on the owner or owners of record. In case there is multiple ownership, the check may be served on any one of the owners. With that copy there shall be served the department must serve on each individual owner of record a copy of so much that part of the plan as relates to the particular parcel or parcels of land taken from him that owner and a statement by the department with respect to the particular parcel or parcels of land taken from him that owner which shall must:

**1. Date of proposed possession.** State the proposed date of taking possession;

**2. Compensation involving severance damage.** Where the department appraisals disclose severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:

- A. The highest and best use of the property at the date of taking;
- B. The highest and best use of the property remaining after the taking;
- C. The fair market value of the property before the taking;
- D. The fair market value of the property after the taking;
- E. The gross damage, showing separately:
  - (1) The fair market value of the real property taken; and
  - (2) Severance damages including the impairment or destruction of facilities and structures;
- F. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against severance damages;
- G. The net damage showing separately:
  - (1) The fair market value of the real property taken;
  - (2) The amount of severance damages in excess of special benefits; and
  - (3) The offering price;
- H. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within said 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and

I. Enclosed Check No.: ..... Amount: \$ .....

Payable to: .....

Sent to: .....

**3. Compensation not involving severance damage.** Where the department appraisals disclose no

severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:

- A. The highest and best use of the property at the date of taking;
- C. The fair market value of the real property taken as of the date of taking;
- E. Offering price;
- F. The check represents the ~~state's~~ State's offer of just compensation. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within the 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and
- G. Enclosed Check No.: ..... Amount: \$ .....

Payable to: .....

Sent to: .....

**4. Compensation in cases involving the facilities of a public utility.** Where the condemnation involves the taking of established rights and facilities owned by a public utility and located outside of an established highway right-of-way, no statement by the department as provided above ~~shall~~ may be sent to the public utility concerned. In any negotiations for an agreement with such public utility with regard to such rights and facilities, the department shall consider, without being limited to, the following elements of damage:

- A. Relocation costs, which ~~shall~~ must include the cost of acquisition of substitute rights and the cost of establishing either existing or substitute facilities in a new location;
- B. The salvage value of facilities removed;
- C. Cost of removal; and
- D. The value of betterments where the function of the substitute facilities exceeds the function of the replaced facilities.

Service of the notice of condemnation with ~~the~~ a copy of the plan, check and the statement by the department ~~shall~~ must be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. ~~The~~ A notice of ~~describing the~~ condemnation ~~only~~ ~~shall~~ must be published once in a newspaper of

general circulation in the county where the property is located and such publication ~~shall constitute~~ constitutes service on any unknown owner or owners or other persons who may have or claim an interest in the property. The notice must consist of an area map depicting the general location of the property interests to be condemned and such other information as the department determines will sufficiently identify the area in which the property interests are to be taken; an informative summary listing the parcel or item numbers to be condemned, the name of the apparent owner or owners of record of the property interests, the estimated areas to be condemned and the nature of the interests to be condemned; and a location at which the complete notice of layout and taking may be examined.

If such owner is a person under the age of 18 years, or an incompetent person, the commission shall cause such notice and check to be served upon the legal guardian of such person or incompetent. If there is no such guardian, then the department shall apply to the judge of probate for the county wherein the property is situated, briefly stating the facts and requesting the appointment of a guardian. The reasonable fee of such guardian as approved by the court ~~shall~~ must be paid by the department.

In case there is a mortgage, tax lien of record or other encumbrance covering any of said land, a copy of the notice of condemnation ~~shall~~ must be sent forthwith by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to ~~his~~ the holder's office or place of abode if known, otherwise to the office, abode or address as set forth in said record.

The recording of the notice of condemnation ~~shall be~~ is the date of taking and ~~shall vest~~ vests title to the property therein described in the State in fee simple or such lesser state as is specified in the notice of condemnation. Within one year after the completion of the project for which the land is taken, the department shall file a plan for recording in the registry of deeds for the county or registry district where the land is located.

If a condemnation proceeding is instituted and then abandoned, the owner of any right, title or interest in any real property included in said proceeding ~~shall~~ must be reimbursed by the department for ~~his~~ reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings.

See title page for effective date.

## CHAPTER 273

### H.P. 397 - L.D. 542

#### **An Act to Make Appeals to the Law Court From Revocation of Probation Proceedings Conditional and to Clarify the Matter of Bail Pending Final Disposition of a Motion for Revocation of Probation**

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

**Sec. 1. 17-A MRSA §1205, sub-§8** is enacted to read:

**8.** In deciding whether to set bail under this section and in setting the kind and amount of that bail, the court must be guided by the standards of post-conviction bail in Title 15, section 1051, subsections 2 and 3. Appeal is governed by Title 15, section 1051, subsections 5 and 6. Bail set under this section is also governed by the sureties and other forms of bail provisions in Title 15, chapter 105-A, subchapter IV and the enforcement provisions in Title 15, chapter 105-A, subchapter V, articles 1 and 3, including the appeal provisions in Title 15, section 1099-A, subsection 2.

**Sec. 2. 17-A MRSA §1206, sub-§3,** as amended by PL 1993, c. 234, §1, is further amended to read:

**3.** If a hearing is ordered, the person on probation must be notified, and the court may issue a summons or may issue a warrant for the person's arrest and order the person committed, with or without bail, pending the hearing. Section 1205, subsection 8 applies to bail under this section.

**Sec. 3. 17-A MRSA §1207,** as amended by PL 1993, c. 234, §3, is repealed and the following enacted in its place:

#### **§1207. Review**

Review of a revocation of probation pursuant to section 1206 must be by appeal.

**1. District Court proceeding.** In a probation revocation proceeding in the District Court, a person whose probation is revoked may appeal to the Superior Court under Title 15, section 2111 and the applicable Maine Rules of Criminal Procedure. An appeal to the Law Court, from an adverse decision of the Superior Court sitting as an intermediate appellate court, is not an appeal of right. The time, manner and specific conditions for taking that appeal to the Law Court are as the Supreme Judicial Court provides in the Maine Rules of Criminal Procedure.

**2. Superior Court proceeding.** In a probation revocation proceeding in the Superior Court, a person whose probation is revoked may not appeal as of right. The time, manner and specific conditions for taking that appeal to the Law Court are as the Supreme Judicial Court provides in the Maine Rules of Criminal Procedure.

**3. Assignment and withdrawal of counsel.** Assignment and withdrawal of counsel must be in accordance with the Maine Rules of Criminal Procedure.

See title page for effective date.

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## CHAPTER 274

S.P. 450 - L.D. 1424

### **An Act to Allow ATV Use on Public Lands Not Specifically Designated as Primitive-use Land**

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

**Sec. 1. 12 MRSA §602, sub-§20,** as amended by PL 1991, c. 354, §1, is further amended to read:

**20. Management of ATV's.** To administer the ATV Recreational Management Fund, established under section 7854, subsection 4, for the purposes given in that subsection. The bureau may ~~promulgate~~ adopt rules, in accordance with Title 5, chapter 375, subchapter II, for the issuance of grants-in-aid from the fund and to further define alpine tundra areas pursuant to section 7851, subsection 5 ~~2-A.~~ 2-A. The bureau shall establish a policy in which the prudent use of ATV's is allowed and guidelines are set for the limited use of ATV's on certain public lands that are not specifically designated or set aside as primitive-use lands pursuant to law or through rulemaking by the department or set aside for other uses incompatible with the use of ATV's. The policy must be in place no later than June 1, 1998; and

See title page for effective date.

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## CHAPTER 275

S.P. 399 - L.D. 1294

### **An Act to Clarify the Jurisdiction of the Public Utilities Commission over Telecommunication Utilities' Special Rate Contracts**

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

**Sec. 1. 35-A MRSA §9102,** as enacted by PL 1993, c. 638, §2, is amended to read:

#### **§9102. Adoption of alternative form of regulation**

The commission may adopt, after public hearings and other processes the commission determines appropriate, an alternative form of regulation for any telephone utility in the State. The alternative form of regulation must conform to the requirements of chapters 71, 73, 75, 87 and 89, but need not conform with chapter 3 to the extent that the provisions of chapter 3 require the use of rate-base, rate-of-return or any other specific form of regulation of the rates of a telephone utility or to the extent that the provisions of chapter 3 give any party, including the telephone utility, the right to petition to change rates for telecommunications services. In addition, the alternative form of regulation need not conform with section 703. This chapter may not be construed to limit the authority of the commission under section 1322.

See title page for effective date.

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## CHAPTER 276

H.P. 544 - L.D. 735

### **An Act to Permit the Public Utilities Commission to Suspend Rate Regulation of Certain Telephone Utilities**

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

**Sec. 1. 35-A MRSA §307-A** is enacted to read:

#### **§307-A. Exemption for certain telephone utilities**

The commission may adopt by rule standards and procedures for granting exemptions from all or specified portions of section 307 and for suspending its powers of suspension and investigation under section 310 with respect to a telephone utility, a specified group of telephone utilities or specified services offered by one or a group of telephone utilities. Any determination granting an exemption or suspension pursuant to the rule must be accompanied by a finding that the utility or group of utilities does not exercise significant power over pricing in the markets for the specified services and that the determination will not result in unjust or unreasonable rates for any customers in the markets for those services. The commission may limit its determination

to specific geographic areas. A utility whose rates or terms and conditions are subject to a determination made pursuant to a rule adopted under this section remains subject to other applicable provisions of this Title and commission rules.

For good cause, as defined by the commission by rule, the commission may revoke any determination made pursuant to this section. A revocation may be in whole or in part and may be specific to a single telephone utility or a single utility service.

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**Sec. 2. 35-A MRSA §912** is enacted to read:

**§912. Exemption for certain telephone utilities**

The commission may adopt by rule standards and procedures for granting exemptions to a telephone utility or a specified group of telephone utilities from all or specified portions of this chapter. Any exemption granted pursuant to the rule must be accompanied by a finding that the application of this chapter or portions of this chapter to the telephone utility or group of telephone utilities will not further the public interest. The commission may limit an exemption to specific geographic areas. A utility granted an exemption pursuant to a rule adopted under this section remains subject to other applicable provisions of this Title and commission rules.

For good cause, as defined by the commission by rule, the commission may revoke any exemption granted pursuant to this section. A revocation may be in whole or in part and may be specific to a single telephone utility or a single utility service.

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**Sec. 3. 35-A MRSA §1105** is enacted to read:

**§1105. Exemption for certain telephone utilities**

The commission may adopt by rule standards and procedures for granting exemptions to a telephone utility or a specified group of telephone utilities from all or specified portions of this chapter. Any exemption granted pursuant to the rule must be accompanied by a finding that the application of this chapter or portions of this chapter to the telephone utility or group of telephone utilities will not further the public interest. The commission may limit an exemption to specific geographic areas. A utility granted an exemption pursuant to a rule adopted under this section remains subject to other applicable provisions of this Title and commission rules.

For good cause, as defined by the commission by rule, the commission may revoke any exemption granted pursuant to this section. A revocation may be in whole or in part and may be specific to a single telephone utility or a single utility service.

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**Sec. 4. Application.** The Public Utilities Commission may not grant any exemption or suspend any of its powers pursuant to rules adopted under the Maine Revised Statutes, Title 35-A, section 307-A, 912 or 1105 before February 1, 1998.

**Sec. 5. Report.** By December 1, 1997, the Public Utilities Commission shall report to the Joint Standing Committee on Utilities and Energy on any actions taken pursuant to this Act. The report must include at a minimum the following:

1. Copies and summaries of any rules adopted or proposed to be adopted pursuant to the Maine Revised Statutes, Title 35-A, section 307-A, 912 or 1105;
2. Identification of all entities that have applied for exemptions or that the commission expects to apply for exemptions pursuant to Title 35-A, section 307-A, 912 or 1105;
3. An explanation of how the commission will assess the effect of granting exemptions pursuant to Title 35-A, section 307-A, 912 or 1105 on local exchange service providers and intrastate interexchange service providers and their customers and how the commission will ensure customers are not affected in a negative manner by the granting of exemptions;
4. A detailed evaluation of how telecommunications laws in this State do or do not conform to the requirements and policies of the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 and whether further changes to the laws of this State should be considered in the context of that federal law and changes that are occurring in the telecommunications industry; and
5. Draft legislation to accomplish any changes to laws in this State that the commission believes the Legislature should consider in light of the commission's evaluation pursuant to subsection 4.

**Sec. 6. Authorization to report legislation.** The Joint Standing Committee on Utilities and Energy may report out legislation concerning the regulation or deregulation of telecommunications service providers

to the Second Regular Session of the 118th Legislature.

See title page for effective date.

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## CHAPTER 277

### H.P. 374 - L.D. 519

#### An Act to Promote Water Skiing in the State

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

**Whereas,** these changes to the laws pertaining to water-skiing events must take effect prior to the start of the water-skiing season; 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. 12 MRSA §7802, sub-§3** is enacted to read:

**3. Sanctioned water-skiing courses.** The prohibition in subsection 1 does not apply to watercraft towing a water-skier on a water-skiing course for slalom, jump or trick events operated under a permit issued by the commissioner under this subsection. The commissioner may issue a permit for a water-skiing course that is located in whole or in part in the water safety zone if the commissioner determines that:

A. The course meets the following minimum dimensional requirements:

(1) Eight hundred and fifty feet in length, plus 500 feet at each end for turning and other maneuvers;

(2) Seventy-five feet in width, except that the course must be at least 125 feet in width if a jump is combined with a slalom or trick ski course; and

(3) A five-foot water depth throughout the course; and

B. The applicant has obtained the written permission of any landowner whose property is less than 75 feet from any course buoy.

The commissioner may issue a permit under this subsection only if notice of the permit application is given to all municipalities that have jurisdiction over the body of water.

All buoys used to mark the water-skiing course must prominently display the permit number. Buoys marking a course may be placed no earlier than April 1st and must be removed no later than November 1st of each year. The number of buoys for any water-skiing course may not exceed 40. Buoys that are part of a permitted course are granted the same legal protection from vandalism as navigational buoys under Title 38, section 329.

Water-skiing tow boats utilizing the course may not travel within 100 feet of the shore at any time. The commissioner, after giving a 10-day advance notice to an applicant, may suspend the use of the water-skiing course for up to 3 days for other permitted events, such as bass tournaments.

A course permitted under this subsection may be used for practice without a permit under section 7797. That use does not violate the provisions of section 7801, subsection 4. A permit under section 7797 is required for any water-skiing exhibition or tournament conducted at a course permitted under this subsection. The provisions of section 7801, subsection 5 do not apply to a course permitted under this subsection unless that course is also permitted under section 7797.

The commissioner may suspend or revoke a permit issued under this subsection if the commissioner determines that the presence of the course creates a safety concern or constitutes a nuisance.

The annual fee for a permit issued under this subsection is \$25.

This subsection is repealed March 31, 1999.

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

Effective May 27, 1997.

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## CHAPTER 278

### H.P. 376 - L.D. 521

#### An Act to Encourage Collaboration and Cooperation among Agencies in the Interests of Juveniles within the Juvenile Court System

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

**Sec. 1. 15 MRSA §3308, sub-§7, ¶B**, as amended by PL 1993, c. 354, §6, is further amended to read:

B. Nothing in this section precludes dissemination of any information contained in the records of ~~juvenile court~~ proceedings or other records described in subsection 5 by one criminal justice agency to another criminal justice agency for the purpose of the administration of criminal justice, the administration of juvenile criminal justice and for criminal justice agency employment, as long as:

- (1) The person concerning whom the records are sought has been convicted of a crime as an adult;
- (2) The person concerning whom the records are sought has been adjudicated as having committed a juvenile crime that, if committed by an adult, would be defined as a Class A, B or C crime by Title 17-A, the Maine Criminal Code, or by any other criminal statute outside that code;
- (3) The person concerning whom the records are sought has been adjudicated as having committed a juvenile crime with the use of a dangerous weapon, as defined in Title 17-A, section 2, subsection 9;
- (4) The person concerning whom the records are sought has been adjudicated as having committed 2 or more juvenile crimes that, if committed by an adult, would be defined as Class D or Class E crimes by Title 17-A, the Maine Criminal Code, or by any other criminal statute outside that code; or
- (5) The person seeking the records is the prosecuting attorney in any proceeding and the person concerning whom the records are sought is a defendant in that proceeding.

**Sec. 2. 15 MRSA §3308, sub-§7, ¶B-1** is enacted to read:

B-1. Nothing in this section precludes dissemination of any information in the records of court proceedings and in the other records described in subsection 5, if:

- (1) The juvenile has been adjudicated as having committed a juvenile crime;
- (2) The information is disseminated by and to persons who directly supervise or report on the health, behavior or progress of the

juvenile, the superintendent of the juvenile's school and the superintendent's designees, criminal justice agencies or agencies that are or might become responsible for the health or welfare of the juvenile as a result of a court order or by agreement with the Department of Corrections or the Department of Human Services; and

(3) The information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation.

Any information received under this paragraph is confidential and may not be further disseminated, except as otherwise provided by law.

**Sec. 3. 34-A MRSA §3003, sub-§1, ¶D**, as amended by PL 1995, c. 368, Pt. R, §9, is further amended to read:

D. To any criminal justice agency if necessary to carry out the administration of criminal justice, the administration of juvenile criminal justice or for criminal justice agency employment; ~~and~~

**Sec. 4. 34-A MRSA §3003, sub-§1, ¶E**, as amended by PL 1995, c. 368, Pt. R, §10, is further amended to read:

E. To persons engaged in research if:

- (1) The research plan is first submitted to and approved by the commissioner;
- (2) The disclosure is approved by the commissioner; and
- (3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

The commissioner and the person doing the research shall preserve the anonymity of the person receiving services from the department and may not disseminate data that refer to that person by name, number or in any other way that might lead to the person's identification; and

**Sec. 5. 34-A MRSA §3003, sub-§1, ¶F** is enacted to read:

F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile, if the information is relevant to and disseminated for the purpose of

creating or maintaining an individualized plan for the juvenile's rehabilitation.

See title page for effective date.

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## CHAPTER 279

H.P. 1135 - L.D. 1591

### An Act to Amend the Washington County Budget Process

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

**Whereas,** county budget preparation for the following calendar year must begin in early fall; and

**Whereas,** immediate enactment of this change in the Washington County budget approval process is necessary for the preparation of the 1998 county budget; 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. 30-A MRSA §900,** as enacted by PL 1991, c. 777, §1, is amended to read:

#### **§900. Budget; appropriations; approval**

Notwithstanding sections 2, 701 and 702, in Washington County the county commissioners may appropriate money; according to a budget that must be approved by a majority of the county commissioners or as otherwise provided in this article.

**Sec. 2. 30-A MRSA §900-B, sub-§1, ¶A,** as enacted by PL 1991, c. 777, §1, is amended to read:

A. Before September 15th of every year, the county commissioners shall notify all municipal officers in the county to caucus by county com-

missioner districts at a specified date, time and place for the purpose of electing at least one municipal officer from each district as a member of the budget advisory committee; except that, in 1992, at least 3 municipal officers must be selected from each district unless the municipal officers of a district decide that another person from that district would be better qualified. A municipality may not be represented by more than one officer at a time. The county commissioner shall serve as nonvoting moderator for that district caucus. Nominations must be received from the floor. The nominee receiving the most votes is approved as a budget advisory committee member except that, in 1992, each caucus shall elect 3 members. The names of those elected by the caucus must be recorded and forwarded to the county commissioners.

**Sec. 3. 30-A MRSA §900-B-1** is enacted to read:

#### **§900-B-1. Prior year's budget available**

Annually by September 15th, the county commissioners shall publish, deliver to the budget advisory committee and make available to the public copies of a financial statement for the preceding county fiscal year showing funds authorized, including but not limited to revenues, unappropriated fund balances and reserve accounts, and expenditures made for each department, account and program and showing the balance in each account at the end of the fiscal year.

**Sec. 4. 30-A MRSA §900-D,** as enacted by PL 1991, c. 777, §1, is amended to read:

#### **§900-D. Budget estimate; submission to advisory committee; legislative delegation role**

The Washington County commissioners shall submit a budget estimate to the budget advisory committee no later than October 1st for the coming year. The budget advisory committee shall review the budget estimate and make recommendations to the commissioners before November 15th. The county commissioners shall act on the budget in a timely fashion and, in any event, not later than December 15th of the budget year. If county commissioners wish to make changes in the budget recommended by the budget advisory committee, the county commissioners shall schedule one or more meetings with the budget advisory committee before December 15th for the purpose of negotiating a final budget.

If, following negotiations, a final budget that is acceptable to the budget advisory committee is not approved by the county commissioners by December 15th, the budget advisory committee shall adopt a final budget and transmit that budget to the county

commissioners. The budget adopted by the budget advisory committee may be changed by a majority vote of the board of county commissioners. If the adopted budget is changed by the county commissioners, the budget advisory committee may reject that change by a 2/3 vote of its membership. The budget is final and not subject to further action by either the county commissioners or the budget advisory committee upon failure of the commissioners to recommend changes in the budget transmitted from the budget advisory committee or upon acceptance or rejection of changes by the budget advisory committee. The entire budget approval process must be completed by December 31st.

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

Effective May 27, 1997.

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**CHAPTER 280**

**H.P. 1132 - L.D. 1588**

**An Act Concerning Rabbit Hunting with Dogs**

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

**Sec. 1. 12 MRSA §7461, sub-§2** is enacted to read:

**2. Hunting with a dog.** A person may use a dog to hunt, or be accompanied by a dog while hunting, for wild hares or rabbits during the open firearm season on deer.

See title page for effective date.

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**CHAPTER 281**

**H.P. 531 - L.D. 722**

**An Act to Amend the Laws Regarding Scallop Harvesting**

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

**Sec. 1. 12 MRSA §§6726 and 6727** are enacted to read:

**§6726. Ring size**

**1. Minimum size.** It is unlawful to utilize a drag to fish for or take scallops in the coastal waters with rings that measure less than:

A. From November 1, 1997 to April 15, 1999, 3 inches in diameter;

B. From November 1, 1999 to April 15, 2001, 3 1/4 inches in diameter; and

C. On November 1, 2001 and thereafter, 3 1/2 inches in diameter.

**2. Measurement of rings.** Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement may not include links or normal welds from ring manufacturing. The rings measured must be at least 5 rings away from the mouth and at least 2 rings away from other rigid portions of the drag.

**3. Configuration of drag.** The commissioner shall adopt rules that limit the mesh size of net material on the top of a scallop drag, prohibit chafing gear or cookies on the top of a scallop drag, establish ring link restrictions for a scallop drag and prohibit drag or net obstructions. Rules initially adopted pursuant to this subsection must be identical to federal regulations in the Atlantic sea scallop fishery in effect on March 25, 1997 that limit the mesh size of net material on the top of a scallop drag, prohibit chafing gear or cookies on the top of a scallop drag, establish ring link restrictions for a scallop drag and prohibit drag or net obstructions. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

**§6727. Drag width**

**1. Opening month of season.** It is unlawful from November 1st to November 30th for a person to possess on any vessel fishing for scallops in the coastal waters, or to utilize when fishing for or taking scallops in the coastal waters, a drag or any combination of drags that measures in excess of 5 feet, 6 inches across from one extreme outside edge of the mouth of the drag or combination of drags to the opposite extreme outside edge.

**2. Remainder of season.** It is unlawful from December 1st to April 15th for a person to possess on any vessel fishing for scallops in the coastal waters, or to utilize when fishing for or taking scallops in the coastal waters, a drag or any combination of drags that measures in excess of 10 feet, 6 inches across from one extreme outside edge of the mouth of the drag or combination of drags to the opposite extreme outside edge.

**Sec. 2. 12 MRSA §6954-B,** as amended by PL 1995, c. 518, §1, is repealed.

**Sec. 3. 12 MRSA §6954-C** is enacted to read:

**§6954-C. Drag limits north of international bridge, Lubec**

**1. Gear requirements.** It is unlawful to fish in the coastal waters northerly and inshore of the international bridge that connects Lubec to Campobello Island, New Brunswick, Canada with any drag or combination of drags:

A. That measures in excess of 5 feet, 6 inches in width measuring from one extreme outside edge of the mouth of the drag or combination of drags to the opposite extreme outside edge; and

B. If used for the taking of scallops, that is greater than 8 rings deep.

See title page for effective date.

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**CHAPTER 282**

**H.P. 643 - L.D. 896**

**An Act Increasing from 12 Hours to 18 Hours the Time Limit for Registering Deer and Bear**

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

**Sec. 1. 12 MRSA §7452, sub-§6,** as enacted by PL 1979, c. 420, §1, is amended to read:

**6. Failure to register bear.** A person is guilty of failure to register a bear if he that person:

A. Possesses a bear ~~which~~ that has not been legally registered as provided in section 7451 except in accordance with chapter 709, subchapter IV;

B. Kills a bear and fails to present it for registration in ~~his~~ that person's name at the first open bear registration station on the route taken by ~~him~~ that person; or

C. Keeps an unregistered bear at ~~his~~ that person's home, or at any place of storage except a bear registration station, more than ~~42~~ 18 hours.

**Sec. 2. 12 MRSA §7458, sub-§4-A,** as enacted by PL 1979, c. 723, §18-E, is amended to read:

**4-A. Keeping an unregistered deer.** A person is guilty, except as provided in subsection 15, paragraph G, of keeping an unregistered deer if ~~he~~ that person keeps an unregistered deer at ~~his~~ home, or at

any place of storage except a deer registration station, more than ~~42~~ 18 hours.

See title page for effective date.

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**CHAPTER 283**

**H.P. 161 - L.D. 203**

**An Act Regarding Trap-tending Requirements**

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

**Sec. 1. 12 MRSA §7432, sub-§2,** as amended by PL 1989, c. 913, Pt. B, §6, is repealed.

**Sec. 2. 12 MRSA §7432, sub-§2-A** is enacted to read:

**2-A. Failure to visit traps.** Except as provided in subsection 14, paragraph C, a person is guilty of failure to visit traps if that person:

A. While trapping in any organized or incorporated place, fails to visit each trap, except killer-type traps, or fails to cause each trap to be visited at least once in every calendar day;

B. While trapping in any organized or incorporated place, fails to visit each killer-type trap or fails to cause each trap to be visited at least once in every 3 calendar days;

C. While trapping in any unorganized place, fails to visit each trap, except killer-type traps and water sets, or fails to cause each trap to be visited at least once in every calendar day; or

D. While trapping in any unorganized place, fails to visit each killer-type trap or water set or fails to cause each trap to be visited at least once in every 5 calendar days.

**Sec. 3. 12 MRSA §7432, sub-§14, ¶C** is enacted to read:

C. The requirements of subsection 2-A do not apply to under ice water sets for beaver and muskrat.

See title page for effective date.

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## CHAPTER 284

H.P. 1201 - L.D. 1701

**An Act to Promote Economic Independence for Low-income Families****Be it enacted by the People of the State of Maine as follows:****Sec. 1. 22 MRSA §3741-M** is enacted to read:**§3741-M. Nontraditional job training and placement services**

The department shall contract with a statewide nonprofit corporation with a proven history of successfully training and placing women in nontraditional trade and technical occupations to provide nontraditional job training and placement services for women receiving assistance under the temporary assistance to needy families program.

See title page for effective date.

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## CHAPTER 285

S.P. 294 - L.D. 945

**An Act to Establish Basic Standards and Procedures for Personal Services Contracting by the State****Be it enacted by the People of the State of Maine as follows:****Sec. 1. 5 MRSA §1816-A** is enacted to read:**§1816-A. Personal services contracting**

**1. Conditions; general.** Except for contracts requiring specific legislative approval, personal services contracting is permissible when any one of the following conditions is met.

A. The services contracted are not currently available within a state agency, can not be performed satisfactorily by civil service employees or are of such a highly specialized or technical nature that the necessary expert knowledge, experience or ability is not available through the civil service system.

B. The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as service agreements, include, but are not limited to,

agreements to service or maintain office equipment or computers that are leased or rented.

C. The legislative, administrative or legal goals and purposes can not be accomplished by using persons selected pursuant to the civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings when there is a clear need for a different outside perspective.

D. A state agency needs private counsel because a conflict of interest on the part of the Department of the Attorney General prevents it from representing the agency without compromising the agency's position. A contract entered into under this condition requires the written consent of the Attorney General.

E. The contractor provides equipment, materials, facilities or support services that the State can not feasibly provide in the location where the services are to be performed.

F. The contractor conducts training courses for which appropriately qualified civil service instructors are not and can not be made available.

G. The services are of such an urgent, temporary or occasional nature that the delay incumbent in implementation under civil service would frustrate the purpose.

H. The contracting agency demonstrates a quantifiable improvement in services that can not be reasonably duplicated within existing resources.

**2. Conditions; cost savings.** Personal services contracting is permissible to achieve actual cost savings when all the following conditions are met.

A. The contracting agency clearly demonstrates that the proposed contract would result in actual overall cost savings to the State as long as, in comparing costs:

(1) The State's costs of providing the same service as proposed by a contractor are included. These costs must include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment and materials needed to perform the service; and

(2) Any continuing state costs directly associated with a contractor providing a contracted function are included. These continuing state costs include, but are not limited to, those costs for inspection, supervision, monitoring and any pro rata share of

existing costs or expenses, including administrative salaries and benefits, rent, equipment costs, utilities and materials.

B. The contract does not adversely affect the State's affirmative action efforts.

C. The contract is awarded in accordance with section 1825-B.

D. The contract includes specific provisions pertaining to the qualifications of the staff that is to perform the work under the contract, as well as a statement that the contractor's hiring practices meet applicable affirmative action and antidiscrimination standards.

E. The potential for future economic risk to the State from potential rate increases or work interruptions by the contractor is minimal.

F. The contract is with a firm or a licensed, registered or otherwise professionally qualified individual. For the purposes of this section, "firm" means a corporation, partnership, nonprofit organization or sole proprietorship.

G. The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by State Government.

H. The contract does not contain standards of performance or employee qualifications lower than existing state standards or minimum qualifications.

**3. Contract information retained.** Departments or agencies submitting proposed contracts shall retain all data, including written findings, relevant to the contracts and necessary for a specific application of the standards set forth in subsections 1 and 2.

**Sec. 2. Application.** This Act applies to proposals for new contracts and the renewal process for existing contracts as they occur on and after the effective date of this Act.

See title page for effective date.

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**CHAPTER 286**

**H.P. 783 - L.D. 1071**

**An Act to Ensure That Crime Victims Are Informed of Their Rights**

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

**Sec. 1. 17-A MRSA §1172, sub-§2,** as enacted by PL 1995, c. 680, §5, is amended to read:

**2.** When providing notice under subsection 1, the attorney for the State shall offer to provide the victim with a pamphlet containing this chapter, Title 5, chapter 316-A and Title 15, sections 812 and 6101. In addition, the attorney for the State, as part of any victim and witness support program that attorney administers under Title 30-A, section 460, shall provide the victim with a pamphlet outlining in every day language the provisions set out in this chapter, Title 5, chapter 316-A and Title 15, sections 812 and 6101. The attorney for the State may use the pamphlet printed and distributed by the Department of Corrections or another pamphlet that meets the criteria in this section.

See title page for effective date.

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**CHAPTER 287**

**S.P. 260 - L.D. 868**

**An Act Regarding the Form of Motorcycle License Plates**

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

**Sec. 1. 29-A MRSA §515-A** is enacted to read:

**§515-A. Motorcycle registration plates**

Motorcycle registration plates must bear the words "Ride Safe." Motorcycle registration plates issued prior to January 1, 1998 may be replaced, upon a registrant's request, by plates issued under this subsection. The registrant shall surrender the original plates and pay a one-time \$5 fee for the replacement plates.

Motorcycle plates issued under sections 457 and 517 are exempt from this subsection.

**Sec. 2. Effective date.** This Act takes effect January 1, 1998.

Effective January 1, 1998.

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**CHAPTER 288**

**H.P. 1224 - L.D. 1736**

**An Act to Register New Property for the Thorncrag Bird Sanctuary with the Department of Inland Fisheries and Wildlife**

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

**Sec. 1. 12 MRSA §7651, sub-§1**, as amended by PL 1991, c. 98, is further amended by amending the 16th blocked paragraph from the end to read:

Thorncrag Bird Sanctuary: The following described territory: A certain parcel of land situated in said Lewiston, and bounded as follows, to wit, beginning on the northeasterly side of the road leading from Barker Mills to the Thorne Corner Schoolhouse so-called, at the corner of the late Benjamin Thorne's land; thence running northeasterly about one hundred and seventy (170) rods to the corner of the late Phineas Wright and Dutton lot, so-called, thence northwesterly on said Wright lot about forty-six (46) rods to land owned by David Nevens; thence southwesterly on the line of said Neven's land to the above mentioned road, thence on the line of said road to the first mentioned bounds, containing forty-five acres (45) more or less. A certain lot or parcel of land, situated in Lewiston, in said County of Androscoggin, and bounded and described as follows: Bounded southwesterly by a line commencing at a point in the southeasterly line of land of The Stanton Bird Sanctuary, six hundred eighty (680) feet northeasterly from the northeasterly line of said Montello Street, thence southeasterly and parallel with said Montello Street to a point six hundred eighty (680) feet northeasterly from said Montello Street to land formerly of George E. Ridley; bounded southeasterly by land formerly of said George E. Ridley; bounded northeasterly by land formerly of George H. Field; and bounded northwesterly by land of The Stanton Bird Club. A certain lot of land situated in said Lewiston, bounded and described as follows, to wit: Beginning at a stake and stones at the northeast corner of lot numbered thirteen (13); thence southwesterly on line of land now or formerly of Catherine Lynch and land formerly owned by George Bubier to the northeast corner of land formerly owned by Phineas Wright; thence northwesterly along said Wright land sixty-two (62) rods and five (5) links to stake in the corner of land now or formerly owned by William B. Kilbourne; thence north fifty degrees (50°) east on line of said Kilbourne land seventy (70) rods to stake standing on the southerly line of lot numbered twelve (12), formerly owned by James Lowell; thence southeasterly on said last mentioned line sixty-two (62) rods and five (5) links to point of commencement. Containing twenty-six (26) acres and one hundred fifty-seven (157) rods. A certain lot or parcel of land adjoining the lot above described and bounded and described as follows, to wit: Commencing on the westerly side of the road leading from Thorne's Corner by the residence now or formerly owned by Henry C. Field to Greene at the northeasterly corner of land owned by said Field, now or formerly; thence

northwesterly on line of said Field land to land now or formerly of Frye and Dill; thence northeasterly on line of said Frye and Dill land and lot above described to land now or formerly owned by Catherine Lynch; thence southeasterly on line of said Lynch land to the aforesaid road; thence southwesterly by said road to point of commencement. Also another piece or parcel of land situated in said Lewiston, being a part of the Homestead Farm of Phineas Wright and bounded and described as follows: Beginning at the westerly corner of the Homestead Farm of Jarius Carville; thence southwesterly on said Carville land and land of Henry Field about fifty-seven (57) rods; thence at right angles northwesterly about sixty-nine and one-half (69 1/2) rods to the stone wall between the field and pasture on said Homestead Farm; thence by said wall northeasterly to the land of the late Dr. William Kilbourne; thence southeasterly on said Kilbourne land and land of Jarius Carville seventy-five (75) rods to point of beginning, containing twenty-seven (27) acres. A certain lot or parcel of land, situated in Lewiston in said County of Androscoggin and bounded and described as follows: Commencing at a point in the northeasterly line of Montello Street where the southeasterly line of land conveyed to the Stanton Bird Club by Alfred Williams Anthony by deed dated Jan. 18, 1922 and recorded in the Androscoggin Registry of Deeds, Book 315, page 447, intersects said street; thence northeasterly by southeasterly line of said land of said Stanton Bird Club, six hundred eighty (680) feet to land of said Stanton Bird Club; thence southeasterly and parallel with said Montello Street to a point six hundred eighty (680) feet northeasterly from said Montello Street and land formerly of George E. Ridley; thence southwesterly by said Ridley land six hundred eighty (680) feet to said Montello Street; thence northwesterly along the northeasterly side of said Montello Street to point of commencement. Also a certain other lot or parcel of land, situated in said Lewiston, bounded as follows: Westerly by the Highland Spring Road, northerly by the Thorne road, so-called, easterly by land of one A.D. Ames, and southerly by lands of Daniel Conley and A.W. Taylor, the same containing six and two-tenths (6.2) acres more or less. A certain lot or parcel of land situated northeasterly from the northeasterly end of East Avenue in said Lewiston, bounded and described as follows, to wit: Beginning at the corner of the Field, Wood, and Thorncrag lots, so-called, near the Miller Fireplace, thence running northwesterly one hundred fifty (150) feet about 9.03 rods, along the stone wall between the Thorncrag and Wood lots, so-called, to a stake and stones; thence at right angles northeasterly about 42.7 rods to a stake and stones on the line dividing the old Frye and Dill lot, now owned by the Stanton Bird Club, and the old Phineas Wright Homestead now owned by this Grantor; thence at nearly right angles along said line two hundred twenty (220) feet (13 1/3 rods) to the corner of the three lots commonly called the Frye and Dill, Henry Field and

Phineas Wright, now owned by this Grantor, lots; thence 42.7 rods at right angles southwesterly along the Field line to the point of beginning; containing three (3) acres more or less. A certain lot or parcel of land situated in said Lewiston, bounded and described as follows: Beginning at an iron stake set in the ground in a stone wall on the northeasterly line of land of said Stanton Bird Club, said stake being one hundred fifty (150) feet from the northwesterly corner of land of Raymond R. Field; thence northwesterly along the northeasterly line of land of said Stanton Bird Club one hundred twenty-five (125) feet to an iron stake set in the ground; thence at right angles northeasterly three hundred (300) feet to an iron stake set in the ground; thence at right angles northwesterly twenty-five (25) feet to an iron stake set in the ground; thence at right angles northeasterly three hundred seventeen (317) feet, more or less, to a stake set in the ground on the southeasterly line of land of the Stanton Bird Club one hundred fifty (150) feet to an iron stake set in the ground on the northwesterly line of land of said Stanton Bird Club; thence southwesterly along the northwesterly line of land of said Stanton Bird Club to the point of beginning; containing two (2) acres, more or less. A certain lot or parcel of land situated in Lewiston, bounded and described as follows: Beginning at a point on the southeasterly line of the original Stanton Bird Club Sanctuary, three hundred sixty-four (364) feet northeasterly from the northeasterly line of Montello Street; thence in a northeasterly direction by land now or formerly of the Stanton Bird Club, three hundred and sixty-eight (368) feet; thence in a southeasterly direction, parallel with the said northeasterly line of Montello Street, two hundred and forty (240) feet; thence in a southwesterly direction parallel with the first described line, three hundred sixty-eight (368) feet; thence in a northwesterly direction parallel with the said northeasterly line of Montello Street, two hundred forty (240) feet to the point of beginning, containing two (2) acres more or less. A certain lot or parcel of land situated in said Lewiston, it being the southwest end of Lot #13 bounded southeasterly on Lot #33 and southwesterly and northwesterly on a four (4) rod way as laid down on the plan of said township of said Lewiston. Containing fifty (50) acres, more or less, and being the homestead farm of the late Elizabeth S. Wood, deceased, and the premises being the same conveyed to her by the name of Elizabeth S. Haley by Dorcas G. Wright by deed dated April 12, 1866, and recorded in the Androscoggin County Registry of Deeds in Book 43, Page 114. A certain lot or parcel of land situated in said Lewiston, bounded and described as follows, viz: Commencing at a point on the westerly line of land now or formerly of H. Osmond Wood and Mabel V. Wood (formerly Dorcas Wright) where the northerly line of land of A. W. Anthony (formerly of Ephriam Wood) intersects said H. Osmond and Mabel V. Wood's west line; thence northerly nine hundred ninety-nine (999') feet on said

H. Osmond and Mabel V. Wood's westerly line to land now or formerly of Charles W. Benson (formerly of O. K. Douglass); thence at right angles westerly one thousand two hundred twenty (1220') feet on said Benson's southerly line to a point in a rock wall; thence southeasterly on line of land now or formerly of George H. McGibbon and Mathilda G. McGibbon, one thousand two hundred thirty (1,230') feet to a point in the rock wall on the northerly line of said Anthony's land, one thousand nine hundred forty-six (1,946') feet from the point of commencement; thence easterly along the northerly line of land of said Anthony, one thousand nine hundred forty-six (1,946') feet to the point of beginning. Deacon Davis Bird Refuge: The following described territory: A certain parcel of land situated in the city of Lewiston, in the county of Androscoggin, and bounded as follows: The most northerly corner of land of the estate of George K. Davis, bounded and described as follows, to wit: On the northwest by land of the so-called Ham Farm; on the northeast by Pleasant Street; on the southwest by land of Joseph Breault; and on the southeast by a line extending northeasterly from the easterly corner of said Breault's land, and being a continuation of the southeast boundary of said Breault's land, containing 2 acres, more or less. Woodbury Sanctuary: The following described territory: A certain parcel of land situated in the towns of Litchfield and Monmouth in the county of Kennebec and bounded as follows: The westerly side of Whippoorwill Road, so called. Being all the land conveyed to the Stanton Bird Club by Louise S. Drew and Clara B. Dana by deed dated July 2, 1929 and recorded in Kennebec County Registry of Deeds in Book 669-Page 210.

See title page for effective date.

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## CHAPTER 289

### H.P. 79 - L.D. 104

#### **An Act Concerning Threatening the Use of Deadly Force Against a Law Enforcement Officer Engaged in Carrying out Public Duty**

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

**Sec. 1. 17-A MRSA §110** is enacted to read:

**§110. Threat to use deadly force against a law enforcement officer**

A person otherwise justified in threatening to use deadly force against another is not justified in doing so with the use of a firearm or other dangerous weapon if the person knows or should know that the other person

is a law enforcement officer, unless the person knows that the law enforcement officer is not in fact engaged in the performance of the law enforcement officer's public duty, or unless the person is justified under this chapter in using deadly force against the law enforcement officer. A law enforcement officer may not make a nonconsensual warrantless entry into a dwelling place solely in response to a threat not justified under this section.

See title page for effective date.

**CHAPTER 290**

**H.P. 598 - L.D. 789**

**An Act to List Specific Threatened and Endangered Species**

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

**Sec. 1. 12 MRSA §7753, sub-§3**, as amended by PL 1995, c. 667, Pt. A, §33, is further amended to read:

**3. Legislative authority.** The Legislature, as sole authority, shall designate a species as state endangered or state threatened species. The list of state endangered or state threatened species is as follows:

Common Name	Scientific Name	Status
Least Tern	<i>Sterna albifrons</i>	Endangered
Golden Eagle	<i>Aquila chrysaetos</i>	Endangered
Piping Plover	<i>Charadrius melodus</i>	Endangered
Sedge Wren	<i>Cistothorus platensis</i>	Endangered
Grasshopper Sparrow	<i>Ammodramus savannarum</i>	Endangered
Box Turtle	<i>Terrapene carolina</i>	Endangered
Black Racer	<i>Coluber constrictor</i>	Endangered
Roseate Tern	<i>Sterna dougallii</i>	<del>Threatened</del> Endangered
Northern Bog Lemming	<i>Synaptomys borealis</i>	Threatened
Loggerhead Turtle	<i>Caretta caretta</i>	Threatened
Blanding's Turtle	<i>Emydoidea blandingii</i>	<del>Threatened</del> Endangered
Black Tern	<i>Chlidonias niger</i>	Endangered
American Pipit	<i>Anthus rubescens</i>	Endangered
Peregrine Falcon	<i>Falco peregrinus</i>	Endangered
Flat-headed Mayfly	<i>Epeorus frisoni</i>	Endangered
Ringed		

Boghaunter	<i>Williamsonia lintneri</i>	Endangered
Clayton's Copper	<i>Lycaena dorcas claytoni</i>	Endangered
Edwards' Hairstreak	<i>Satyrrium edwardsii</i>	Endangered
Hessel's Hairstreak	<i>Mitoura hesseli</i>	Endangered
Katahdin Arctic	<i>Oenis polixenes katahdin</i>	Endangered
Spotted Turtle	<i>Clemmys guttata</i>	Threatened
Bald Eagle	<i>Haliaeetus leucocephalus</i>	Threatened
Razorbill	<i>Alca torda</i>	Threatened
Atlantic Puffin	<i>Fratercula arctica</i>	Threatened
Harlequin Duck	<i>Histrionicus histrionicus</i>	Threatened
Arctic Tern	<i>Sterna paradisaea</i>	Threatened
Upland Sandpiper	<i>Bartramia longicauda</i>	Threatened
Swamp Darter	<i>Etheostoma fusiforme</i>	Threatened
Tidewater Mucket	<i>Leptodea ochracea</i>	Threatened
Yellow Lampmussel	<i>Lampsilis cariosa</i>	Threatened
Tomah Mayfly	<i>Siphonisca aerodromia</i>	Threatened
Pygmy Snaketail	<i>Ophiogomphus howei</i>	Threatened
Twilight Moth	<i>Lycia rachelae</i>	Threatened
Pine Barrens Zanclognatha	<i>Zanclognatha martha</i>	Threatened

**Sec. 2. 12 MRSA §7754, sub-§4** is enacted to read:

**4. Annual report.** The commissioner shall submit a written report by January 1st of each year to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters describing the status of all current and planned programs, activities and rules of the department pertaining to the conservation or management of endangered or threatened species. When appropriate, this report may be combined with any transplantation report required under subsection 1, paragraph D.

See title page for effective date.

**CHAPTER 291**

**H.P. 712 - L.D. 976**

**An Act to Amend the Enhanced 9-1-1 Laws**

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

**Sec. 1. 25 MRSA §2925, sub-§1**, as amended by PL 1993, c. 566, §8, is further amended to read:

**1. Membership.** The E-9-1-1 Council is composed of ~~45~~ 17 members; one appointed by the Public Utilities Commission; one appointed by the Commissioner of Public Safety; and ~~43~~ 15 appointed by the Governor, including one who is a municipal official nominated by the statewide association of municipalities, one county official nominated by a statewide association of county commissioners, one who is a chief of a municipal police department nominated by the statewide association of chiefs of police, one who is the chief of a municipal fire department nominated by the statewide association of fire chiefs, one who is a county sheriff nominated by the statewide association of sheriffs, one who represents small telephone companies, one who represents the largest provider of local exchange telephone services, one who represents cellular or wireless service providers, one who represents a direct provider of emergency medical services, one who is a dispatcher nominated by the statewide association of dispatchers, one who is a member of a volunteer fire department, one to represent the deaf and hearing impaired and 3 to represent the public-at-large. Each member may name a designee who may attend meetings of the council and act on that member's behalf in council proceedings.

**Sec. 2. 25 MRSA §2928**, as amended by PL 1995, c. 672, §5, is repealed.

**Sec. 3. 25 MRSA §§2929 to 2931** are enacted to read:

**§2929. Confidentiality of system information**

**1. Definition.** As used in this section, "confidential information" means the following information as contained in any database, report, audio recording or other record of the bureau or a public safety answering point:

- A. The names, addresses and telephone numbers of persons listed in E-9-1-1 databases;
- B. Customer information, described in Title 35-A, section 7501, subsection 1, that is omitted from a telephone utility directory list at the request of a customer;
- C. The name, address and telephone number of a caller to a public safety answering point; or
- D. The name, address and telephone number of and any medical information about a person re-

ceiving emergency services through the E-9-1-1 system.

**2. Confidentiality.** Confidential information may not be utilized for commercial purposes and may not be disclosed in any manner except as follows:

A. A public safety answering point may disclose confidential information to public or private safety agencies and emergency responders for purposes of processing emergency calls and providing emergency services;

B. A public safety answering point may disclose confidential information to a law enforcement officer or law enforcement agency for the purpose of criminal investigations related to an E-9-1-1 call;

C. A public safety answering point may disclose confidential information to designees of the bureau director for the purpose of system maintenance and quality control; and

D. The bureau director may disclose confidential information to public safety answering points, public or private safety agencies, emergency responders or others within the E-9-1-1 system to the extent necessary to implement and manage the E-9-1-1 system.

**3. Disclosure required.** The restrictions on disclosure provided under subsection 2 apply only to those portions of databases, reports, audio recordings or other records of the bureau or a public safety answering point that contain confidential information. Other information that appears in those records and other records, except information or records declared to be confidential under other law, is subject to disclosure pursuant to Title 1, section 408. The bureau shall develop procedures to ensure protection of confidential records and information and public access to other records and information. Procedures may involve developing edited copies of records containing confidential information or the production of official summaries of those records that contain the substance of all nonconfidential information.

**4. Audio recordings of E-9-1-1 calls; confidential.** Audio recordings of emergency calls made to the E-9-1-1 system are confidential and may not be disclosed except as provided in this subsection. Except as provided in subsection 2, information contained in the audio recordings is public information and must be disclosed in transcript form in accordance with subsection 3. Subject to all the requirements of subsection 2, the bureau or a public safety answering point may disclose audio recordings of emergency calls made to the E-9-1-1 system in the following circumstances:

A. To persons within the E-9-1-1 system to the extent necessary to implement and manage the E-9-1-1 system;

B. To a law enforcement officer or law enforcement agency for the purpose of criminal investigations related to an E-9-1-1 call;

C. To designees of the bureau director for the purpose of system maintenance and quality control; and

D. In accordance with an order issued on a finding of good cause by a court of competent jurisdiction.

**5. Unlisted telephone numbers.** The name and address associated with the number of a telephone company customer with an unlisted telephone number may be furnished to the E-9-1-1 system for processing a request for E-9-1-1 services from that number and for the provision of emergency services resulting from the request.

**6. Penalty for disseminating information.** Disclosing confidential information in violation of subsection 2 or disclosing audio recordings of emergency calls to the E-9-1-1 system in violation of subsection 4 is a Class E crime.

#### **§2930. Immunity**

**1. Governmental entity.** Subject to all the limitations and exceptions provided under the Maine Tort Claims Act, Title 14, chapter 741, a government entity is immune from tort liability for property damages, bodily injury or death resulting from acts or omissions occurring in developing, establishing, implementing, maintaining or operating the E-9-1-1 system.

**2. Cellular or wireless telecommunications service provider.** To the extent that a local exchange carrier is deemed to have limitations of liability and indemnification pursuant to the provisions of a tariff or schedule agreement in effect at the time of the transmission of the E-9-1-1 service, a cellular or wireless telecommunications provider that processes an E-9-1-1 communication has the same limitation of liability and indemnification that the local exchange carrier has for that E-9-1-1 transmission.

#### **§2931. Misuse of E-9-1-1 system**

**1. Prohibited use.** A person is guilty of misuse of the E-9-1-1 system if, without reasonable cause, that person makes repeated telephone calls to a public safety answering point by dialing 9-1-1 to make nonemergency reports or inquiries after having been forbidden to do so by a public safety answering point manager or administrator or a law enforcement officer.

**2. Penalty.** Violation of this section is a Class E crime.

See title page for effective date.

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## CHAPTER 292

### H.P. 974 - L.D. 1354

#### **An Act to Transfer the Responsibility for the Certification of Batterers' Intervention Programs to the Department of Corrections**

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

**Sec. 1. 19 MRSA §770-C, sub-§1,** as enacted by PL 1995, c. 405, §17, is amended to read:

**1. Rules establishing standards and procedures for certification.** The Department of Public Safety Corrections, referred to in this section as the "department," shall adopt rules pursuant to the Maine Administrative Procedure Act, in consultation with the Maine Commission on Domestic Abuse, that establish standards and procedures for certification of batterers' intervention programs. The department, in consultation with the commission, shall review and certify programs that meet the standards. Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

**Sec. 2. 19-A MRSA §4014, sub-§1,** as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

**1. Rules establishing standards and procedures for certification.** The Department of Public Safety Corrections, referred to in this section as the "department," shall adopt rules pursuant to the Maine Administrative Procedure Act, in consultation with the Maine Commission on Domestic Abuse, that establish standards and procedures for certification of batterers' intervention programs. The department, in consultation with the commission, shall review and certify programs that meet the standards. Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

**Sec. 3. Effective date.** That section of this Act that amends the Maine Revised Statutes, Title 19-A, section 4014, subsection 1 is effective October 1, 1997.

See title page for effective date, unless otherwise indicated.

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## CHAPTER 293

H.P. 1209 - L.D. 1709

**An Act Regarding Errors and  
Inconsistencies in the Maine  
Employment Security Law**

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

**Sec. 1. 26 MRSA §1043, sub-§9, ¶G,** as amended by PL 1971, c. 538, §5, is further amended to read:

G. Any individual or employing unit ~~which that~~ acquired any part of the organization, trade or business or assets of another ~~which part, and the acquired part,~~ had it previously been treated as a separate unit, would have been an employer under paragraphs A, A-1 ~~or~~ H or J;

**Sec. 2. 26 MRSA §1043, sub-§11, ¶A-1,** as amended by PL 1979, c. 541, Pt. A, §179, is further amended by amending sub-¶(3) to read:

(3) Notwithstanding paragraph F, except as herein provided, service performed in the employ of a religious, charitable, educational or other organization ~~which that~~ is excluded from the term employment as defined in the Federal Unemployment Tax Act solely by reason of ~~section~~ Section 3306 (c)(8) of that Act; and the organization had 4 or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time; and such services are not excluded under paragraph F, subparagraph (21), divisions (a) through ~~(h)~~ (i);

**Sec. 3. 26 MRSA §1043, sub-§19, ¶B,** as amended by PL 1985, c. 348, §2, is further amended by amending sub-¶(1-A) to read:

(1-A) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer or a 3rd party to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for that employer;

**Sec. 4. 26 MRSA §1051, sub-§5,** as amended by PL 1983, c. 305, §1, is further amended to read:

**5. Refusal to repay erroneous payments; waiver of repayment.** If, after due notice, any person refuses to repay amounts erroneously paid to ~~him~~ that person as unemployment benefits, the amounts due from that person ~~shall be~~ are collectible in the manner provided in subsection 6 or in the discretion of the commission the amount erroneously paid to such person may be deducted from any future benefits payable to ~~him~~ that person under this chapter; provided that there ~~shall be~~ is no recovery of payments from any person who, in the judgment of at least 2 commission members, is without fault ~~on his part~~ and where, in the judgment of the commission, such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience. No recovery may be attempted until the determination of an erroneous payment is final as to law and fact and the individual has been notified of the opportunity for a waiver under this subsection.

**Sec. 5. 26 MRSA §1194, sub-§12,** as enacted by PL 1989, c. 691, is amended to read:

**12. Collateral estoppel.** Except for proceedings under this chapter, no finding of fact or conclusion of law contained in a decision of a deputy, an administrative hearing officer, the ~~Unemployment Insurance Commission~~ commission, the commissioner or a court, obtained under this chapter, has preclusive effect in any other action or proceeding.

This provision applies to decisions issued on or after ~~the effective date of this subsection~~ July 14, 1990.

**Sec. 6. 26 MRSA §1221, sub-§10, ¶A,** as amended by PL 1979, c. 651, §44, is further amended to read:

A. Any nonprofit organization ~~which that~~ becomes subject to this chapter after January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of 2 calendar years beginning with the date on which such subjectivity begins by filing a written notice of its election with the bureau not later than 30 days immediately following the date of determination of its subjectivity. Any nonprofit organization or governmental entity subject to this chapter ~~and or~~ after January 1, 1978, may elect to become liable for payments in lieu of contributions for a period of not less than one calendar year beginning with the date on which such subjectivity begins by filing a written notice of its election with the bureau not later than 30 days immediately following the date of determination of its subjectivity. Any nonprofit organization ~~which~~ or governmental entity that makes an election in

accordance with this paragraph will continue to be liable for payments in lieu of contributions, until it files with the bureau a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination ~~shall~~ is first ~~be~~ effective.

**Sec. 7. 26 MRSA §1221, sub-§11, ¶E**, as amended by PL 1975, c. 462, §5, is further amended to read:

E. Past-due payments of amounts in lieu of contributions ~~shall be~~ are subject to the same interest, penalties and collection provisions that, pursuant to section 1225, ~~subsection~~ subsections 3 and 4, sections 1229, 1230 and 1231 apply to past-due contributions.

**Sec. 8. 26 MRSA §1221, sub-§11, ¶F**, as amended by PL 1977, c. 694, §479, is further amended to read:

F. The ~~commission~~ commissioner shall promptly review and reconsider the amount due specified in the assessment and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination ~~shall be~~ is conclusive on the employer or governmental entity unless the employer or governmental entity files an appeal in accordance with Title 5, ~~section 11001 et seq~~ chapter 375, subchapter VII.

**Sec. 9. 26 MRSA §1251, sub-§3, ¶A**, as amended by PL 1987, c. 131, is further amended to read:

A. Any hotel, motel, inn, variety store, trading post, sporting camp or other lodging facility, including camps operated for boys and girls, restaurants and other eating establishments, which customarily conducts ~~its~~ operations ~~which that~~ are primarily related to the production of ~~its~~ characteristic goods or services for a regularly recurring period or periods of less than 26 weeks in any one calendar year shall be is deemed seasonal.

See title page for effective date.

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## CHAPTER 294

H.P. 1151 - L.D. 1616

### An Act to Amend the Laws Regulating Occupational Therapy Practice

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

**Sec. 1. 32 MRSA §2271**, as enacted by PL 1983, c. 746, §2, is amended to read:

#### **§2271. Declaration of purpose**

In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons; to assure the highest degree of professional conduct on the part of occupational therapists and certified occupational therapy assistants; and to assure the availability of occupational therapy services of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services.

**Sec. 2. 32 MRSA §2272**, as corrected by RR 1993, c. 1, §87, is repealed and the following enacted in its place:

#### **§2272. Definitions**

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

**1. ACOTE.** "ACOTE" means the Accreditation Council for Occupational Therapy Education, a nationally recognized accrediting agency for professional programs in the field of occupational therapy.

**2. AOTA.** "AOTA" means the American Occupational Therapy Association.

**3. Board.** "Board" means the Board of Occupational Therapy Practice established under this chapter.

**4. Certification examination.** "Certification examination" means the certification examination for a registered occupational therapist or the certification examination for certified occupational therapy assistant, both of which are administered by NBCOT.

**5. Certified occupational therapy assistant.** "Certified occupational therapy assistant" means an individual who has passed the certification examination of the National Board for Certification in Occupational Therapy for an occupational therapy assistant or who was certified as an occupational therapy assistant prior to June 1977 and who is licensed to practice occupational therapy under this chapter in the State under the supervision of an occupational therapist.

**6. Commissioner.** "Commissioner" means the Commissioner of Professional and Financial Regulation.

**7. Department.** "Department" means the Department of Professional and Financial Regulation.

**8. Developing programs.** "Developing programs" means programs that submitted a letter of intent to seek accreditation by ACOTE prior to December 1, 1994.

**9. Level II fieldwork.** "Level II fieldwork" means the experience required to prepare occupational therapy and occupation therapy assistant students to carry out professional responsibilities under appropriate supervision and professional role modeling.

A minimum of 6 months, or 940 hours, of level II fieldwork is required for occupational therapy educational programs.

A minimum of 12 weeks, or 440 hours, of level II fieldwork is required for occupational therapy assistant educational programs.

**10. NBCOT.** "NBCOT" means the National Board for Certification in Occupational Therapy, formerly the AOTCB, or American Occupational Therapy Certification Board.

**11. Occupational therapist.** "Occupational therapist" means an individual who has passed the certification examination of the National Board for Certification in Occupational Therapy for an occupational therapist or meets the requirements of section 2279, subsection 6 and who is licensed to practice occupational therapy under this chapter in the State.

**12. Occupational therapy.** "Occupational therapy" means the assessment, planning and implementation of a program of purposeful activities to develop or maintain adaptive skills necessary to achieve the maximal physical and mental functioning of the individual in the individual's daily pursuits. The practice of "occupational therapy" includes, but is not limited to, assessment and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities or anticipated dysfunction, using:

A. Treatment techniques such as task-oriented activities to prevent or correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual;

B. Assessment techniques such as assessment of cognitive and sensory motor abilities, assessment of the development of self-care activities and capacity for independence, assessment of the physical capacity for prevocational and work tasks, assessment of play and leisure performance and appraisal of living areas for the disabled; and

C. Specific occupational therapy techniques such as daily living skill activities, the fabrication and application of splinting devices, sensory motor activities, the use of specifically designed manual and creative activities, guidance in the selection and use of adaptive equipment, specific exercises to enhance functional performance and treatment techniques for physical capabilities for work activities.

The techniques may be applied in the treatment of individuals or groups.

**13. Person.** "Person" means any individual, partnership, unincorporated organization or corporation.

**14. Supervision of COTA.** "Supervision of COTA" means initial directions and periodic inspection of the service delivery and provision of relevant in-service training. The supervising licensed occupational therapist shall determine the frequency and nature of the supervision to be provided based on the clients' required level of care and the COTA's caseload, experience and competency.

**15. Supervision of temporary licensees.** "Supervision of temporary licensees" includes initial and periodic inspection or written assessments, written treatment plans, patient notes and periodic evaluation of performance. The reviews and evaluations must be conducted in person by a licensed occupational therapist.

**Sec. 3. 32 MRSA §2276**, as amended by PL 1987, c. 597, §4, is further amended to read:

**§2276. License required**

**1. License required.** ~~No person may practice, or hold himself out as authorized to practice occupational therapy, as an occupational therapist or certified occupational therapist in this State or use the words "occupational therapist" or "certified occupational therapy assistant" or the letters "O.T." "C.O.T.A." or other words or letters to indicate that the person using the words or letters is a licensed occupational therapist or certified occupational therapy assistant, unless he is licensed in accordance with this chapter.~~

**1-A. License required.** A person may not practice, or profess to be authorized to practice occupational therapy, as an occupational therapist or certified occupational therapist in this State or use the words "occupational therapist," "Registered Occupational Therapist," "occupational therapy assistant" or "certified occupational therapy assistant" or the letters "O.T." "O.T.A." "C.O.T.A." or other words or letters to indicate that the person using the words or letters is a licensed occupational therapist or certified occupational therapy assistant, or which may misrepresent to

the public that the person has received formalized training in the field of occupational therapy, unless that person is licensed in accordance with this chapter.

This subsection is not intended to prohibit occupational therapy students and occupational therapy assistant students completing fieldwork from using the letters "O.T.S." and "O.T.A.S." respectively.

**2. Individual license.** Only an individual may be licensed under this chapter.

**3. Penalty; injunction.** A person who violates the provisions of this section ~~or any lawful order or rule of the board~~ is guilty of a Class E crime.

The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted.

**Sec. 4. 32 MRSA §2277**, as amended by PL 1991, c. 509, §§10 and 11, is further amended to read:

**§2277. Persons and practices exempt**

Nothing in this chapter may be construed as preventing or restricting the practice, services or activities of:

**1. Licensed persons.** Any person licensed in this State by any other law from engaging in the profession or occupation for which ~~he~~ the person is licensed;

**2. Students or trainees.** Any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at a developing or an accredited or approved educational program, if the person is designated by a title which that clearly indicates that person's status as a student or trainee; or, At the discretion of the supervising occupational therapist, the student or trainee may be assigned duties or functions commensurate with the student's or trainee's education and training.

Occupational therapy students and occupational therapy assistant students completing fieldwork may use the letters "O.T.S." and "O.T.A.S." respectively.

~~**3. Supervised fieldworkers.** Any person fulfilling the supervised fieldwork experience requirements of section 2279, subsection 4, if the experience constitutes a part of the experience necessary to meet the requirement of that subsection.~~

**Sec. 5. 32 MRSA §2278**, as amended by PL 1991, c. 509, §12, is repealed and the following enacted in its place:

**§2278. Temporary license**

A temporary license may be granted to a person who has completed the education and level II fieldwork requirements of this chapter and who has also received NBCOT approval to sit for the appropriate certification examination. This temporary license allows the holder to practice occupational therapy under the supervision of a licensed occupational therapist. Temporary licensees shall take the first available national examination for which they become eligible.

A temporary license is valid until the results of the national examination are made available to the board. If the person has passed the national examination, a license must be issued under sections 2279 and 2280-A. The temporary license of a person who has failed the examination may be renewed one time at the discretion of the board.

If, for a legitimate reason, a person holding a temporary license does not take the first available national examination for which the person becomes eligible, the person must submit a letter to the board explaining the circumstances. After review, the board, at its discretion, may renew the person's temporary license once to allow the person to sit for the next scheduled national examination.

A temporary license may not be renewed more than once.

Foreign trained applicants must receive approval to sit for the examination from NBCOT in order to be eligible for a temporary license.

**Sec. 6. 32 MRSA §2279**, as amended by PL 1991, c. 509, §13, is further amended to read:

**§2279. Requirements for licensure**

An applicant applying for a license as ~~an~~ a certified occupational therapist or as an occupational therapy assistant ~~shall~~ must file a written application provided by the board, showing to the satisfaction of the board that ~~he~~ the applicant meets the following requirements.

**1. Residence.** An applicant need not be a resident of this State.

~~**2. Character.** An applicant shall have demonstrated ethical practice.~~

**2-A. Character references.** An applicant must submit 2 completed character reference forms acceptable to the board.

**3. Education.** An applicant ~~shall~~ must present evidence satisfactory to the board of having successfully completed the academic and fieldwork requirements of an educational program in occupational

therapy ~~recognized by the board~~ or occupational therapy assisting.

A. ~~The occupational therapy or occupational therapy assisting educational program must be accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the American Occupational Therapy Certification Board ACOTE.~~

B. ~~The occupational therapy assistant educational program must be approved by the American Occupational Therapy Certification Board.~~

~~4. Experience. An applicant shall submit to the board evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he met the academic requirements or by the nationally recognized professional association.~~

A. ~~For an occupational therapist, a minimum of 6 months of supervised fieldwork experience is required.~~

B. ~~For an occupational therapy assistant, a minimum of 2 months of supervised fieldwork experience is required.~~

~~5. Examination. An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall must pass an examination as provided for in section 2280 2280-A.~~

~~6. Licensure. An applicant may be licensed as an occupational therapist if he the applicant has practiced as an occupational therapy assistant for 4 years, has completed the level II fieldwork requirements of subsection 4, paragraph A, for an occupational therapist before January 1, 1988, and has passed the examination for occupational therapists.~~

~~7. Certification. An applicant must submit a verification of certification form from NBCOT. The form must be completed and signed by NBCOT. An applicant applying within 3 months of having taken the certification examination who has the examination scores sent directly to the board is exempt from this requirement.~~

~~8. Fee. An applicant must pay an application fee and license fee.~~

~~Sec. 7. 32 MRSA §2280, as amended by PL 1991, c. 509, §14, is repealed.~~

~~Sec. 8. 32 MRSA §2280-A is enacted to read:~~

~~§2280-A. National examination for licensure of occupational therapists and occupational therapy assistants~~

The certification examination of NBCOT for the occupational therapist or occupational therapy assistant satisfies examination requirements of the board.

The certification examination for the occupational therapy assistant may be waived for any person who was certified as an occupational therapy assistant by the American Occupational Therapy Association prior to June 1977.

**Sec. 9. 32 MRSA §2281**, as amended by PL 1991, c. 509, §15, is further amended to read:

**§2281. Waiver of requirements for licensure**

The board shall grant a license to any person who, prior to July 25, 1984, ~~has~~ successfully completed an examination administered by the Psychological Corporation under contract with the American Occupational Therapy Certification Board if that person meets the requirements of section 2279, subsections 1, ~~2~~, ~~2-A~~ and ~~3~~ and 4.

**Sec. 10. 32 MRSA §2283, sub-§1**, as enacted by PL 1983, c. 746, §2, is amended to read:

**1. Biennial renewal.** Any license issued under this chapter ~~shall be~~ is subject to biennial renewal and ~~shall expire~~ expires upon the stated expiration date, unless renewed in the manner prescribed by the rules of the board, ~~upon the including~~ payment of a renewal fee. Licenses may be ~~renewed~~ reinstated up to 90 days after the date of expiration upon payment of a late fee of \$10 in addition to the renewal fee. The 90-day period is for expediting the reinstatement process only. It does not extend the licensure period. Any person who submits an application for ~~renewal~~ reinstatement more than 90 days after the license ~~renewal~~ expiration date ~~shall be~~ is subject to all requirements governing new applicants under this chapter, except that the board may in its discretion, giving due consideration to the protection of the public, waive examination if that ~~renewal~~ reinstatement application is made within 2 years from the date of that expiration.

**Sec. 11. 32 MRSA §2284**, as enacted by PL 1983, c. 746, §2, is repealed and the following enacted in its place:

**§2284. Foreign-trained applicants**

Foreign-trained applicants are subject to the provisions of this section.

**1. Approval.** Applicants must receive approval for their educational programs, supervised fieldwork and English language proficiency, based on standards set by NBCOT.

2. Character references. Applicants must submit 2 completed character reference forms acceptable to the board.

3. Examination. Applicants for licensure as occupational therapists or occupational therapy assistants must pass an examination as provided for in section 2280-A.

4. Certification. Applicants, except those applying within 3 months of having taken the certification examination who have their examination scores sent directly to the board, must submit a verification of certification form, provided by either the board or NBCOT. All forms must be completed and signed by NBCOT.

5. Fee. Applicants must pay application and license fees according to this chapter.

6. Temporary license. Foreign-trained applicants must receive approval to sit for the examination from NBCOT in order to be eligible for a temporary license.

**Sec. 13.** 32 MRSA §2285, sub-§2, as enacted by PL 1983, c. 746, §2, is amended to read:

**2. Disposal of fees.** All fees received by the board shall must be paid to the Treasurer of State to be used for carrying out this chapter. Any balance of fees shall may not lapse but shall must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years. All fees are nonrefundable.

**Sec. 14.** 32 MRSA §2286, sub-§2, ¶B, as enacted by PL 1983, c. 746, §2, is amended to read:

B. Unprofessional conduct. A licensee shall be deemed to have has engaged in unprofessional conduct if he the licensee violates any standard of professional behavior which has been established in the practice for which the licensee is licensed as defined by the Occupational Therapy Code of Ethics, as adopted by AOTA;

See title page for effective date.

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**CHAPTER 295**

**H.P. 285 - L.D. 349**

**An Act to Modify the  
Prequalification Laws to Allow the  
Disqualification of Contractors for a  
Time Not to Exceed One Year**

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

**Sec. 1.** 5 MRSA §1747, as amended by PL 1993, c. 324, §1, is further amended to read:

**§1747. Questionnaire as prebid qualification**

The public official may require, from any person a firm proposing to bid on public work duly advertised, a standard form of questionnaire and financial statement, containing a complete statement of the person's financial ability and experience in performing public work, qualification statement and a letter from a licensed bonding company confirming that the firm has the financial capacity to perform the work before furnishing that person with plans and specifications for the proposed public work advertised.

The Director of the Bureau of Public Improvements General Services, after consultation with the appropriate department head or superintendent of schools, may refuse to release plans and specifications to a contractor for the purpose of bidding on a project:

**1. Untimely completion.** If, in the opinion of the director, there is evidence the contractor has not completed in a timely manner a prior construction project or projects and the resulting noncompletion clearly reflects disregard for the completion date and has created a hardship for the owner;

**2. Incomplete work.** If, in the opinion of the director, that there is evidence the contractor has a history of inability to complete similar work;

**3. Insufficient resources.** If, in the opinion of the director, there is evidence the contractor does not have sufficient resources to successfully complete the work; or

**4. Misconduct.** If the contractor has been convicted of collusion or fraud or any other civil or criminal violation relating to construction projects.

If a contractor is disqualified for any of the reasons stated in subsection 1, 2 or 4, the director may disallow the contractor from bidding on any similar public improvements for a period not to exceed one year.

See title page for effective date.

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**CHAPTER 296**

**H.P. 1111 - L.D. 1554**

**An Act to Eliminate Inconsistencies  
and Unnecessary Duplication  
Regarding the Training and  
Certification of Individuals Who  
Enforce Land Use Regulations**

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

**Sec. 1. 4 MRSA §807, sub-§3, ¶D**, as repealed and replaced by PL 1989, c. 755, is amended to read:

D. A person who is not an attorney, but is representing a municipality under:

- (1) Title 30-A, section 2671, subsection 3;
- ~~(2) Title 30-A, section 4221, subsection 2;~~
- (3) Title 30-A, section 4452, subsection 1; or
- (4) Title 38, section 441, subsection 2;

**Sec. 2. 12 MRSA §685-C, sub-§9**, as enacted by PL 1991, c. 688, §1, is amended to read:

**9. Representation in court.** The commission may authorize certified employees of the commission to serve civil process and represent the commission in District Court in the prosecution of violations of those laws enforced by the commission and set forth in Title 4, section 152, subsection 6-A. Certification of these employees must be as provided under Title 30-A, section 4221, ~~subsection 2, paragraph A~~ 4453.

**Sec. 3. 30-A MRSA §4221, sub-§1**, as amended by PL 1989, c. 104, Pt. A, §44 and Pt. C, §§8 and 10, is further amended to read:

**1. Appointment; compensation; removal.** In every municipality, the municipal officers shall appoint one or more inspectors of plumbing, who need not be residents of the municipality for which they are appointed. Plumbing inspectors ~~shall be~~ are appointed for a term of one year or more and ~~shall must~~ be sworn and the appointment recorded as provided in section 2526, subsection 9. An individual properly appointed as plumbing inspector and satisfactorily performing the duties may continue in that capacity after the term has expired until replaced. The municipal officers shall notify the department and the State Planning Office of the appointment of a plumbing inspector in writing within 30 days of the appointment.

Compensation of plumbing inspectors ~~shall be~~ is determined by the municipal officers and ~~shall be~~ paid by the respective municipalities.

The municipal officers may remove a plumbing inspector for cause, after notice and hearing.

**Sec. 4. 30-A MRSA §4221, sub-§2**, as amended by PL 1991, c. 688, §2, is repealed and the following enacted in its place:

**2. Certification requirements.** A person may not hold the office of plumbing inspector unless currently certified as qualified by the State Planning Office pursuant to section 4451. Certification is effective for a period of 5 years unless sooner revoked or suspended by the Administrative Court as provided for in section 4451.

**Sec. 5. 30-A MRSA §4451, sub-§1, ¶¶A and B**, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, are amended to read:

A. An individual other than an individual appointed as a plumbing inspector has 12 months after beginning employment to be trained and certified as provided in this section; ~~and~~

B. Whether or not any extension is available under paragraph A, the office may waive this requirement for up to one year if the certification requirements cannot be met without imposing a hardship on the municipality employing the individual; and

**Sec. 6. 30-A MRSA §4451, sub-§1, ¶C** is enacted to read:

C. An individual may be temporarily authorized in writing by the Department of Human Services, Division of Health Engineering to be employed as a plumbing inspector for a period not to exceed 12 months.

**Sec. 7. 30-A MRSA §4451, sub-§3**, as amended by PL 1991, c. 163, is further amended to read:

**3. Training and certification of code enforcement officers.** In cooperation with the Maine Technical College System, the Department of Environmental Protection and the Department of Human Services, the office shall establish a continuing education program for individuals engaged in code enforcement. This program must provide basic and advanced training in the technical and legal aspects of code enforcement necessary for certification.

**Sec. 8. 30-A MRSA §4452, sub-§7**, as amended by PL 1995, c. 704, Pt. B, §1 and affected by Pt. C, §2, is further amended to read:

**7. Natural resources protection laws.** A code enforcement officer, authorized by a municipality to represent that municipality in District Court and certified by the State Planning Office under section ~~4221~~ 4453 as familiar with court procedures, may enforce the provisions of the natural resources protection laws, Title 38, chapter 3, subchapter I, article 5-A and Title 38, section 420-C, by instituting injunctive proceedings or by seeking civil penalties in accordance with Title 38, section 349, subsection 2.

**Sec. 9. 30-A MRSA §4453** is enacted to read:

**§4453. Certification for representation in court**

The office shall establish certification standards and a program to certify familiarity with court procedures for the following individuals:

**1. Code enforcement officers.** Code enforcement officers as set forth in sections 4451 and 4452 and Title 38, section 441;

**2. Plumbing inspectors.** Plumbing inspectors as set forth in sections 4221 and 4451;

**3. Department of Environmental Protection.** Department of Environmental Protection employees as set forth in Title 38, section 342, subsection 7; and

**4. Maine Land Use Regulation Commission.** Maine Land Use Regulation Commission employees as set forth in Title 12, section 685-C, subsection 9.

**Sec. 10. 38 MRSA §342, sub-§7**, as corrected by RR 1993, c. 2, §37, is amended to read:

**7. Representation in court.** The commissioner may authorize certified employees of the department to serve civil process and represent the department in District Court in the prosecution of violations of those laws enforced by the department and set forth in Title 4, section 152, subsection 6. Certification of these employees ~~shall~~ must be provided as under Title 30-A, section ~~4221, subsection 2~~ 4453.

**Sec. 11. 38 MRSA §441, sub-§2**, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

**2. Certification; authorization by municipal officers.** No person may serve as a code enforcement officer who is authorized by the municipal officers to represent the municipality in District Court unless ~~he~~ that person is currently certified under Title 30-A, section ~~4221, subsection 2~~ 4453, as being familiar with court procedures.

Upon written authorization by the municipal officers, a certified code enforcement officer may serve civil process on persons whom ~~he~~ that officer determines to be in violation of ordinances adopted pursuant to this chapter and, if authorized by the municipal officers, may represent the municipality in District Court in the prosecution of violations of ordinances adopted pursuant to this chapter.

See title page for effective date.

**CHAPTER 297**

**H.P. 251 - L.D. 315**

**An Act to Amend the Laws  
Regarding Fees Charged in the Elver  
Fishery**

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

**Sec. 1. 12 MRSA §6505-A, sub-§4**, as enacted by PL 1995, c. 536, Pt. A, §8, is amended to read:

**4. Fees.** Fees for elver fishing licenses are:

A. For a person who is a resident, ~~§33~~ §83; and

B. For a person who is a nonresident, ~~§334~~ §384.

Fifty dollars of each license fee collected under this subsection accrue to the Eel and Elver Management Fund established in section 6505-D.

**Sec. 2. 12 MRSA §6505-A, sub-§5**, as enacted by PL 1995, c. 536, Pt. A, §8, is amended to read:

**5. Gear.** ~~The A person issued a license under this section may utilize one elver fyke net, one Sheldon eel trap or one dip net to fish for or take elvers without paying the fee required for a first net or trap pursuant to section 6505-B. A license issued under this section must identify the number and types of nets for which that the license holder has paid fees may use pursuant to this section and section 6505-B.~~

**Sec. 3. 12 MRSA §6505-B, sub-§1, ¶¶A and B**, as enacted by PL 1995, c. 536, Pt. A, §8, are repealed and the following enacted in their place:

A. Fifty dollars per net or trap for the use of a first or 2nd elver fyke net or Sheldon eel trap, except that the fee under this paragraph does not apply to an elver fyke or Sheldon eel trap a person utilizes pursuant to section 6505-A, subsection 5. For the purposes of assessing fees under this subsection, an elver fyke net or Sheldon eel trap utilized pursuant to section 6505-A, subsection 5 is the first net or trap;

B. One hundred dollars per net or trap for the use of a 3rd elver fyke net or Sheldon eel trap; and

**Sec. 4. 12 MRSA §6505-B, sub-§1, ¶C** is enacted to read:

C. Two hundred dollars per net or trap for the use of a 4th and 5th elver fyke net or Sheldon eel trap.

**Sec. 5. 12 MRSA §6505-B, sub-§3**, as enacted by PL 1995, c. 536, Pt. A, §8, is amended to read:

**3. Dip net fee.** It is unlawful for a person to utilize a dip net to fish for or take elvers without paying a fee of ~~\$75~~ \$50 per dip net annually.

This subsection does not apply to a dip net a person utilizes pursuant to section 6505-A, subsection 5.

See title page for effective date.

## CHAPTER 298

S.P. 524 - L.D. 1629

### An Act to Include Possession of a Dangerous Weapon as Grounds for Expulsion of a Student

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

**Sec. 1. 20-A MRSA §1001, sub-§9, ¶C**, as enacted by PL 1993, c. 157, §1, is amended to read:

C. Who possesses on school property a firearm as defined in Title 17-A, section 2, subsection 12-A or a dangerous weapon as defined in Title 17-A, section 2, subsection 9 without permission of a school official;

See title page for effective date.

## CHAPTER 299

S.P. 354 - L.D. 1173

### An Act to Preserve Public Access to Governmental Information through Libraries Regardless of Format or Medium

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

Whereas, public access to public records is immediately threatened by changes in the way the information is prepared and distributed; 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. 1 MRSA §501-A**, as repealed and replaced by PL 1987, c. 402, Pt. A, §2, is repealed and the following enacted in its place:

#### §501-A. Publications of state agencies

**1. Definitions.** As used in this section, the term "publications" includes periodicals; newsletters; bulletins; pamphlets; leaflets; directories; bibliographies; statistical reports; brochures; plan drafts; planning documents; reports; special reports; committee and commission minutes; informational handouts; and rules and compilations of rules, regardless of number of pages, number of copies ordered, physical size, publication medium or intended audience inside or outside the agency.

**2. Production and distribution.** The publications of all agencies, the University of Maine System and the Maine Maritime Academy may be printed, bound and distributed, subject to Title 5, sections 43 to 46. The State Purchasing Agent may determine the style in which publications may be printed and bound, with the approval of the Governor.

**3. Annual or biennial reports.** Immediately upon receipt of any annual or biennial report that is not included in the Maine State Government Annual Report provided for in Title 5, sections 43 to 46, the State Purchasing Agent shall deliver at least 55 copies of that annual or biennial report to the State Librarian for exchange and library use. The State Purchasing Agent shall deliver the balance of the number of each such report to the agency that prepared the report.

**4. State agency and legislative committee publications.** Except as provided in subsection 5, any agency or legislative committee issuing publications, including publications in an electronic format, shall deliver 18 copies of the publications in the published format to the State Librarian. These copies must be furnished at the expense of the issuing agency. Publications not furnished upon request will be reproduced at the expense of the issuing agency. The agency or committee preparing a publication may determine the date on which a publication may be released, except as otherwise provided by law.

**5. Electronic publishing.** An agency or committee that electronically publishes information to the public is only required to provide the State Librarian with one printed copy of an electronically published publication. An electronically published publication is not required to be provided to the State

Librarian if the publication is also published in print or in an electronic format and is provided to the State Librarian in compliance with subsection 4 or the publication is:

A. Designed to provide the public with current information and is subject to frequent additions and deletions, such as current lists of certified professionals, daily updates of weather conditions or fire hazards; or

B. Designed to promote the agency's services or assist citizens in use of the agency's services, such as job advertisements, application forms, advertising brochures, letters and memos.

**6. Forwarding of requisitions.** The State Purchasing Agent, Central Printing and all other printing operations within State Government shall forward to the State Librarian upon receipt one copy of all requisitions for publications to be printed.

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

Effective May 28, 1997.

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**CHAPTER 300**

**H.P. 1082 - L.D. 1519**

**An Act to Prevent Unnecessary Search and Rescue Operations on Marine Waters**

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

**Sec. 1. 12 MRSA §6958** is enacted to read:

**§6958. False search and rescue information**

A person who intentionally provides the department or causes to be given to the department false or misleading information that results in an unnecessary search and rescue effort or prolongs an ongoing search and rescue effort is subject to a civil penalty of up to the cost of providing the search and rescue service, payable to the State. This penalty is recoverable in a civil action. The State may also recover the cost of bringing the action, including a reasonable attorney's fee.

See title page for effective date.

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**CHAPTER 301**

**H.P. 918 - L.D. 1261**

**An Act Concerning Public Notice of Lottery Odds**

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

**Sec. 1. 8 MRSA §374, sub-§1, ¶¶K and L,** as enacted by PL 1987, c. 505, §2, are amended to read:

K. The manner and amount of compensation to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the general public; ~~and~~

L. The apportionment of the total annual revenue accruing from the sale of lottery tickets or shares and from all other sources for the payment of prizes to the holders of winning tickets or shares; for the payment of costs incurred in the operation and administration of the lotteries, including the expenses of the commission and the costs resulting from any contract or contracts entered into for promotional, advertising, consulting or operational services or for the purchase or lease of lottery equipment and materials; for the repayment of the money appropriated to the State Lottery Fund; and for transfer to the General Fund for distribution pursuant to section 387; ~~and~~

**Sec. 2. 8 MRSA §374, sub-§1, ¶M** is enacted to read:

M. The imprinting on all lottery tickets sold in the State of the overall odds of winning a prize for each game.

See title page for effective date.

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**CHAPTER 302**

**S.P. 446 - L.D. 1420**

**An Act to Amend the Uniform Management of Institutional Funds Act**

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

**Sec. 1. 13 MRSA §4106, first ¶,** as enacted by PL 1993, c. 371, §2, is amended to read:

In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. ~~In so doing~~ When exercising ordinary business care and prudence, they shall consider long-term and short-term needs of the institution in carrying out its educational, religious, philanthropic or other charitable purposes; its present and anticipated financial requirements; expected total return on its investments; price-level trends; and general economic conditions. Unless explicitly stated otherwise by the donor, appreciation on investments of endowment funds, until appropriated pursuant to proper governing board action, must be considered a donor restricted asset.

See title page for effective date.

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## CHAPTER 303

### H.P. 713 - L.D. 977

#### An Act to Establish the Rider Safety Act

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

Sec. 1. 8 MRSA c. 29 is enacted to read:

#### CHAPTER 29

#### RIDER SAFETY

##### §801. Short title

This chapter may be known and cited as the "Rider Safety Act."

##### §802. Definitions

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

**1. Amusement owner.** "Amusement owner" means a person, the State or a political subdivision of the State that owns an amusement ride or, if the amusement ride is leased, the lessee.

**2. Amusement ride.** "Amusement ride" means:

A. A device that is intended to give amusement, excitement, pleasure or thrills to passengers whom the device carries along or around a fixed or restricted course or within a defined area; or

B. A structure that gives amusement, excitement, pleasure or thrills to people who move around, over or through the structure without the aid of a moving device integral to the structure.

"Amusement ride" does not include a device or structure that is devoted principally to exhibitions related to agriculture, the arts, education, industry, religion or science.

**3. Parent or guardian.** "Parent or guardian" means each parent, custodian or guardian responsible for the control, safety, training or education of a minor rider.

**4. Rider.** "Rider" means any person who is:

A. Waiting in the immediate vicinity to get on an amusement ride;

B. Getting on an amusement ride;

C. Using an amusement ride;

D. Getting off an amusement ride; or

E. Leaving an amusement ride and still in its immediate vicinity.

"Rider" does not include employees, agents or servants of the amusement owner while engaged in the duties of their employment.

**5. Sign.** "Sign" means any symbol or language reasonably calculated to communicate information to riders or their parents or guardians, including placards, prerecorded messages, live public address, stickers, pictures, pictograms, video, verbal information and visual signals.

##### §803. Rider conduct

**1. Reports.** A rider or the rider's parent or guardian shall report in writing to the amusement owner or the amusement owner's designee any injury sustained on an amusement ride before leaving the amusement owner's premises, including:

A. The name, address and phone number of the injured person;

B. A brief description of the incident, the injury claimed and the location, date and time of the injury;

C. The cause of the injury, if known; and

D. The names, addresses and phone numbers of any witnesses to the incident.

If the rider or the rider's parent or guardian is unable to file a report because of the severity of the rider's injuries, the rider or the rider's parent or guardian shall

file the report as soon as reasonably possible. The failure of a rider or the rider's parent or guardian to report an injury under this section does not affect the rider's right to commence a civil action.

**2. Code of conduct.** A rider shall at a minimum:

A. Obey the reasonable safety rules posted in accordance with this Act and oral instructions for an amusement ride issued by the amusement owner or the amusement owner's employee or agent, unless:

(1) The safety rules are contrary to this Act; or

(2) The oral instructions are contrary to this Act or the safety rules; and

B. Refrain from acting in any manner that may cause or contribute to injuring the rider or others, including:

(1) Exceeding the limits of the rider's ability;

(2) Interfering with safe operation of the amusement ride;

(3) Not engaging any safety devices that are provided;

(4) Disconnecting or disabling a safety device except at the express instruction of the ride operator;

(5) Altering or enhancing the intended speed, course or direction of an amusement ride;

(6) Using the controls of an amusement ride designed solely to be operated by the ride operator;

(7) Extending arms and legs beyond the carrier or seating area except at the express direction of the ride operator;

(8) Throwing, dropping or expelling an object from or toward an amusement ride except as permitted by the ride operator;

(9) Getting on or off an amusement ride except at the designated time and area, if any, at the direction of the ride operator or in an emergency; and

(10) Not reasonably controlling the speed or direction of the rider's person or an amusement ride that requires the rider to

control or direct the rider's person or a device.

**3. Rider qualifications.** A rider may not get on or attempt to get on an amusement ride unless the rider or the rider's parent or guardian reasonably determines that, at a minimum, the rider:

A. Has sufficient knowledge to use, get on and get off the amusement ride safely without instruction or has requested and received before getting on the ride sufficient information to get on, use and get off safely;

B. Has located, reviewed and understood any signs in the vicinity of the ride and has satisfied any posted height, medical or other restrictions;

C. Knows the range and limits of the rider's ability and knows the requirements of the amusement ride will not exceed those limits;

D. Is not under the influence of alcohol or any drug that affects the rider's ability to safely use the amusement ride or obey the posted rules or oral instructions; and

E. Is authorized by the amusement owner or the amusement owner's authorized servant, agent or employee to get on the amusement ride.

#### **§804. Notice to riders**

**1. General signs.** An amusement owner shall display signs indicating the applicable safety responsibilities of riders set forth in section 803 and the location of stations to report injuries. The signs must be located at:

A. Each station for reporting an injury;

B. Each first aid station; and

C. Either:

(1) At least 4 other locations on the premises, including each premises entrance and exit, if there are no more than 4 entrances or exits for riders;

(2) At least 4 other locations on the premises, including the 4 premises entrances and exits most commonly used by riders, if there are more than 4 entrances and exits for riders; or

(3) Each amusement ride.

**2. Individual amusement ride signs.** An amusement owner shall post a sign at each amusement ride that includes:

A. Operational instructions, if any;

B. Safety guidelines for riders, if any;

C. Restrictions on the use of the amusement ride, if any;

D. Behavior or activities that are prohibited, if any; and

E. A legend providing that "State law requires riders to obey all warnings and directions for this ride and behave in a manner that will not cause or contribute to injuring themselves or others. Riders must report injuries before leaving. Failure to comply is punishable by fine and imprisonment."

Any sign required by this section must be prominently displayed at a conspicuous location, clearly visible to the public and bold and legible in design.

**§805. Construction**

Nothing in this chapter may be construed to preclude a criminal prosecution or civil action available under any other law.

**§806. Uniformity of interpretation**

This Act must be interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

See title page for effective date.

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**CHAPTER 304**

**S.P. 244 - L.D. 813**

**An Act to Define the Projects That Public Works Departments May Undertake Without Procuring the Services of a Registered Professional Engineer**

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

**Sec. 1. 32 MRSA §1254** is repealed and the following enacted in its place:

**§1254. Public works**

**1. Use of registered professional engineer not required.** Except as provided in subsection 2, any department of this State or any of its political subdivisions, any county, city, town, township or plantation may engage in construction of any public work involving professional engineering without procuring the services of a registered professional engineer, as long as the contemplated expenditure for the completed project does not exceed \$100,000 and the work,

both as performed and as completed, does not create an undue risk to public safety or welfare.

**2. Exception.** A department of this State may require the services of a registered professional engineer for any public works project if the services of the professional engineer are required to comply with any provision of law or rule.

See title page for effective date.

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**CHAPTER 305**

**S.P. 133 - L.D. 412**

**An Act to Require the Purchaser of Tobacco Products to Produce Suitable Identification**

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

**Sec. 1. 22 MRSA §1552-A, sub-§2,** as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

**2. Display of prohibition against sales to juveniles.** All licensees shall post notice of the prohibition on tobacco sales to juveniles pursuant to section ~~1555~~ **1555-B**. Notices must be publicly and conspicuously displayed in the licensee's place of business in letters at least 3/8 inches high. Signs required by this section must be provided at cost by the department. Any person who violates this subsection commits a civil violation for which a forfeiture of not less than \$50 nor more than \$200 may be adjudged for any one offense.

**Sec. 2. 22 MRSA §1553-A, sub-§1,** as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

**1. Vending requirements.** When the sale of cigarettes or any other tobacco product is made from a vending machine the following is required.

A. Only cigarettes or any other tobacco products may be dispensed by that machine.

B. A sign must be affixed conspicuously to the front of the machine. The sign must:

(1) Contain lettering that is at least 3/8 inches in height; and

(2) State the following: "WARNING. It is unlawful for any person under the age of 18 to purchase cigarettes in this State."

C. At all times during the hours the vending machine is accessible, it must be located within the

unobstructed line of sight and under the direct supervision of an adult. That adult is responsible for preventing persons under 18 years of age from purchasing cigarettes or any other tobacco product from that vending machine.

~~This subsection does not apply to any vending machine located in an area where minors are not allowed by law or by policy of the owner of the premises.~~

Vending machines may be located only in areas in which minors are allowed only when accompanied by an adult.

**Sec. 3. 22 MRSA §1554-A, sub-§1**, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

**1. Prohibition.** A person may not sell cigarettes except in the original, sealed package in which they were placed by the manufacturer, which may not be smaller than 20 cigarettes per package, nor may a person sell cigarettes in smaller quantities than placed in the package by the manufacturer.

**Sec. 4. 22 MRSA §1555**, as amended by PL 1995, c. 593, §3, is repealed.

**Sec. 5. 22 MRSA §1555-B** is enacted to read:

**§1555-B. Sales of tobacco products**

**1. Retail sales.** Tobacco products may be sold at retail only in a direct, face-to-face exchange in which the purchaser may be clearly identified and through the mail under procedures approved by the department to provide reliable verification that the purchaser is not a minor.

**2. Sales to minors prohibited.** A person may not sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any person under 18 years of age. Tobacco products may not be sold at retail to any person under 27 years of age unless the seller first verifies that person's age by means of reliable photographic identification containing the person's date of birth.

**3. Sales through vending machines.** Tobacco products may be sold through vending machines according to section 1553-A.

**4. Wholesale sales.** Tobacco products may be distributed at wholesale without a face-to-face exchange only in the normal course of trade and under procedures approved by the Bureau of Taxation to ensure that tobacco products are not provided to any person under 18 years of age.

**5. Use of false identification by minors prohibited.** A person under 18 years of age may not offer

false identification in an attempt to purchase any tobacco products or to purchase, possess or use cigarettes, cigarette paper or any other tobacco product.

**6. Display of prohibition of sales to juveniles.**

A dealer or distributor of tobacco products shall post notice of this section prohibiting tobacco and cigarette paper sales to persons under 18 years of age. Notices must be publicly and conspicuously displayed in the dealer's or distributor's place of business in letters at least 3/8 inches in height. Signs required by this section may be provided at cost by the department.

**7. Enforcement.** Law enforcement officers shall enforce this section. A citizen may register a complaint under this section with the law enforcement agency having jurisdiction. The law enforcement agency may notify any establishment or individual subject to this section of a citizen complaint regarding that establishment's or individual's alleged violation of this section and shall keep a record of that notification.

**8. Fines and forfeitures.** Violations of this section are subject to fines and forfeitures according to this subsection.

A. A person who violates subsection 1, 2, 3 or 4 commits a civil violation for which a fine of not less than \$50 nor more than \$1,500, plus court costs, may be adjudged for any one offense. An employer of a person who violates subsection 1, 2, 3 or 4 commits a civil violation for which a fine of not less than \$50 nor more than \$1,500, plus court costs, may be adjudged. For a violation, the court shall impose a fine that may not be suspended, except pursuant to Title 15, section 3314.

B. A person who violates subsection 2 commits a civil violation for which the following forfeitures may be adjudged.

(1) For a first offense, a forfeiture of not less than \$100 and not more than \$300 may be imposed. The judge, as an alternative to or in addition to the forfeiture permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

(2) For a 2nd offense, a forfeiture of not less than \$200 and not more than \$500 may be imposed. The judge, as an alternative to or in addition to the forfeiture permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

(3) For all subsequent offenses, a forfeiture of \$500 must be imposed and that forfeiture may not be suspended. The judge, in addition to the forfeiture permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

C. A person who violates subsection 6 commits a civil violation for which a forfeiture of not less than \$50 nor more than \$200 may be adjudged for any one offense.

**9. Distribution of fines.** Fines and forfeitures collected pursuant to subchapter I and this subchapter must be credited as follows: one half to the General Fund and 1/2 to be deposited in a nonlapsing account to be paid to law enforcement agencies.

**10. Affirmative defense.** It is an affirmative defense to prosecution for a violation of subsection 1, 2 or 4 that the defendant sold, furnished, gave away or offered to sell, furnish or give away a tobacco product to a person under 18 years of age in reasonable reliance upon a fraudulent proof of age presented by the purchaser.

**Sec. 6. 22 MRSA §1556-A, sub-§2,** as repealed and replaced by PL 1995, c. 593, §4, is amended to read:

**2. Enforcement; jurisdiction.** Enforcement of criminal offenses may be carried out by written summons pursuant to Title 17-A filed in the District Court. Enforcement of civil violations set forth in section ~~4555~~ 1555-B, subsection 2 may be carried out by complaint filed in District Court. All other civil violations under this chapter are within the jurisdiction of the Administrative Court pursuant to section 1557, subsection 1.

See title page for effective date.

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## CHAPTER 306

H.P. 997 - L.D. 1389

### An Act to Allow Partially Consumed Bottles of Wine to be Taken from Restaurants

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

**Sec. 1. 28-A MRSA §1051, sub-§§4 and 5** are enacted to read:

**4. Partially consumed bottles of wine.** Notwithstanding subsection 3, any establishment licensed

by the State to sell wine on the premises may permit a person who has purchased a full course meal, and purchased and partially consumed a bottle of table wine with the meal, to remove the partially consumed bottle from the premises upon departure, provided that the person is not visibly intoxicated as provided in section 2503, subsection 7, and the bottle of table wine is removed and transported in a manner consistent with subsection 5.

**5. Transporting partially consumed bottles.** A partially consumed bottle of table wine that is removed from the premises under subsection 4 must be securely sealed and bagged by the licensee, either to be in conformance with any applicable open container law for those patrons on foot or transported in the trunk of a motor vehicle. If the vehicle is not equipped with a trunk, the securely sealed opened table wine bottle may be transported in that compartment of the vehicle that is the least accessible to the driver.

**Sec. 2. 28-A MRSA §2074, sub-§1,** as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

**1. Transportation on-premises or off-premises.** Any Except as provided in section 1051, any person who transports liquor onto or off of the premises of an on-premise retail licensee is guilty of a Class E crime.

See title page for effective date.

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## CHAPTER 307

S.P. 285 - L.D. 893

### An Act to Conform the Provisions of the Maine Business Corporation Act Regarding Derivative Proceedings to the Provisions of the Revised Model Business Corporation Act

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

**Sec. 1. 13-A MRSA §627,** as amended by PL 1973, c. 455, is repealed.

**Sec. 2. 13-A MRSA §§628 to 635** are enacted to read:

#### **§628. Definitions**

As used in sections 628 to 635, unless the context otherwise indicates, the following terms have the following meanings.

**1. Derivative proceeding.** "Derivative proceeding" means a civil suit in the right of a domestic

corporation or, to the extent provided in section 635, in the right of a foreign corporation.

**2. Shareholder.** "Shareholder," in addition to the meaning set forth in section 102, subsection 17, includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

### **§629. Standing**

A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

**1. Shareholder; time became.** Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

**2. Represents corporation.** Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

### **§630. Demand**

A shareholder may not commence a derivative proceeding until:

**1. Written demand.** A written demand has been made upon the corporation to take suitable action; and

**2. Expiration period.** Ninety days have expired from the date that demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

### **§631. Stay of proceedings**

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for a period the court determines appropriate.

### **§632. Dismissal**

**1. Dismissal of proceeding.** A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection 2 or 6 has determined in good faith after conducting a reasonable inquiry that the maintenance of the derivative proceeding is not in the best interest of the corporation.

**2. Determination.** Unless a panel is appointed pursuant to subsection 6, the determination in subsection 1 must be made by:

A. A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

B. A majority vote of a committee consisting of 2 or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constitute a quorum.

**3. Director; independent.** None of the following by itself cause a director to be considered not independent for purposes of this section:

A. The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

B. The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

C. The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

**4. Derivative proceeding.** If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or that the requirements of subsection 1 have not been met.

**5. Burden of proof.** If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection 1 have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff has the burden of proving that the requirements of subsection 1 have not been met.

**6. Panel.** The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. The plaintiff has the burden of proving that the requirements of subsection 1 have not been met.

### **§633. Discontinuance or settlement**

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement substantially affects the interest of the corpora-

tion's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

**§634. Payment of expenses**

On termination of a derivative proceeding the court may:

**1. Corporation pay plaintiff's expenses.** Order the corporation to pay the plaintiff's reasonable expenses, including attorney's fees, incurred in the proceeding if the court finds that the proceeding has resulted in a substantial benefit to the corporation; or

**2. Plaintiff pay defendant's expenses.** Order the plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if the court finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

**§635. Applicability to foreign corporations**

In a derivative proceeding in the right of a foreign corporation, the matters covered by this chapter are governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 631, 633 and 634.

See title page for effective date.

**CHAPTER 308**

**H.P. 1043 - L.D. 1460**

**An Act Requiring the Department of Education to Perform Annual Cost-benefit Analysis of Special Education Programs in the State**

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

**Sec. 1. 20-A MRSA §7004** is enacted to read:

**§7004. Cost-benefit analysis**

The department shall perform an annual cost-benefit analysis of special education programs in the State and hold a public hearing annually for members of school units to explain what special education programs are offered in each unit and the cost of these programs.

See title page for effective date.

**CHAPTER 309**

**S.P. 100 - L.D. 379**

**An Act to Clarify the Reimbursement of Legislators' Expenses**

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

**Sec. 1. 3 MRSA §2, 3rd ¶**, as amended by PL 1989, c. 501, Pt. O, §2; c. 600, Pt. B, §§9 and 10 and c. 878, Pt. D, §§14 and 15, is further amended to read:

Each Except as provided in this section, each member of the Senate and House of Representatives ~~shall be~~ is entitled to a meal allowance in the amount of \$32 and a housing allowance in the amount of \$38 for each day in attendance at sessions of the Legislature and for each day the member occupies overnight accommodations away from home either immediately preceding or immediately following attendance at daily sessions of the Legislature. The presiding officers may establish reasonable policies regarding allowances for meals and overnight accommodations for the day immediately preceding the session, which may include policies regarding whether an allowance is paid, whether the full amount or a portion of the statutory allowance is paid and whether receipts are required. In lieu of the meal and housing allowance, each member ~~shall be~~ is entitled to a daily meal allowance in the amount of \$32 and actual daily mileage allowances in an amount up to but not exceeding \$38 per day. Each member of the Senate ~~shall also receive~~ receives an annual allowance for constituent services in the amount of \$1,000, \$650 ~~of which shall be received~~ at the start of each regular session and \$350 ~~of which shall be received~~ in the month following adjournment of the regular session. Each member of the House of Representatives ~~shall also receive~~ receives an annual allowance for constituent services in the amount of \$750, \$500 ~~of which shall be received~~ at the start of each regular session and \$250 ~~of which shall be received~~ in the month following adjournment of the regular session.

See title page for effective date.

**CHAPTER 310**

**S.P. 333 - L.D. 1111**

**An Act to Protect Loons**

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

**Sec. 1. 12 MRSA §7035, sub-§17** is enacted to read:

**17. Promotion and education on lead sinkers and lures.** The commissioner may accept money, goods or services donated to the department for the purpose of educating the public on ways to minimize the threat to loons and other bird species from discarded or lost lead sinkers and lures. Any money, goods or services accepted by the commissioner under this subsection may be used only for those purposes.

See title page for effective date.

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## CHAPTER 311

### H.P. 207 - L.D. 260

#### An Act to Implement the Recommendations of the Task Force on Production and Issuance of Registration Plates

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

**Sec. 1. 29-A MRSA §451, sub-§4-A** is enacted to read:

**4-A. New general issue design.** Notwithstanding subsection 4, the design of registration plates issued pursuant to subsection 1-A is governed by this subsection.

A. Registration plates must bear the year of issue or the last 2 numerals of that year and the word "Maine" or the abbreviation "ME" in letters of at least 3/4 inch in height centered at the top of the registration plate.

B. Except on motorcycle plates, registration numbers may not be substantially less than 3 inches high.

C. On registration plates issued for private use and trucks, the word "Vacationland" must be centered at the bottom in letters not less than 3/4 inch in height, except, when the Secretary of State determines that for other than passenger vehicles, that space may be used for class codes.

D. A new registration plate must have:

(1) A green shaded background;

(2) Identification numbers, letters and the border distinctly black; and

(3) An illustration of a chickadee, pine cone and tassel.

E. The Secretary of State shall devise, with the advice of the joint standing committee of the Legislature having jurisdiction over transportation matters, a numbering system suitable for a new general issue of registration plates.

**Sec. 2. PL 1995, c. 645, Pt. C, §15** is amended to read:

**Sec. C-15. Task force on production and issuance of license plates.** The Secretary of State shall convene a task force to study the production and issuance of license plates. The task force shall convene no later than May 15, 1996 and conclude its work no later than ~~November 1, 1996~~ December 1, 1998.

**1. Membership.** The task force consists of 11 members selected as follows.

The President of the Senate and the Speaker of the House shall each appoint 2 members to serve as task force members. ~~Members may continue to serve after their legislative term of office has expired.~~ At the request of one of their appointees, the appointing authority may appoint another member of the committee to replace the requesting member on the task force.

The Secretary of State shall appoint 2 members representing law enforcement: one representing county sheriffs' departments and one representing municipal police departments.

The Chief of the State Police shall designate a state police officer to serve as a member.

The business manager for the bureau; the director of the public services division within the Bureau of Motor Vehicles; the director of the commercial vehicles division within the bureau; and an assistant deputy secretary of state serve as ex officio members of the task force.

The Chairs of the Joint Standing Committee on Transportation and the Secretary of State shall send a list of the people appointed to serve on the task force to the Executive Director of the Legislative Council no later than May 1, 1996.

**2. Convening of first meeting; election of chair.** The Secretary of State or a designee of the Secretary of State shall convene the first meeting of the task force no later than May 15, 1996. The task force shall select a chair from among its members.

**3. Staff and resource consultants to the task force.** The Secretary of State shall provide staff assistance to the task force. The supervisor of the Maine State Prison plate shop shall serve as a consultant to the task force. The task force may

request assistance with the preparation of any recommended legislation from the Legislative Council.

**4. Purpose of task force.** The task force shall study issues relating to the design and production of license plates and make recommendations to the Legislature for the new general plate issue beginning July 1, 1999. In conducting the study the task force shall examine the following.

A. The task force shall evaluate the existing equipment at the Warren prison facility, its adequacy for meeting plate production demand and the costs of overhauling that equipment prior to a new general issue. The task force shall examine state-of-the-art technology for in-house graphics creation and production of specialty plates. The task force shall consider costs of new equipment and the impact of various types of equipment on production capabilities and on jobs at the prison facility.

B. The task force shall consider methods of assigning unique identifiers to license plates. The task force shall consider use of a stacked letter system to allow duplication of numbers among different types of plates. The task force shall make recommendations as to the use of a single numbering system or a system that allows duplication.

C. ~~The~~ Until November 1, 1996, the task force shall consider designs for a new general issue plate to replace the lobster plate design. The task force shall use the plate design standards of the American Association of Motor Vehicle Administrators in developing or evaluating designs. The task force shall present design alternatives to the Joint Standing Committee on Transportation before making a recommendation, on or by November 1, 1996, on plate design.

D. The task force may consider any other issues related to the production of license plates.

**5. Reimbursement for travel expenses.** Members of the task force who are Legislators or were Legislators at the time of appointment are entitled to reimbursement for travel expenses for meetings of the task force. Members of the Joint Standing Committee on Transportation who participated in meetings initiated by the Secretary of State to study license plate production issues during the period of September 1, 1995 to December 31, 1995 are entitled to reimbursement for travel expenses upon submitting the appropriate expense forms to the Executive Director of the Legislative Council.

**6. Initial recommendation.** The task force shall submit a an initial report including findings,

recommendations and proposed legislation to the Joint Standing Committee on Transportation and to the Executive Director of the Legislative Council no later than November 1, 1996. The task force shall submit legislation to implement its recommendations to the Revisor of Statutes no later than January 1, 1997. The report must include a proposed plate design for the new general issue, recommendations for the registration classes required to display the new general issue plates and for the specialty plates to remain in use concurrent with the new general issue.

**7. Final recommendations.** The task force shall submit its final recommendations regarding the use of a single numbering system or a system that allows duplication to the Joint Standing Committee on Transportation and to the Executive Director of the Legislative Council during the Second Regular Session of the 118th Legislature.

**Sec. 3. Transition; retroactivity.** Those members of the task force to study the production and issuance of license plates who were appointed pursuant to Public Law 1995, chapter 645, Part C, section 15 continue to serve as members of the task force, except that the 2 legislative members of the task force whose legislative terms have expired must be replaced with new appointees who are members of the Joint Standing Committee on Transportation by the President of the Senate and the Speaker of the House.

This section and those sections of this Act that amend Public Law 1995, chapter 645, Part C, section 15 apply retroactively to November 1, 1996.

See title page for effective date.

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## CHAPTER 312

H.P. 1204 - L.D. 1704

### An Act to Require the Department of Inland Fisheries and Wildlife to File Monthly Revenue Reports

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

**Sec. 1. 12 MRSA §7017, sub-§7** is enacted to read:

**7. Monthly report.** By the 15th day of each month, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters. When the Legislature is in session, the department shall submit its report at a meeting of the committee. When the Legislature is not in session, the department shall mail the report to each member of the committee with a copy to the Executive Director of the Legisla-

tive Council. The report must identify for the immediately preceding month:

- A. Revenues of the department;
- B. Expenditures of the department; and
- C. The difference between the projected revenues and expenditures of the department and the actual revenues and expenditures.

See title page for effective date.

**CHAPTER 313**

**H.P. 1301 - L.D. 1844**

**An Act to Amend the Professional Service Corporation Act As It Relates to Eye Care Providers**

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

**Sec. 1. 13 MRSA §705**, as amended by PL 1989, c. 613, is further amended to read:

**§705. Corporate organization**

An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional service within this State may organize and become a shareholder or shareholders of a professional corporation under the corporation laws for the sole and specific purpose of rendering the same and specific professional service. Notwithstanding any other provisions of law, for the purposes of this chapter, osteopathic physicians licensed under Title 32, chapter 36; and physicians and surgeons licensed under Title 32, chapter 48; are considered to render the same professional service. Notwithstanding any other provision of law, for the purposes of this chapter, optometrists licensed under Title 32, chapter 34-A and ophthalmologists licensed under Title 32, chapter 36 or 48 may organize and become the sole shareholders of the same professional corporation under the corporation laws for the sole and specific purpose of rendering their respective professional services that are considered to be complementary to one another.

See title page for effective date.

**CHAPTER 314**

**S.P. 657 - L.D. 1879**

**An Act Authorizing the Bureau of Insurance to Release Aggregate Ratios of Consumer Complaints to the Public**

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

**Sec. 1. 24-A MRSA §216, sub-§2**, as amended by PL 1989, c. 269, §5, is further amended to read:

2. All records of the bureau ~~shall be~~ are subject to public inspection, except as otherwise expressly provided by law as to particular matters; and except that records, correspondence and reports of investigation in connection with actual or claimed violations of this Title or prosecution or disciplinary action ~~therefor shall be for those violations are~~ confidential. The confidential nature of any such record, correspondence or report ~~shall may~~ not limit or affect use of the same by the superintendent in any such prosecution or action. This subsection ~~shall does~~ not preclude participation by the superintendent in the establishment of an interstate complaint handling system ~~which that~~ may involve the sharing of information with insurance regulatory officials in other jurisdictions and with the National Association of Insurance Commissioners, ~~provided that as long as~~ as long as the names of the complainant and insured remain confidential. This subsection does not preclude the dissemination of aggregate ratios of substantiated consumer complaints to the public by the superintendent. Only complaints received in writing are included in the calculation of the complaint ratio. A complaint received by electronic means is considered a written complaint. A substantiated consumer complaint includes any matter in which the resolution results in a favorable outcome to the consumer, including, but not limited to, the recovery of premium refunds, additional amounts paid on claims or policy reinstatements. A matter in which the actions of an insurer are in violation of this Title is deemed a substantiated complaint. The superintendent shall adopt rules necessary to define the method for calculating complaint ratios. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

**Sec. 2. Rule-making authority.** The Superintendent of Insurance has authority to adopt rules in accordance with the Maine Revised Statutes, Title 5, chapter 375 to implement Title 24-A, section 216, subsection 2, as amended by this Act. Such rules must be provisionally adopted and submitted to the Legislature for review as major substantive rules

pursuant to Title 5, chapter 375, subchapter II-A no later than January 1, 1998.

See title page for effective date.

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## CHAPTER 315

### S.P. 439 - L.D. 1385

#### **An Act to Promote Parity in the Regulation of Insurance Sales by Federally and State-chartered Financial Institutions**

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

**Whereas,** state law currently prohibits financial institutions from selling most types of insurance; and

**Whereas,** this prohibition may not apply to federally chartered financial institutions in light of the unanimous decision of the United States Supreme Court in a March 1996 case entitled Barnett Bank, N.A. v. Nelson; and

**Whereas,** if the State does not immediately permit state-chartered financial institutions to sell insurance, these banks will be encouraged to convert to federally chartered banks, thereby lessening state oversight and revenues. The lack of parity may also discourage financial institutions from benefiting in the State's economy by locating in this State; and

**Whereas,** if banks are permitted to sell insurance in the State, those sales should be in accordance with reasonable market regulations in order to protect the consumer; 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. 9-A MRSA §4-102, sub-§§1 and 2,** as enacted by PL 1973, c. 762, §1, are amended to read:

1. Except as provided in subsection 2, Parts 1, 2 and 3 of this Article applies apply to insurance provided or to be provided in relation to a consumer credit transaction.

2. The provision on cancellation by a creditor, section 4-304, applies to loans, the primary purpose of

which is the financing of insurance. No other provision of Parts 1, 2 and 3 of this Article applies to insurance so financed.

**Sec. 2. 9-A MRSA §4-104, sub-§§1 and 2,** as enacted by PL 1973, c. 762, §1, are amended to read:

1. Except as otherwise provided in Parts 1, 2 and 3 of this Article and subject to the provisions on additional charges, section 2-501, and maximum finance charges, Parts 2 and 4 of Article II, a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by ~~him~~ that creditor. This Act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

2. The excess amount of a charge for insurance provided for in agreements in violation of Parts 1, 2 and 3 of this Article is an excess charge for the purposes of the provisions of the Article on Remedies and Penalties, Article V, as to effect of violations on rights of parties, section 5-201, and of the provisions of the Article on Administration, Article VI, as to civil actions by the administrator, section 6-113.

**Sec. 3. 9-A MRSA §4-106, sub-§2,** as enacted by PL 1973, c. 762, §1, is amended to read:

2. If consumer credit insurance otherwise complies with Parts 1, 2 and 3 of this Article and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in and of itself unconscionable in the absence of other practices and circumstances.

**Sec. 4. 9-A MRSA §4-111,** as enacted by PL 1973, c. 762, §1, is amended to read:

#### **§4-111. Cooperation between administrator and Superintendent of Insurance**

The administrator and the Superintendent of Insurance are authorized and directed to consult and assist one another in maintaining compliance with Parts 1, 2 and 3 of this Article. They may jointly pursue investigations, prosecute suits and take other official action as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of Parts 1, 2 and 3 of this Article, or of the insurance laws, rules and regulations of this State, ~~he~~ the administrator shall advise the Superintendent of Insurance of the circumstances.

**Sec. 5. 9-A MRSA §4-112, sub-§1**, as enacted by PL 1973, c. 762, §1, is amended to read:

1. To the extent ~~that his~~ of required responsibility under Parts 1, 2 and 3 of this Article requires, the Superintendent of Insurance shall issue rules with respect to insurers, and with respect to refunds, section ~~4-108~~ 4-108, forms, schedules of premium rates and charges, section ~~4-203~~ 4-203, and ~~his~~ the Superintendent of Insurance's approval or disapproval thereof and, in case of violation, may make an order for compliance.

**Sec. 6. 9-A MRSA §4-301, first ¶** is enacted to read:

The following provisions apply to insurance provided or to be provided in relation to a consumer credit transaction:

**Sec. 7. 9-A MRSA §4-303**, as amended by PL 1987, c. 129, §63, is repealed.

**Sec. 8. 9-A MRSA Art. IV, Pt. 4** is enacted to read:

#### **PART 4**

### **INSURANCE ACTIVITIES BY SUPERVISED LENDERS**

#### **§4-401. Scope**

**1. Scope.** This Part applies to supervised lenders who are not supervised financial organizations.

**2. Exceptions.** Except for sections 4-402 and 4-405, this Part does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and credit health insurance to the extent authorized by Title 24-A, chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance.

#### **§4-402. Insurance agency activities**

A supervised lender and any affiliate may become licensed under Title 24-A as an insurance agent or agency, broker or consultant for the sale of insurance products in this State and may act as an insurance agent, broker or consultant for the sale of insurance products in this State.

#### **§4-403. Definitions**

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

**1. Affiliate.** "Affiliate" means any of the following entities:

A. A subsidiary of a supervised lender;

B. An entity of which a supervised lender is a subsidiary;

C. An employee, officer other than a director or licensed 3rd-party agent of a supervised lender or any institution listed in paragraph A or B;

D. A person or entity possessing 5% or more of the ownership interests of a supervised lender or any institution listed in paragraph A or B; or

E. An insurer or insurance agent, broker or consultant utilizing space in the retail area of a supervised lender, or an institution listed in paragraph A or B in order to engage in the transaction of insurance when payments for use of such space are made to the supervised lender or other such institution pursuant to a space-sharing agreement based directly or indirectly on a percentage of the volume of business conducted by the insurer, insurance agent, broker or consultant.

**2. Customer.** "Customer" means a person or an authorized representative who has been personally and directly offered or presently maintains an investment security, trust, credit or an insurance product with a supervised lender.

**3. Insurance agent or agency.** "Insurance agent or agency" means a person engaged in the business of an insurance agent as defined in Title 24-A, section 1502.

**4. Insurance broker.** "Insurance broker" means a person engaged in the business of an insurance broker as defined in Title 24-A, section 1506.

**5. Insurance consultant.** "Insurance consultant" means a person engaged in the business of an insurance consultant as defined in Title 24-A, section 1508.

**6. Insurance product.** "Insurance product" means a contract of insurance that is offered for sale by a licensed agent or broker employed by or affiliated with a supervised lender.

**7. Licensed 3rd-party agent.** "Licensed 3rd-party agent" means a licensed insurance agent, broker or consultant who engages in authorized insurance activities related to insurance products directly on behalf of a specified licensed insurance entity through an independent contractor relationship.

**8. Ownership interest.** "Ownership interest" includes general partnership shares, limited partner-

ship shares and shares of stock that possess any voting rights.

**9. Subsidiary.** "Subsidiary" means any corporation, partnership, association or other business entity in which either:

A. One or more supervised lenders or any of their officers, employees, agents or representatives possess, directly or indirectly, singly or in the aggregate, an ownership interest of at least 25%; or

B. It is determined by the Director of the Office of Consumer Credit Regulation after notice and opportunity for hearing that one or more supervised lenders or any of their officers, employees, agents or representatives, singly or in the aggregate exercise a controlling influence over the management and policies of the entity.

**§4-404. Choice of insurance agent or broker**

A supervised lender or its affiliate that negotiates or sells insurance products to purchasers or borrowers as authorized under section 4-402 may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of an insurance agent or company under applicable provisions set forth in Title 24-A.

**§4-405. Tie-in arrangements**

A supervised lender, a subsidiary of a supervised lender or an entity of which a supervised lender is a subsidiary may not sell in any manner an insurance product as authorized under section 4-402 or fix or vary the consideration for that product on the condition, agreement, requirement or understanding that the purchaser or borrower obtain additional or other credit, property or other service from the supervised lender, a subsidiary of a supervised lender or an entity of which a supervised lender is a subsidiary. This section does not prohibit a tie-in involving insurance products that is permitted under Title 24-A.

**§4-406. Distinguishing insurance products from loan products; identification of insurance brokers and agents**

To the extent practicable, sales of insurance products authorized by this Part must take place in a manner that minimizes customer confusion between any noninsurance product offered by the supervised lender or its affiliates and those insurance products. A supervised lender, or its affiliates, is in compliance with this section if it utilizes signs clearly visible to its customers that distinguish insurance products of the supervised lender, or its affiliates, from its noninsurance products and that adequately identify insurance

agents, brokers and consultants affiliated with the supervised lender.

**§4-407. Rulemaking**

The Superintendent of Banking, the Superintendent of Insurance and the Director of the Office of Consumer Credit Regulation may undertake joint rulemaking, pursuant to this section, Title 9-B, section 448, subsection 5 and Title 24-A, section 1514-A, subsection 5 to carry out the purposes of section 4-406, including issues regarding signs, the physical location of sales of insurance and identification of agents and brokers affiliated with financial institutions, credit unions, financial institution holding companies or supervised lenders. In adopting rules pursuant to this Part, the Superintendent of Banking, the Superintendent of Insurance and the Director of the Office of Consumer Credit Regulation shall consider the possibility of confusion and perception of coercion among the insurance consuming public, the need for cost-effective delivery of insurance products to insurance consumers and the importance of parity among agents and brokers affiliated with federally chartered and state-chartered financial institutions and credit unions. Any rule adopted may not interfere significantly with the ability of an agent or broker to solicit or negotiate the sale of an insurance product, whether or not that agent or broker is affiliated with a financial institution, credit union, financial institution holding company or supervised lender, except when no other reasonable alternative exists that protects the insurance consuming public. Rules adopted under this Part are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Nothing in this section is intended to restrict or interfere with the ability of the Bureau of Insurance, the Bureau of Banking or the Office of Consumer Credit Regulation to adopt rules with respect to areas in which the respective agencies have independent jurisdiction.

**Sec. 9. 9-B MRSA §131, sub-§§22-B to 22-E** are enacted to read:

**22-B. Insurance agent or agency.** "Insurance agent or agency" means a person engaged in the business of an insurance agent as defined in Title 24-A, section 1502.

**22-C. Insurance broker.** "Insurance broker" means a person engaged in the business of an insurance broker as defined in Title 24-A, section 1506.

**22-D. Insurance consultant.** "Insurance consultant" means a person engaged in the business of an insurance consultant as defined in Title 24-A, section 1508.

**22-E. Insurance product.** "Insurance product" means a contract of insurance that is offered for sale by a licensed agent or broker.

**Sec. 10. 9-B MRSA §161, sub-§2, ¶J,** as amended by PL 1989, c. 368, §2, is further amended to read:

J. Any disclosure of records made under the Federal Currency and Foreign Transactions Reporting Act, Public Law 91-508, 31 United States Code, ~~section~~ Section 5311, et seq., as amended; ~~or~~

**Sec. 11. 9-B MRSA §161, sub-§2, ¶K,** as enacted by PL 1989, c. 368, §3, is amended to read:

K. The examination or furnishing of any financial records by a fiduciary institution to any officer, employee or agent of the Treasurer of State for use solely in the exercise of that officer's, employee's or agent's duties under the Unclaimed Property Act, Title 33, chapter 37; ~~or~~

**Sec. 12. 9-B MRSA §161, sub-§2, ¶L** is enacted to read:

L. The exchange of financial records between a fiduciary institution and a consumer reporting agency or between or among a fiduciary institution and its subsidiaries, employees, agents or affiliates as permitted under Title 10, chapter 210 or 15 United States Code, Chapter 41.

**Sec. 13. 9-B MRSA §241, sub-§11** is enacted to read:

**11. Choice of insurance agent or broker.** A financial institution or credit union authorized to do business in this State, or a financial institution holding company or an affiliate of a financial institution holding company that is authorized to do business in this State as insurance agent or broker under section 448, or pursuant to applicable federal law, and Title 24-A to negotiate or sell insurance products to purchasers or borrowers may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of insurance agent or company under applicable provisions contained in Title 24-A.

Any violation of this subsection is an anticompetitive or deceptive practice under this chapter and is subject to the remedies provided in this chapter in addition to those remedies otherwise provided by law.

This subsection does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and health insurance to the extent authorized by Title 24-A, chapter 37, credit property insurance, credit involuntary unem-

ployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance.

**Sec. 14. 9-B MRSA §242, sub-§4** is enacted to read:

**4. Advertisement of insurance products.** In any advertisement of an insurance product offered pursuant to section 448, a financial institution or its affiliate shall include a statement that the product is not insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, as applicable.

This subsection does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and health insurance to the extent authorized by Title 24-A, chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance.

**Sec. 15. 9-B MRSA §243, sub-§1,** as amended by PL 1979, c. 663, §32, is further amended to read:

**1. Prohibition.** A financial institution authorized to do business in this State ~~shall~~ may not in any manner extend credit, lease or sell property, or furnish any service, or fix or vary the consideration for any of the foregoing on the condition, agreement, requirement or understanding:

A. That the customer ~~shall~~ obtain some additional or other credit, property, or other service from such financial institution other than a loan, discount, deposit or trust service. This paragraph does not prohibit a tie-in involving insurance products that is permitted under Title 24-A;

B. That the customer ~~shall~~ obtain some additional or other credit, property, or service from a subsidiary of such financial institution, a financial institution holding company of such financial institution, or from any other subsidiary of such financial institution holding ~~company~~ company;

C. That the customer provide some additional or other credit, property, or service to such financial institution, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

D. That the customer provide some additional or other credit, property or service to a subsidiary of

such financial institution, a financial institution holding company of such financial institution, or from any other subsidiary of such financial institution holding company; or

E. That the customer shall may not obtain some additional or other credit, property, or service from a competitor of such financial institution, a subsidiary of a competitor financial institution, a financial institution holding company of a competitor financial institution, or any other subsidiary of such competitor financial institution holding company, other than a condition or requirement that such financial institution shall reasonably impose in a credit transaction to assure the soundness of the credit.

**Sec. 16. 9-B MRSA §443, sub-§11**, as enacted by PL 1993, c. 322, §1, is amended to read:

**11. Annuities.** A financial institution, credit union or financial institution holding company, or a subsidiary or employee of such an entity, authorized to do business in the State may sell, or arrange for the sale of, through a licensed 3rd-party, annuities purchased from a licensed insurance company and may share commissions in connection with the sale of annuities pursuant to the provisions of Title 24-A. A financial institution, a credit union or a financial institution holding company or an employee or subsidiary of such an entity must be licensed in accordance with Title 24-A, ~~section sections~~ 1512 or 1531, subsection 1, paragraph F before engaging in any of the activities concerning the sale of annuities authorized by this subsection. ~~If annuities are sold pursuant to the authorization under this subsection through an arrangement with a licensed 3rd party agent, that 3rd party agent may not be licensed to sell general lines insurance or life and health insurance.~~ As used in this subsection, the words "sell annuities" and "arrange for the sale of annuities" do not include the underwriting of those products.

A financial institution, credit union or financial institution holding company that sells or arranges for the sale of annuities on the premises of that entity:

A. Shall post conspicuously a notice that is clearly visible to all customers that may purchase annuities. The notice must state in clearly understandable language that the annuities are not insured by the Federal Deposit Insurance Corporation;

B. Shall orally inform a prospective purchaser of annuities that the annuities are not insured by the Federal Deposit Insurance Corporation; and

C. Before a sale of annuities is completed, must obtain a written statement signed by the pur-

chaser of the annuities stating that the purchaser received the oral notice required by paragraph B.

**Sec. 17. 9-B MRSA §448** is enacted to read:

**§448. Insurance agency activities**

**1. Authorization.** A financial institution or credit union authorized to do business in this State, or financial institution holding company, or an affiliate of either, other than a licensed supervised lender regulated under Title 9-A, Article IV, Part 4, may act as an agent, broker or consultant in this State and may employ, affiliate with or hire as a 3rd-party agent an insurance agent or agency, broker or consultant, if the agent, agency, broker or consultant is duly licensed under Title 24-A or engage in authorized insurance activities in another state, if the agent, agency, broker or consultant complies with the applicable laws of that state.

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

A. "Affiliate" has the same meaning as defined in Title 24-A, section 1514-A, subsection 1.

B. "Customer" means a person or business entity or an authorized representative of either who has been personally and directly offered, or presently maintains, an investment security, trust, credit or an insurance product with a financial institution or credit union authorized to do business in this State.

**3. Customer notice that insurance is not federally guaranteed.** An institution that engages in insurance agency or brokerage activities authorized under subsection 1 must provide customer notice regarding insurance products in the following manner.

A. The institution shall post conspicuously a notice that is clearly visible to all customers that may purchase insurance products from the institution. The notice must state in clearly understandable language that the insurance is not insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, as applicable;

B. When a prospective purchaser of insurance is directly and personally contacted by the institution, the institution shall orally inform that prospective purchaser of insurance that the insurance product is not insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, as applicable; and

C. Before the sale of an insurance product is completed the institution must obtain a written

statement signed by the purchaser of insurance that the purchaser received the oral notice required by paragraph B.

**4. Distinguishing insurance products from loan or deposit products; identification of insurance brokers and agents** To the extent practicable, sales of insurance products authorized by this section must take place in a manner that minimizes customer confusion between the deposit, share or loan products offered by the institution and those insurance products. An institution authorized under subsection 1 is in compliance with this subsection if it utilizes signs clearly visible to its customers that distinguish its insurance products from its deposit, share or loan products and that adequately identify insurance agents, brokers and consultants affiliated with the institution.

**5. Rulemaking.** The superintendent, Superintendent of Insurance and the Director of the Office of Consumer Credit Regulation are authorized, pursuant to this subsection, Title 9-A, section 4-407 and Title 24-A, section 1514-A, subsection 5 to undertake joint rulemaking to carry out the purpose of subsection 4, including issues regarding signs, the physical location of sales of insurance and identification of agents and brokers affiliated with financial institutions, credit unions, financial institution holding companies or supervised lenders. In adopting rules pursuant to this section, the superintendent, the Superintendent of Insurance and the Director of the Office of Consumer Credit Regulation shall consider the possibility of confusion and perception of coercion among the insurance consuming public, the need for cost-effective delivery of insurance products to insurance consumers and the importance of parity among agents and brokers affiliated with federally chartered and state-chartered financial institutions and credit unions. Any rule adopted may not interfere significantly with the ability of an agent or broker to solicit or negotiate the sale of an insurance product, whether or not that agent or broker is affiliated with a financial institution, credit union, financial institution holding company or supervised lender, except when no other reasonable alternative exists to protect the insurance consuming public. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Nothing in this section is intended to restrict or interfere with the ability of the bureau, the Bureau of Insurance or the Office of Consumer Credit Regulation to adopt rules with respect to areas in which the respective agencies have independent jurisdiction.

**6. Applicability.** Other than the authorizations provided in subsection 1, this section does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and credit health insurance to the extent authorized by

Title 24-A, chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance. This section also does not apply to annuity sales authorized under section 443, subsection 11.

**Sec. 18. 24-A MRSA §1514**, as amended by PL 1973, c. 585, §12, is repealed.

**Sec. 19. 24-A MRSA §1514-A**, as amended by PL 1995, c. 329, §10, is further amended to read:

**§1514-A. Insurance agency and brokerage activities by financial institutions and related parties**

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

~~A. "Financial institution" means a trust company, commercial bank, savings bank, industrial bank, savings and loan association or credit union, either state chartered or federally chartered.~~

A-1. "Affiliate" means any of the following entities:

(1) A subsidiary of a financial institution or credit union authorized to do business in this State or of a financial institution holding company;

(2) An employee, an officer other than a director, or licensed 3rd-party agent of a financial institution or credit union authorized to do business in this State, a financial institution holding company or any institution listed in subparagraph (1);

(3) A person or entity possessing 5% or more of the ownership interests of a financial institution or credit union authorized to do business in this State, or of a financial institution holding company or of any institution listed in subparagraph (1); or

(4) An insurer or insurance agent, broker or consultant utilizing space in the retail area of a financial institution or credit union authorized to do business in this State or of a financial institution holding company or an institution listed in subparagraph (1) in order to engage in the transaction of insurance when payments for use of the space are made to that institution pursuant to a space-sharing agreement based directly or indirectly upon a percentage of the volume

of business conducted by the insurer, insurance agent, broker or consultant.

A-2. "Financial institution authorized to do business in this State" or a "credit union authorized to do business in this State" has the same meaning as defined in Title 9-B, section 131, subsections 12-A and 17-A.

B. "Financial institution holding company" has the same meaning set forth as defined in Title 9-B, section 1011 and includes a mutual holding company as defined in Title 9-B, section 1052.

B-1. "Licensed 3rd-party agent" means a licensed insurance agent, broker or consultant who engages in authorized insurance activities related to insurance products directly on behalf of a specified licensed insurance entity through an independent contractor relationship.

C. "Ownership interest" includes general partnership shares, limited partnership shares and shares of stock which that possess any voting rights.

D. "Retail area" means all space occupied by a financial institution where the "business of banking," as defined in Title 9-B, section 131, subsection 5, may occur.

E. "Subsidiary" means any corporation, partnership, association or other business entity in which either:

(1) One or more financial institutions or credit unions authorized to do business in this State, financial institution holding companies or any officers, employees, agents or representatives of the financial institutions or credit unions authorized to do business in this State or financial institution holding companies possess directly or indirectly, singly or in the aggregate, an ownership interest of at least 25%; or

(2) It is determined by the superintendent after notice and opportunity for hearing that one or more financial institutions or credit unions authorized to do business in this State, financial institution holding companies or any officers, employees, agents or representatives of financial institutions or credit unions authorized to do business in this State or financial institution holding companies, singly or in the aggregate, exercise a controlling influence over the management and policies of the entity.

~~**2. Prohibition on licensing.** A financial institution, financial institution holding company or the~~

~~subsidiary of either or an officer, employee, agent or representative of a financial institution, financial institution holding company or the subsidiary of either may not be licensed as an insurance agent, broker or consultant in this State or may not act as an insurance agent, broker or consultant in this State. Nothing in this section limits the activity of these organizations with respect to credit life and credit health insurance to the extent authorized by chapter 37, group health insurance to the extent authorized by chapter 35 and group life insurance to the extent authorized by chapter 31. Nothing in this section prohibits a financial institution, credit union, financial institution holding company or a subsidiary or employee of any such entity from selling annuities, arranging for the sale of annuities or sharing commissions in connection with the sale of annuities to the extent authorized by Title 9-B, section 443, subsection 11, provided that such entity has been licensed pursuant to section 1531, subsection 1, paragraph F and if that activity includes the sale of variable annuity contracts, the National Association of Securities Dealers registration form has been submitted to the superintendent as required by the provisions of section 1520, subsection 3.~~

**2. Licensing.** A financial institution or credit union authorized to do business in this State, financial institution holding company or the subsidiary or affiliate of either of those entities or an officer, employee, agent or representative of a financial institution, credit union, financial institution holding company or the subsidiary of either of those entities may be licensed as an insurance agent, broker or consultant in this State and may act as an insurance agent, broker or consultant in this State. These organizations are not required to become licensed as an insurance agent, broker or consultant with respect to credit life and credit health insurance to the extent authorized by chapter 37 when the insured is enrolled in the policy; group health insurance to the extent authorized by chapter 35 when the insured is enrolled in the policy; group life insurance to the extent authorized by chapter 31 when the insured is enrolled in the policy; credit property insurance; credit involuntary unemployment insurance; forced placed property insurance; a vendor's single interest policy; and any other insurance product as determined by the superintendent. In addition, a financial institution, credit union, financial institution holding company or a subsidiary or employee of any such entity may sell annuities, arrange for the sale of annuities or share commissions in connection with the sale of annuities to the extent authorized by Title 9-B, section 443, subsection 11, if such an entity has been licensed pursuant to section 1531, subsection 1, paragraph F or section 1512 and if that activity includes the sale of variable annuity contracts, the National Association of Securities Dealers registration form has been submitted to the superintendent as required by the provisions of section 1520, subsection 3.

~~2-A. Notwithstanding the provisions of subsections 1 and 2, an individual may not be affiliated pursuant to section 1518, subsection 5, with a financial institution, credit union, holding company or subsidiary of a financial institution, credit union, holding company or subsidiary of which the individual is a director or trustee nor may an individual, through a 3rd party arrangement, otherwise sell annuities for or share commissions with an institution. This prohibition applies to an organization licensed as an agent or broker in which the director or trustee has an ownership interest or otherwise controls the organization.~~

~~3. Limitations on leasing activities. Any arrangement involving a financial institution or financial institution holding company and an insurer or insurance agent, broker or consultant pursuant to which an insurer, insurance agent, broker or consultant utilizes space in the retail area of a financial institution in order to engage in the transaction of insurance is subject to the following conditions:~~

~~A. The financial institution, financial institution holding company or subsidiary of either may not own, in whole or in part, the insurer, insurance agent, broker or consultant.~~

~~B. No officer, employee, agent or representative of the financial institution, financial institution holding company or a subsidiary of either may act as an officer, employee, agent or representative of the insurer, insurance agent, broker or consultant.~~

~~C. The payments to be made to the financial institution or financial institution holding company pursuant to a space sharing agreement may not be based, directly or indirectly, upon a percentage of the volume of business conducted by the insurer, insurance agent, broker or consultant.~~

~~D. The financial institution or financial institution holding company may not engage in any joint advertising or solicitation with the insurer, insurance agent, broker or consultant.~~

~~E. The space occupied by the insurer, insurance agent, broker or consultant shall be sufficiently separate and distinct from areas occupied by officers or employees of the financial institution and the respective parties shall act in a manner so that:~~

~~(1) A consumer would not have reason to believe that there is any affiliation between the financial institution and the insurer, insurance agent, broker or consultant; and~~

~~(2) The right of the consumer to consider insurance transactions in a confidential and noncoercive environment is assured.~~

~~4. Rule-making authority. The superintendent may promulgate rules to implement and support this section, including reasonable rules to implement the general conditions set forth in subsection 3, concerning space sharing arrangements. The rules may limit or prohibit activities which evade or circumvent the provisions of this section.~~

5. Rulemaking. The superintendent, the Superintendent of Banking and the Director of the Office of Consumer Credit Regulation may, pursuant to this subsection, Title 9-A, section 4-407 and Title 9-B, section 448, subsection 5, undertake joint rulemaking to carry out the purpose of this section, including issues regarding signs, the physical location of sales of insurance and identification of agents and brokers affiliated with financial institutions, credit unions, financial institution holding companies or supervised lenders. In adopting rules pursuant to this section, the superintendent, the Superintendent of Banking and the Director of the Office of Consumer Credit Regulation shall consider the possibility of confusion and perception of coercion among the insurance consuming public, the need for cost-effective delivery of insurance products to insurance consumers and the importance of parity among agents and brokers affiliated with federally chartered and state-chartered financial institutions and credit unions. Any rule adopted may not interfere significantly with the ability of an agent or broker to solicit or negotiate the sale of an insurance product, whether or not that agent or broker is affiliated with a financial institution, credit union, financial institution holding company or supervised lender, except when no other reasonable alternative exists to protect the insurance consuming public. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Nothing in this section is intended to restrict or interfere with the ability of the bureau, the Bureau of Banking or the Office of Consumer Credit Regulation to adopt rules with respect to areas in which the respective agencies have independent jurisdiction.

**Sec. 20. 24-A MRSA §1531, sub-§1, ¶F,** as enacted by PL 1993, c. 322, §6, is amended to read:

F. Covering only annuities. An individual who is licensed to sell annuities as well as other kinds of insurance under the Maine Insurance Code who is or becomes an employee of a financial institution, credit union, financial institution holding company or a subsidiary of such an entity that becomes licensed pursuant to this subsection, must promptly deliver the license to the superintendent for reissuance without fee or

~~charge as a limited license for the sale of annuities only.~~

**Sec. 21. 24-A MRSA §2168, sub-§1**, as amended by PL 1983, c. 394, §4, is further amended to read:

**1. Prohibition against certain requirements.** ~~No~~ A person engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property may not require, as a condition to the financing or lending, or as a condition to the renewal or extension of any such loan or to the performance of any other act in connection with the financing or lending, that the purchaser or borrower, or ~~his~~ the successors, ~~shall~~ of the purchaser or borrower negotiate through a particular insurer or insurers, insurance agent or agents, broker or brokers, type of insurer or types of insurers, any policy of insurance or renewal thereof ~~insuring that property~~ issued in connection with the extension of credit. For purposes of this section, the term "policy" includes, but is not limited to, any temporary contract or binder, by whatever name known, under the terms of which insurance coverage commences at a specified time, and continues until a finished policy is issued or the risk is declined and coverage is terminated.

**Sec. 22. 24-A MRSA §2168, sub-§1-A** is enacted to read:

**1-A. Prohibition against unreasonable burdens.** A creditor or lender may not, in connection with the extension of credit, interfere with the free choice of a borrower or purchaser under subsection 1 by imposing any unreasonable time or burden on an insurance agent or broker not affiliated with the lender or creditor that is not also imposed on an insurance agent or broker who is affiliated with the lender or creditor. "Affiliate" has the same meaning as set forth in section 1514-A, subsection 1 with respect to financial institutions and credit unions and in Title 9-A, section 4-403, with respect to supervised lenders.

**Sec. 23. 24-A MRSA §2168, sub-§2**, as enacted by PL 1969, c. 132, §1, is amended to read:

**2. Approval of insurer; written criteria.** This section ~~shall~~ does not prevent the exercise by any ~~mortgagee~~ lender or creditor of ~~his~~ its right to approve the insurer selected by the borrower on a reasonable nondiscriminatory basis related to the solvency and assessment policies of the insurer and its ability to service the policy. A lender or creditor who exercises its rights under this subsection shall establish written criteria for approving the insurer selected by the borrower and in the event the creditor or lender actually denies an insurer under that criteria the lender or creditor must provide verbal notice to the customer within 3 business days and written notice within 10

business days. Upon request by a licensed insurer, agent, broker or consultant, a customer, a lender or creditor must within 10 business days of receiving the request provide a copy of its written criteria for approving an insurer.

**Sec. 24. 24-A MRSA §2168, sub-§2-B** is enacted to read:

**2-B. Change of insurance carrier.** A purchaser or borrower may change insurance carriers in connection with the extension of credit by a lender or creditor if the change does not violate a condition of the extension of credit regarding adequacy of coverage or other proper basis under subsection 2 or is otherwise prohibited by law.

**Sec. 25. 24-A MRSA §2168-B** is enacted to read:

**§2168-B. Solicitation or negotiation involving purchasers or borrowers**

A licensed agent or broker affiliated with a lender or creditor may not solicit an application for an insurance contract in connection with the extension of credit or negotiate such a contract from a purchaser or borrower whom the agent or broker knows, or should have known, has applied to receive an extension of credit from that lender or creditor until such time as the creditor or lender has provided by hand or sent written notice to the purchaser or borrower of its action on the application or has documented in writing in the lender's or creditor's records its action on the application. This section does not limit the ability of a lender or creditor to do any of the following:

**1. Marketing activities.** To engage at any time in marketing activities and solicitations for the sale of insurance, including through the mail or by telephone, that are not specifically directed toward purchasers or borrowers who have applied to receive an extension of credit.

This section does not apply to group health and group life insurance to the extent authorized by chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and credit health insurance to the extent authorized by chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the superintendent.

"Affiliate" has the same meaning as set forth in section 1514-A, subsection 1 with respect to financial institutions and credit unions and in Title 9-A, section 4-403 with respect to supervised lenders.

**Sec. 26. 24-A MRSA §2169**, as amended by PL 1993, c. 208, §1, is further amended to read:

**§2169. Notice of free choice of agent or insurer**

Every debtor, borrower or purchaser of property with respect to which insurance of any kind on the property is required in connection with a debt or loan secured by that property or in connection with the sale of that property must be informed by the The creditor or lender at the time of application for the loan or at the outset of negotiations regarding the loan or sale shall inform the purchaser or borrower of that person's right of free choice in the selection of the agent and insurer through or by which the insurance in connection with the loan is to be placed, including the right to choose an agent or broker whether or not that agent or broker is affiliated with a creditor or lender. For purposes of this section, "affiliated" has the same meaning as set forth in section 1514-A, subsection 1, with respect to financial institutions and credit unions or in Title 9-A, section 1-403 with respect to supervised lenders. In conjunction with this notice, a creditor or lender shall inform its purchasers or borrowers that obtaining insurance products from a particular agent or broker does not affect credit decisions by the creditor or lender regarding the purchaser or borrower, unless the insurance product selected violates the terms of the extension of credit regarding adequacy of coverage or is otherwise not approved under section 2168, subsection 2. Another person may not interfere either directly or indirectly with the borrower's, debtor's or purchaser's free choice of an agent and of an insurer that complies with the requirements set out in section 2168; and the creditor or lender may not refuse an adequate policy so tendered by the borrower, debtor or purchaser. A creditor or lender may not reject an insurance product selected by a purchaser or borrower because the product was not obtained from or through an insurance agent or broker affiliated with the institution. For purposes of this section, the term "policy" includes, but is not limited to, any temporary contract or binder, by whatever name known, under the terms of which insurance coverage commences at a specified time, and continues until a finished policy is issued or the risk is declined and coverage is terminated. Upon notice of any refusal of this tendered policy, the superintendent shall order the creditor or lender to accept the tendered policy, if the superintendent determines that the refusal is not in accordance with the requirements set out in section 2168. Failure to comply with such an order of the superintendent is a violation of this section.

This section does not apply to group health and group life insurance to the extent authorized by chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and credit health insurance to the extent authorized by chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's

single interest policy or any other insurance product as determined by the superintendent.

**Sec. 27. 24-A MRSA §2169-A** is enacted to read:

**§2169-A. Confidentiality of insurance information obtained by lenders**

**1. Prohibited use of information.** If a lender or creditor requires a purchaser or borrower to provide insurance information in connection with the extension of credit, an insurance agent or broker affiliated with that lender or creditor may not later use the information obtained to solicit or offer insurance directly to the purchaser or borrower. "Insurance information" means copies of insurance policies, binders, rates and expiration dates not otherwise in the possession of the agent or broker. "Affiliate" has the same meaning as set forth in section 1514-A, subsection 1 with respect to financial institutions and credit unions or in Title 9-A, section 4-403 with respect to supervised lenders.

**2. Use of information with consent.** Notwithstanding subsection 1, an insurance agent or broker affiliated with a lender or creditor may use the insurance information obtained from the purchaser or borrower to solicit or offer insurance to the customer if the customer consents in writing to the use of the information. This consent may not be a condition of the extension of credit to the customer.

**3. Information permitted under Fair Credit Reporting Act.** Notwithstanding subsection 1, a lender or creditor may exchange insurance information with its affiliates as permitted under the Fair Credit Reporting Act pursuant to Title 10, chapter 210 or 15 United States Code, Chapter 41.

**Sec. 28. Commencement of rulemaking.** Within 90 days of the effective date of this Act, the Bureau of Banking, the Bureau of Insurance and the Office of Consumer Credit Regulation shall commence rulemaking regarding signs, the physical location of sales of insurance and identification of agents and brokers affiliated with financial institutions, credit unions, financial institution holding companies or supervised lenders, pursuant to the Maine Revised Statutes, Title 9-A, section 4-407, Title 9-B, section 448, subsection 5 and Title 24-A, section 1514-A, subsection 5.

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

Effective May 29, 1997.

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## CHAPTER 316

H.P. 1274 - L.D. 1804

An Act to Restructure the State's  
Electric Industry

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

**Sec. 1. 35-A MRSA §3139**, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

**Sec. 2. 35-A MRSA §3140, sub-§§1, 3 and 4**, as enacted by PL 1987, c. 141, Pt. A, §6, are amended to read:

**1. Foreign electric utility to notify commission before acting within this State.** A foreign electric utility ~~acting under section 3139~~ shall, before constructing, purchasing, owning, controlling, operating, managing or otherwise participating in a joint or common interest in a utility facility within this State:

A. Notify the commission in writing of the action to be taken by the utility; and

B. Provide any information reasonably required by the commission under section 3132.

**3. Registered office and agent; service of process.** A foreign electric utility ~~acting under section 3139~~ shall:

A. ~~Designate~~ Shall designate and continuously maintain in this State a registered office and a registered agent in accordance with Title 13-A, section 1212; and

B. ~~Be~~ is subject to service of process, notice or demand as provided in Title 13-A, section 1212.

**4. Certificate of agency with regulatory jurisdiction over foreign electric utility.** Upon the filing with the commission of a certificate of the appropriate regulatory agency of the state of domicile or principal locus of a foreign electric utility, or of the United States, stating either that the agency has regulatory jurisdiction over the issuance of stocks, bonds or other evidences of indebtedness payable more than 12 months from date of issue by that foreign electric utility to finance a utility facility in this State or that the agency has general supervision of that foreign electric utility in the conduct of its electric utility business, that foreign electric utility ~~shall~~ may not be deemed an "electric utility" as defined in section 102, subsection 5, merely by reason of the exercise by it of the authority granted in former section 3139.

**Sec. 3. 35-A MRSA c. 32** is enacted to read:

## CHAPTER 32

ELECTRIC INDUSTRY RESTRUCTURING§3201. Definitions

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

**1. Affiliated interest.** "Affiliated interest" has the same meaning as provided in section 707, subsection 1, paragraph A.

**2. Aggregate.** "Aggregate" means to organize individual electricity consumers into a group or entity for the purpose of purchasing electricity on a group basis.

**3. Aggregator.** "Aggregator" means an entity that gathers individual customers together for the purpose of purchasing electricity.

**4. Broker.** "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity.

**5. Competitive electricity provider.** "Competitive electricity provider" means a marketer, broker, aggregator or any other entity selling electricity to the public at retail.

**6. Consumer-owned transmission and distribution utility.** "Consumer-owned transmission and distribution utility" means any transmission and distribution utility wholly owned by its consumers, including, but not limited to:

A. The transmission and distribution portion of a rural electrification cooperative organized under chapter 37;

B. The transmission and distribution portion of an electrification cooperative organized on a cooperative plan under the laws of the State;

C. A municipal or quasi-municipal transmission and distribution utility;

D. The transmission and distribution portion of a municipal or quasi-municipal entity providing generation and other services; and

E. A transmission and distribution utility wholly owned by a municipality.

**7. Divest.** "Divest" means to legally transfer ownership and control to an entity that is not an affiliated interest.

**8. Electric billing and metering services.**

"Electric billing and metering services" means the following services:

- A. Billing and collection;
- B. Provision of a meter;
- C. Meter maintenance and testing; and
- D. Meter reading.

**9. Entity.** "Entity" means a person or organization, including but not limited to any political, governmental, quasi-governmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization.

**10. Generation assets.** "Generation assets" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the generation of electric power.

**11. Generation service.** "Generation service" means the provision of electric power to a consumer through a transmission and distribution utility but does not encompass any activity related to the transmission or distribution of that power.

**12. Large, investor-owned transmission and distribution utility.** "Large, investor-owned transmission and distribution utility" means an investor-owned transmission and distribution utility serving more than 50,000 retail customers.

**13. Marketer.** "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.

**14. Public entity.** "Public entity" includes the State, any political subdivision of the State, a municipality and any quasi-municipal entity.

**15. Qualifying facility.** "Qualifying facility" has the same meaning as provided in section 3303.

**16. Small, investor-owned transmission and distribution utility.** "Small, investor-owned transmission and distribution utility" means an investor-owned transmission and distribution utility serving 50,000 or fewer retail customers.

**17. Retail access.** "Retail access" means the right of a retail consumer of electricity to purchase generation service from a competitive electricity provider.

**18. Transmission and distribution plant.** "Transmission and distribution plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the transmission, distribution or delivery of

electricity for light, heat or power for public use and includes all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used, or to be used, for the transmission or distribution of electricity for light, heat or power for public use.

**19. Transmission and distribution utility.**

"Transmission and distribution utility" means a person, its lessees, trustees, receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State.

**§3202. Retail access; deregulation**

**1. Right to purchase generation.** Beginning on March 1, 2000, all consumers of electricity have the right to purchase generation services directly from competitive electricity providers.

**2. Deregulation of generation services.** Except as otherwise provided in this chapter, competitive electricity providers are not subject to regulation under this Title on or after March 1, 2000.

**3. Aggregation permitted; limitation.** When retail access begins, consumers of electricity may aggregate their purchases of generation service in any manner they choose. If a public entity serves as an aggregator, it may not require consumers of electricity within its jurisdiction to purchase generation service from that entity.

**4. Electric billing and metering services.** Beginning March 1, 2002, pursuant to rules adopted by the commission, the provision of electric billing and metering services is subject to competition. The commission by rule may establish an earlier date for the beginning of competition for the provision of billing or metering services, except that the commission may not set a beginning date that is prior to March 1, 2000.

The commission by rule shall establish minimum standards necessary to protect consumers of these services and codes of conduct governing the relationship among transmission and distribution utilities providing electric billing and metering services, any affiliates of transmission and distribution utilities providing such services and providers of such services that are not affiliated with a transmission and distribution utility. The commission shall determine each transmission and distribution utility's costs of providing electric billing and metering services that are reflected in consumer rates, including capital costs, depreciation, operating expenses and taxes, and shall separate this portion of the consumer rate into a separate charge.

Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

**§3203. Licensing of competitive electricity providers; consumer protections; enforcement**

**1. Authority.** In order to provide effective competition in the market for the generation and sale of electricity in the State and to provide an orderly transition from the current form of regulation to retail access, the commission shall license competitive electricity providers in accordance with this section.

**2. Requirements.** A competitive electricity provider may not undertake the sale of electricity at retail in this State without first receiving a license from the commission. Before approving a license application, the commission must receive from the applicant:

A. Evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason;

B. Evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities;

C. Disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the commission in the 12 months prior to the date of license application;

D. Evidence of the ability to satisfy the renewable resource portfolio requirement established under section 3210; and

E. Disclosure of the names and corporate addresses of all affiliates of the applicant.

The commission shall consider the need for requiring and, if it determines there is a need, may require a competitive electricity provider to file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service.

**3. Informational filings; public information.** The commission shall establish by rule information disclosure and filing requirements for competitive electricity providers. The rules must require generation providers to file their generally available rates, terms and conditions with the commission. The commission, subject to appropriate protective orders,

may require the submission of individual service contracts or any other confidential information from a competitive electricity provider.

The commission by rule shall establish standards for publishing and disseminating, through any means considered appropriate, information that enhances consumers' ability to effectively make choices in a competitive electricity market.

Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

**4. Standard consumer protection provisions.**

As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a customer, wherever located, with a demand of 100 kilowatts or less:

A. May not terminate generation service without at least 30 day prior notice to the customer;

B. Must offer service to the customer for a minimum period of 30 days;

C. Must allow the customer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection;

D. May not telemarket services to the customer if the customer has filed with the commission a written request not to receive telemarketing from competitive electricity providers;

E. Must provide to the customer within 30 days of contracting for retail service a disclosure of information provided to the commission pursuant to rules adopted under subsection 3 in a standard written format established by the commission; and

F. Must comply with any other provisions adopted by the commission by rule or order.

**5. Licensing renewals and revocations.** Consistent with all applicable requirements of Title 5, chapter 375, the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.

**6. Consumer protection standards; rules.** The commission shall establish by rule consumer protection standards and standards to protect and promote market competition in order to protect retail consum-

ers of electricity from fraud and other unfair and deceptive business practices.

**7. Penalties.** In an adjudicatory proceeding, the commission may impose a penalty of up to \$5,000 for each violation of this section or any consumer protection rule adopted under this section. Each day a violation continues constitutes a separate offense. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under section 117.

**8. Dispute resolution.** The commission shall resolve disputes between competitive electricity providers and retail consumers of electricity concerning standards established pursuant to subsection 6.

**9. Additional actions.** The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider.

**10. Cease and desist orders.** The commission may issue a cease and desist order:

A. Following an adjudicatory hearing held in conformance with Title 5, chapter 375, subchapter IV, if the commission finds that any competitive electricity provider or transmission and distribution utility has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the commission or any lawful order issued by the commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004; or

B. In an emergency, without hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider or a transmission and distribution utility is selling electricity to retail consumers without being duly licensed or is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues in force and effect until further order of the commission or until stayed by a court of competent jurisdiction. In a subsequent hearing the commission shall in a final order affirm, modify or set aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the commission.

**11. Restitution.** The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.

**12. Enforcement.** The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it.

**13. Notice to Attorney General.** If the commission has reason to believe that any competitive electricity provider or transmission and distribution utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

**14. Disconnection restricted.** A transmission and distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under section 3212.

**15. Standard billing.** The commission shall consider requiring standard billing information on bills for electric power service. If standard billing information is required, the commission shall investigate the possibility of adopting standards consistent with other New England states. The commission may not prohibit transmission and distribution utilities from contracting with generation service providers to include both entities' charges on a single bill. The commission may not preclude the inclusion of other information on bills for electric power service.

**16. Access to load data.** Upon request from a competitive electricity provider, the commission shall provide load data on a class basis that is in the possession of a transmission and distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.

**17. Rules.** Except as otherwise provided in this section, rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

#### **§3204. Divestiture of generation**

**1. Divestiture required; exceptions.** Except as provided in subsection 3, on or before March 1, 2000, each investor-owned electric utility shall divest all generation assets and generation-related business activities other than any:

A. Contract with a qualifying facility or with a demand-side management or conservation provider, broker or host;

B. Ownership interest in a nuclear power plant;

C. Ownership interest in a facility located outside the United States; or

D. Ownership interest in a generation asset that the commission determines is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

No later than January 1, 1999, each investor-owned electric utility shall submit to the commission a plan to accomplish the divestiture required under this subsection. In an adjudicatory proceeding, the commission shall review the plans for consistency with this chapter. By July 1, 1999, the commission shall issue an order approving the plan or modifying the plan to make it consistent with the requirements of this chapter. An investor-owned electric utility shall divest its generation assets in accordance with the commission's order.

**2. Commission may require divestiture of Maine Yankee interests.** Notwithstanding any other provision of this chapter, the commission, if necessary to achieve the purposes of this chapter, may, in an adjudicatory proceeding, require any investor-owned transmission and distribution utility to divest its ownership interests in the Maine Yankee Atomic Power Company on or after January 1, 2009. The commission may order divestiture under this subsection only after notice to all interested parties and an opportunity for those parties to be heard.

**3. Extension; separation required.** An investor-owned electric utility may apply to the commission for an extension to permit the utility to divest one or more generation assets after March 1, 2000. The commission shall grant an extension if the commission finds that an extension would be likely to improve the sale value of those assets on the market. If the commission grants an extension, the utility shall transfer to a distinct corporate entity by March 1, 2000 the generation assets to which the extension applies. Conduct of the utility and any affiliated corporate entity receiving the generation assets is governed by section 3205.

The commission by rule shall establish the procedure for granting extensions. By March 1, 1999, the

commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

**4. Sale of capacity and energy required.** The commission by rule shall require each investor-owned electric utility after February 28, 2000 to sell rights to capacity and energy from all generation assets and generation-related business, including purchased power contracts that are not divested pursuant to subsection 1, except those rights to capacity and energy that the commission determines are necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

In the rules adopted under this subsection, the commission shall establish procedures to promote the maximum market value for these rights. Nothing in this subsection prohibits a utility from re-negotiating, buying out or buying down a contract with a qualifying facility in accordance with applicable laws. By March 1, 1999, the commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

**5. Ownership of generation prohibited.** Except as otherwise permitted under this chapter, on or after March 1, 2000, an investor-owned transmission and distribution utility may not own, have a financial interest in or otherwise control generation or generation-related assets.

**6. Generation assets permitted.** On or after March 1, 2000, notwithstanding any other provision in this chapter, the commission may allow an investor-owned transmission and distribution utility to own, have a financial interest in or otherwise control generation and generation-related assets to the extent that the commission finds that ownership, interest or control is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

**7. Corporate law; exemptions.** An order of the commission directing or approving divestiture renders an electric utility and its directors, officers and shareholders exempt from Title 13-A, sections 514, 517, 624 and 720 and from the Uniform Fraudulent Transfer Act, Title 14, chapter 504 for the matters addressed by the order. A divestiture pursuant to a commission order directing or approving the divestiture does not constitute a sale of all or substantially all of the assets of a corporation within the meaning of Title 13-A, chapter 10.

**§3205. Marketing; large utilities**

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

A. "Affiliated competitive provider" means a competitive electricity provider whose relationship with a large investor-owned transmission and distribution utility qualifies it as an affiliated interest.

B. "Distribution utility" means a large investor-owned transmission and distribution utility that has an affiliated competitive provider.

C. "Purchasing entity" means a person that purchases 10% or more of the stock of a distribution utility on or after the effective date of this section.

D. "Related entity" means:

(1) Any person who owns, directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of the purchasing entity;

(2) Any person 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1);

(3) Any person 10% or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;

(4) Any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a purchasing entity, provided that the person or group of persons beneficially owns more than 3% of the purchasing entity's voting securities; or

(5) Any purchasing entity of which any person defined in subparagraphs (1) to (4) is an affiliated interest.

E. "Voting securities" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company.

**2. Marketing permitted.** On and after the beginning of retail access, a large investor-owned transmission and distribution utility may not sell electric energy or capacity to any retail consumer of electricity. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated competitive provider may sell electric energy or capacity to retail consumers of electricity:

A. Outside the service territory of the distribution utility with which it is affiliated; and

B. Within the service territory of the distribution utility with which it is affiliated, except that:

(1) The affiliated competitive provider may not sell or contract to sell more than 33% of the total kilowatt hours sold within the service territory of the distribution utility, as determined by the commission by rule; and

(2) In accordance with section 3212, the affiliated competitive provider may not at any one time provide or bid to provide standard-offer service for more than 20% of electric load within the territory of the transmission and distribution utility with which it is affiliated.

No later than January 1, 2005, based on its evaluation of the development of the competitive retail electric sales market, the commission shall complete an evaluation of the need for the market share limitation imposed under paragraph B, subparagraph (1) and shall report its findings together with any recommendations to the joint standing committee of the legislature having jurisdiction over utility matters.

**3. Standards of conduct.** The following provisions govern the conduct of a distribution utility and an affiliated competitive provider.

A. A distribution utility may not, through a tariff provision or otherwise, give its affiliated competitive provider or customers of its affiliated competitive provider preference over nonaffiliated competitive electricity providers or customers of nonaffiliated competitive electricity providers in matters relating to any regulated product or service.

B. All regulated products and services offered by a distribution utility, including any discount, rebate or fee waiver, must be available to all customers and competitive electricity providers simultaneously to the extent technically possible and without undue or unreasonable discrimination.

C. A distribution utility may not sell or otherwise provide regulated products or services to its affiliated competitive provider without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for that product or service.

D. A distribution utility shall process all similar requests for a regulated product or service in the same manner and within the same period of time.

E. A distribution utility may not condition or tie the provision of any regulated product, service or rate agreement by the distribution utility to the provision of any product or service in which an affiliated competitive provider is involved.

F. A distribution utility shall process all similar requests for information in the same manner and within the same period of time. A distribution utility may not provide information to an affiliated competitive provider without a request when information is made available to nonaffiliated competitive electricity providers only upon request. A distribution utility may not allow an affiliated competitive provider preferential access to any nonpublic information regarding the distribution system or customers taking service from the distribution utility that is not made available to nonaffiliated competitive electricity providers upon request, and a distribution utility shall instruct all of its employees not to provide affiliated competitive providers or nonaffiliated competitive electricity providers any preferential access to nonpublic information.

G. Employees of a distribution utility may not share with any affiliated competitive provider or any nonaffiliated competitive electricity provider:

(1) Any market information acquired from the affiliated competitive provider or from any nonaffiliated competitive electricity provider; or

(2) Any market information developed by the distribution utility in the course of responding to requests for distribution service.

H. A distribution utility shall keep a log of all requests for information made by the affiliated competitive provider and nonaffiliated competitive electricity providers and the date of the response to such requests. The log is subject to periodic review by the commission. The commission shall establish categories of requests for information and shall specify which categories, if any, are sufficiently trivial to be exempt from the log requirements imposed under this paragraph.

I. A distribution utility may not release any proprietary customer information without the prior written authorization of the customer.

J. A distribution utility shall refrain from giving any appearance of speaking on behalf of its affiliated competitive provider. Neither a distribution utility nor an affiliated competitive provider may in any way represent that any advantage accrues to customers or others in the use of the dis-

tribution utility's services as a result of that customer or others dealing with the affiliated competitive provider. A distribution utility may not engage in joint advertising or marketing programs of any sort with its affiliated competitive provider, nor may the distribution utility promote or market any product or service offered by its affiliated competitive provider. The commission shall maintain a current list of all competitive providers. If a customer requests information about competitive electricity providers, the distribution utility shall provide a copy of a list on which competitive electricity providers appear in random sequence and not in alphabetical order. The distribution utility may not in any manner promote its affiliated competitive provider.

K. Employees of a distribution utility may not state or provide to any customer or potential customer any opinion regarding the reliability, experience, qualifications, financial capability, managerial capability, operations capability, customer service record, consumer practices or market share of any affiliated competitive provider or nonaffiliated competitive electricity provider.

L. Employees of a distribution utility may not be shared with, and must be physically separated from those of, an affiliated competitive provider. The commission may approve an exemption from these separation requirements upon a finding by the commission that:

(1) Sharing employees or facilities would be in the best interest of the public;

(2) Sharing employees or facilities would have no anticompetitive effect; and

(3) The costs of any shared employees or facilities can be fully and accurately allocated between the distribution utility and the affiliated competitive provider.

Any request for an exemption must be accompanied by a full and transparent allocation of costs for any shared facilities or general and administrative support services. The commission shall allow a reasonable opportunity for parties to submit comments regarding any request for an exemption. An exemption is valid until the commission determines that modification or removal of the exemption is necessary.

M. A distribution utility and its affiliated competitive provider shall keep separate books of accounts and records, which are subject to review by the commission.

N. A distribution utility shall establish and file with the commission a dispute resolution proce-

dures to address complaints alleging violations of this section or any rules adopted pursuant to this section. A dispute resolution procedure must, at a minimum, designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the claimant in writing within 30 days after the complaint was received, including a description of any action taken and the complainant's right to file a complaint with the commission if not satisfied with the results of the investigation. The distribution utility shall maintain a log of all new, resolved and pending complaints. The log is subject to annual review by the commission and must include, at a minimum, the written statement of the complaint and the resolution of the complaint or the reason why the complaint is still pending.

O. A distribution utility shall maintain its books of account and records of its transmission and distribution operations separately from those of its affiliated competitive provider, and the transmission and distribution books of account and records must be available for commission inspection.

P. A distribution utility shall maintain in a public place and file with the commission current written procedures implementing the standards of conduct established by this section and rules adopted by the commission pursuant to this section. Such written procedure must be in detail sufficient to enable customers and the commission to determine that the company is in compliance with the requirements of this section.

**4. Rules.** The commission shall adopt rules implementing the provisions of this section, including:

A. Rules governing the tracking of the amount of kilowatt-hour sales by any affiliated competitive provider compared to the total kilowatt-hour sales within the service territory of the affiliated distribution utility;

B. Rules governing the procedure for divestiture; and

C. Rules establishing standards of conduct for distribution utilities and affiliated competitive providers consistent with the requirements of this section.

Beginning on the effective date of competition and annually thereafter, copies of the rules adopted under this section must be provided by distribution utilities to every employee of the distribution utility and posted prominently in every employee location.

Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375,

subchapter II-A and must be provisionally adopted by March 1, 1999.

**5. Penalties.** The commission shall require the distribution utility to divest the affiliated competitive provider if the commission determines in an adjudicatory proceeding that:

A. The distribution utility or an affiliated competitive provider has knowingly violated any provision of this section or any rule adopted by the commission pursuant to this section; and

B. The violation resulted or had the potential to result in substantial injury to retail consumers of electric energy or to the competitive retail market for electric energy.

The commission may impose administrative penalties of up to \$10,000 for a violation of any provision of this section or any rule adopted by the commission pursuant to this section. Each day of a violation constitutes a separate offense. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under section 117.

**6. Prohibition; divestiture.** If, after the effective date of this section, 10% or more of the stock of a distribution utility is purchased by an entity:

A. The purchasing entity and any related entity may not sell or offer for sale generation service to any retail consumer of electric energy in this State; and

B. If, in an adjudicatory proceeding, the commission determines that an affiliated competitive provider obtains an unfair market advantage as a result of the purchase, the commission shall order the distribution utility to divest the affiliated competitive provider.

If the commission orders a divestiture pursuant to this subsection, the distribution utility must complete the divestiture within 12 months of the order to divest, unless the commission grants an extension. Upon application by the distribution utility, the commission may grant an extension for the purpose of permitting the utility to complete a divestiture that has been initiated in good faith but not finalized within the 12-month period. The commission shall oversee and approve a divestiture in accordance with rules adopted pursuant to subsection 4.

**7. Effect of divestiture.** If the commission orders a distribution utility to divest an affiliated competitive provider pursuant to this section, the distribution utility may not have an affiliated interest in a competitive electricity provider after the divestiture.

**§3206. Marketing; small utilities**

**1. Small utilities; limitations.** Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated interest of a small investor-owned transmission and distribution utility may sell retail generation service to retail consumers of electricity located within or outside the service territory of the small investor-owned transmission and distribution utility with which it is affiliated.

**2. Rules of conduct.** By July 1, 1998, the commission shall open a rule-making proceeding to determine the extent of separation between a small investor-owned transmission and distribution utility and an affiliated competitive electricity provider necessary to avoid cross-subsidization and market power abuses. By March 1, 1999, the commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. In adopting rules under this subsection, the commission shall consider all relevant issues, including, but not limited to:

- A. Codes of conduct that may be required to ensure the effectiveness of the separation requirement;
- B. Restrictions on employee activities;
- C. Accounting standards; and
- D. Information and service comparability requirements.

**3. Commission study.** The commission shall conduct a study to determine the most effective and efficient means of ensuring that the portions of this State that are currently connected to the New England electric grid through transmission lines that pass through Canada are connected to the grid in a manner that ensures that customers in those portions of the State are able to take full advantage of retail access. By January 1, 1999, the commission shall complete its study and report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over utility matters.

**§3207. Marketing; consumer-owned utilities**

**1. Consumer-owned utilities; limitations.** Consumer-owned transmission and distribution utilities:

- A. May sell retail generation service only within their respective service territories; and
- B. May not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service.

**2. Commission review of marketing within territory.** Notwithstanding any other provision of this chapter, the commission by rule shall limit or prohibit sale of generation services by competitive providers within the service territory of a consumer-owned transmission and distribution utility if the commission determines that allowing such sales would cause the consumer-owned transmission and distribution utility to lose its tax-exempt status under federal or state law. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**§3208. Stranded cost recovery**

**1. Stranded costs defined.** For the purposes of this section, the term "stranded costs" means a utility's legitimate, verifiable and unmitigable costs made unrecoverable as a result of the restructuring of the electric industry required by this chapter and determined by the commission as provided in this subsection.

**2. Calculation.** For each electric utility, the commission shall determine the sum of the following to the extent they qualify as stranded costs pursuant to subsection 1:

- A. The costs of a utility's regulatory assets related to generation;
- B. The difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and
- C. The difference between future contract payments and the market value of a utility's purchased power contracts.

When determining the market value of generation assets and purchased power contracts, the commission shall rely to the greatest extent possible on market information, including, but not limited to, market valuations that become known as generation assets and the rights to power under contracts with qualifying facilities are sold.

**3. Exclusions.** Notwithstanding any other provision of this chapter, the commission may not include any costs for obligations incurred on or after April 1, 1995 in a utility's stranded costs, except that the commission may include:

- A. Regulatory assets created after April 1, 1995 and prior to March 1, 2000 for:
  - (1) The amortization of costs associated with the restructuring of a qualifying facility contract;
  - (2) Costs deferred pursuant to rate plans; or

(3) Energy conservation costs;

B. Obligations incurred by a utility after April 1, 1995 and prior to March 1, 2000 that are beyond the control of the electric utility; and

C. Obligations incurred by an electric utility after April 1, 1995 to reduce potential stranded costs.

**4. Mitigation.** An electric utility shall pursue all reasonable means to reduce its potential stranded costs and to receive the highest possible value for generation assets and contracts, including the exploration of all reasonable and lawful opportunities to reduce the cost to ratepayers of contracts with qualifying facilities. The commission shall consider a utility's efforts to satisfy this requirement when determining the amount of a utility's stranded costs.

**5. Stranded costs recoverable.** When retail access begins, the commission shall provide a transmission and distribution utility a reasonable opportunity to recover stranded costs through the rates of the transmission and distribution utility, as provided in this section. The opportunity must be comparable to the utility's opportunity to recover stranded costs before the implementation of retail access under this chapter. Nothing in this chapter may be construed to give a transmission and distribution utility a greater or lesser opportunity to recover stranded costs than existed prior to the implementation of retail access. The commission may reduce or increase the amount of stranded costs that the commission allows a utility to recover based on the efforts of the utility to mitigate its stranded costs.

**6. Determination of stranded costs charges.** Before retail access begins, the commission shall estimate the stranded costs for each electric utility in the State. The commission shall use these estimates as the basis for a stranded costs charge to be charged by each transmission and distribution utility when retail access begins. In 2003 and every 3 years thereafter until the utility is no longer recovering adjustable stranded costs, the commission shall correct any substantial inaccuracies in the stranded costs estimates associated with adjustable stranded costs and adjust the stranded costs charges to reflect any such correction. The commission may correct adjustable stranded costs estimates and adjust the stranded costs charges at any other time. When correcting stranded costs estimates and adjusting stranded costs charges, the commission shall make any change effective only prospectively and may not reconcile past estimates to reflect actual values.

For purposes of this subsection, "adjustable stranded costs" means stranded costs other than stranded costs associated with divested generation assets.

**7. Recovery of stranded costs.** The commission shall set an amount of recoverable stranded costs after calculating the net aggregate value of all divested assets that had proceeds exceeding book costs against the aggregate value of all other stranded electricity generation assets. The commission may not shift cost recovery among customer classes in a manner inconsistent with existing law, as applicable.

**8. Proceedings.** The commission shall conduct separate adjudicatory proceedings to determine the stranded costs for each investor-owned utility and each consumer-owned utility. In the same proceedings, the commission shall establish the revenue requirements for each transmission and distribution utility and stranded costs charges to be charged by each transmission and distribution utility when retail access begins. The proceedings must be completed by July 1, 1999.

**§3209. Rate design**

The commission shall set charges and rates collected by transmission and distribution utilities in accordance with this section.

**1. Applicable law.** The design of rate recovery for the collection of transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter must be consistent with existing law, as applicable. The commission may continue to permit recovery, in transmission and distribution utility rates, of costs previously incurred by the utility when it was an integrated electric utility that are not included in the recovery of stranded costs pursuant to section 3208.

**2. Proceeding.** Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before October 1, 1999 for the design of cost recovery for transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter and for the design of rates for backup or standby service.

**3. Exit fees.** A customer who significantly reduces or eliminates consumption of electricity due to self-generation, conversion to an alternative fuel or demand-side management may not be assessed an exit or reentry fee in any form for the reduction or elimination of consumption or reestablishment of service with a transmission and distribution utility.

**4. Decommissioning costs.** As required by federal law, rule or order, the commission shall include in the rates of a transmission and distribution utility decommissioning expenses associated with a nuclear unit.

**§3210. Renewable resources**

**1. Policy.** In order to ensure an adequate and reliable supply of electricity for Maine residents and to encourage the use of renewable and indigenous resources, it is the policy of this State to encourage the generation of electricity from renewable sources and to diversify electricity production on which residents of this State rely in a manner consistent with this section.

**2. Definition.** As used in this section, the term "renewable resource" means a source of electrical generation that generates power that can physically be delivered to the control region in which the New England Power Pool, or its successor as approved by the Federal Energy Regulatory Commission, has authority over transmission and that:

A. Qualifies as a qualifying small power production facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997;

B. Qualifies as a qualifying cogeneration facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997 and was constructed prior to January 1, 1997; or

C. Whose total power production capacity does not exceed 100 megawatts and that relies on one or more of the following:

- (1) Fuel cells;
- (2) Tidal power;
- (3) Solar arrays and installations;
- (4) Wind power installations;
- (5) Geothermal installations;
- (6) Hydroelectric generators;
- (7) Biomass generators; or
- (8) Generators fueled by municipal solid waste in conjunction with recycling.

**3. Portfolio requirements.** As a condition of licensing pursuant to section 3203, each competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that no less than 30% of its portfolio of supply sources for retail electricity sales in this State are accounted for by renewable resources. By January 1, 1999, the commission shall provisionally adopt rules establishing reasonable procedures for implementing this requirement. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

**4. Report.** In view of property tax benefits, developments in other states and the development of a market for tradable credits for satisfying renewable resource requirements, the commission shall review the 30% portfolio requirement and make a recommendation for any change to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters no later than 5 years after the beginning of retail competition.

**5. Funding for research and development.** The commission by rule shall establish a program allowing retail consumers of electricity to make voluntary contributions to fund renewable resource research and development. The program must:

A. Include a mechanism for customers to indicate their willingness to make contributions;

B. Provide that transmission and distribution utilities collect and account for the contributions and forward them to the commission; and

C. Provide for a distribution of the funds to the University of Maine System, the Maine Maritime Academy or the Maine Technical College System for renewable resource research and development.

Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

#### **§3211. Conservation programs**

The commission shall require transmission and distribution utilities to implement energy conservation programs and include the cost of any such programs in the rates of transmission and distribution utilities. The commission shall require transmission and distribution utilities to select energy efficiency service providers through periodic competitive bidding programs. The commission shall establish a reasonable level of funding for those programs comparable to the amount expended for similar programs in the year 1999 and regularly review the amount of funding needed.

By July 1, 1998, the commission shall commence a rule-making proceeding on energy conservation programs. By July 1, 1999, the commission shall provisionally adopt rules establishing energy conservation programs in compliance with this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

#### **§3212. Standard offer**

When retail access begins, the commission shall ensure that standard-offer service is available to all consumers of electricity.

**1. Establishment of terms and conditions.**

The commission shall open a rule-making proceeding no later than October 1, 1997 to establish terms and conditions for standard-offer service that include, but are not limited to:

A. Entry and exit restrictions;

B. Protection against a standard-offer service provider's failure to provide service as contracted for;

C. Appropriate rate design issues;

D. Retaining averaged prices for all customers in the same class; and

E. Credit, collection and disconnection practices.

By February 15, 1998, the commission shall provisionally adopt rules establishing terms and conditions for standard-offer service. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

**2. Selection of standard-offer service providers.**

After terms and conditions for standard-offer service have been established under subsection 1, the commission shall administer a bid process to select a standard-offer service provider for that transmission and distribution utility's service territory. By July 1, 1999, the commission shall review the bid submissions for each transmission and distribution utility and select the standard-offer service provider or providers for that utility's service territory.

A. The commission shall determine the general credit data and specific information from general load and usage data that transmission and distribution utilities must provide to potential standard-offer service bidders, including, but not limited to, monthly demand and energy consumption and the number of customers in each customer class. The commission shall ensure that individual customer confidentiality is preserved in this process and that a transmission and distribution utility releases customer-specific data only with the customer's permission. If the transmission and distribution utility incurs additional costs to develop and produce the required data, the commission shall permit that utility to recover those costs through transmission and distribution rates.

B. The commission shall establish the maximum duration of a standard-offer service contract after considering all relevant factors, including, but not limited to, market risks and the need for price stability and contract flexibility.

C. A competitive electricity provider that is an affiliate of a large investor-owned transmission and distribution utility may submit bids to provide standard-offer service for up to 20% of the electric load within the service territory of the large investor-owned transmission and distribution utility with which it is affiliated. To prevent the unfair use of information possessed by a large investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.

D. A consumer-owned transmission and distribution utility and a small investor-owned transmission and distribution utility may submit bids to provide standard-offer service for that utility's service territory. To prevent the unfair use of information possessed by a consumer-owned transmission and distribution utility or a small investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.

By February 15, 1998, the commission shall provisionally adopt rules establishing a methodology for structuring the bidding process for standard-offer service in order to implement the provisions of this subsection. In adopting rules, the commission shall consider methods to ensure, to the extent possible, at least 3 providers of standard-offer service in each transmission and distribution utility service territory, as long as the method does not result in any significant adverse impacts on rates paid by consumers. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

**3. Price cap; investigation.** If the qualifying bids under subsection 2 for standard-offer service in any service territory, when combined with the regulated rates of transmission and distribution service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission shall investigate whether the implementation of retail access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place. Pursuant to section 3217, the commission shall notify the Legislature of the results of its investigation and its determination.

**4. Implementation period.** Standard-offer service must be available until March 1, 2005. By January 1, 2004, the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and

in the public interest. The commission shall conclude the investigation by June 30, 2004 and report its results to the Legislature pursuant to section 3217.

**5. Territorial and rate class application.**

Nothing in this section precludes the commission from permitting or requiring different terms and conditions for standard-offer service in different utility service territories or for different customer classes.

**§3213. Bill unbundling; consumer education**

**1. Unbundled bills.** Beginning January 1, 1999, electric utilities shall issue bills that state the current cost of electric capacity and energy separately from transmission and distribution charges and other charges for electric service. By January 31, 1998, each electric utility shall file with the commission a bill unbundling proposal. The commission shall complete its review of those proposals and adopt a rule establishing unbundled bill requirements by July 1, 1998. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

**2. Consumer education advisory board; rules.**

The commission shall adopt rules implementing a consumer education program in compliance with this subsection.

A. The commission shall immediately organize a consumer education advisory board to investigate and recommend methods to educate the public about the implementation of retail access and its impact on consumers. The commission shall ensure broad representation of residential, industrial and commercial electric consumers, public agencies and the electric industry on the advisory board. Members of the board shall serve without compensation.

B. In its recommendations, the advisory board shall address:

- (1) The level of funding necessary for adequate educational efforts and the appropriate source of that funding;
- (2) The aspects of retail access on which consumers need education;
- (3) The most effective means of accomplishing the education of consumers;
- (4) The appropriate entities to conduct the education effort; and
- (5) Any other issue relevant to the education of consumers regarding the implementation of retail access and its impact on consumers.

C. The commission shall consider the recommendations of the advisory board when adopting rules to implement a consumer education program. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. The commission shall provide these rules to the Legislature in accordance with Title 5, chapter 375, subchapter II-A, no later than February 1, 1998.

**§3214. Needs-based low-income assistance**

**1. Policy.** In order to meet legitimate needs of electricity consumers who are unable to pay their electricity bills in full and who satisfy eligibility criteria for assistance, and recognizing that electricity is a basic necessity to which all residents of the State should have access, it is the policy of the State to ensure adequate provision of financial assistance.

**2. Low-income assistance.** In order to continue existing levels of financial assistance for low-income households and to meet future increases in need caused by economic exigencies, the commission shall:

A. Receive funds collected by all transmission and distribution utilities in the State at a rate set by the commission in periodic rate cases; and

B. Set initial funding for programs based on an assessment of aggregate customer need in periodic rate cases. The funding formula may not result in assistance being counted as income or as a resource in other means-tested assistance programs for low-income households. To the extent possible, assistance must be provided in a manner most likely to prevent the loss of other federal assistance.

**3. Special rate.** Nothing in this section may be construed to prohibit a transmission and distribution utility from offering any special rate or program for low-income customers that is not in effect as of the effective date of this chapter, subject to the approval of the commission.

**4. Financial support.** If the Legislature appropriates from the General Fund financial support for households and individuals receiving assistance under this section, the commission may not terminate the assistance provided by transmission and distribution utilities unless the General Fund source has completely replaced such assistance. The commission may adjust the assistance provided pursuant to this section based on the amount of any financial support from the General Fund and may reinstitute assistance subsequent to any termination of assistance if the commission finds that the General Fund source no longer completely replaces such assistance.

**§3215. Commission authority and responsibility**

**1. Authority.** Without limiting the commission's authority under any other provision of law, the commission may:

A. Intervene and participate in proceedings at the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the United States Department of Energy and other federal agencies and in proceedings conducted by Canadian or other authorities or agencies whenever the interests of competition, consumers of electricity or economic development in this State are affected; and

B. Monitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or to any federal agency regarding:

(1) The safety and economic effects or potential effects of market competition on nuclear units; and

(2) The effects or potential effects of market competition on Maine's air quality.

**2. Findings; responsibility.** The Legislature finds that, in order for retail competition in this State to function effectively, the governance of any independent system operator with responsibility for operations of the regional transmission system must be fully independent of influence by market participants. The commission shall use all means within its authority and resources to advocate for and promote the interests of Maine ratepayers in any proceeding at the Federal Energy Regulatory Commission involving the development, governance, operations or conduct of an independent system operator.

### **§3216. Transition; utility employees**

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

A. "Eligible employees" means all employees of an electric utility:

(1) Who are not officers of the utility;

(2) Who are employed by the utility on January 1, 1998; and

(3) Who are laid off due to retail competition.

Absent other just cause, a layoff after March 1, 2000 is deemed to have been due to retail competition. The commission by rule shall establish a date after which a layoff is deemed not to have been due to retail competition. An employee is not an eligible employee by reason of

the transfer of the employee's job duties or assignment within a company or within affiliated companies at similar levels of compensation.

**B. "Retail competition" means:**

(1) Retail access; or

(2) The sale or merger of any generation asset that occurs prior to March 1, 2000.

**2. Substantive plan.** Prior to the beginning of retail access, each investor-owned electric utility shall prepare a plan for providing transition services and benefits for eligible employees. The plan must:

A. Include a program to assist eligible employees in maintaining fringe benefits and obtaining employment that makes use of their potential;

B. For 2 years after the beginning of retail access, provide to eligible employees retraining services and out-placement services and benefits, including intensive vocational-interests-and-aptitude screening;

C. Provide full tuition for 2 years at the University of Maine or a vocational or technical school in the State or other reasonable retraining services of value equal to full in-state tuition for 2 years at the University of Maine, at the discretion of the eligible employee;

D. For 24 months or until permanent replacement coverage is obtained through reemployment, whichever comes first, provide continued health care insurance at the benefit and contribution levels existing during employment with the utility; and

E. Provide severance pay equal to 2 weeks of base pay for each year of full-time employment.

The plan may include provisions for providing early retirement benefits.

**3. Procedural requirements.** Each investor-owned utility shall file with the commission a plan for providing transition services and benefits for eligible employees that conforms to the requirements of subsection 2. A plan must be filed prior to the utility finalizing any transaction that would result in an eligible employee being laid off or at least 90 days prior to the start of retail access, whichever is first. Prior to filing the plan with the commission, the utility shall inform its employees and their certified representatives of the provisions of the proposed plan and, in accordance with applicable law, shall confer with those employees or their certified representatives regarding the impact of the proposed plan on those employees and measures to minimize any resulting hardships on those employees.

While a plan is in effect, an investor-owned utility shall file notice with the commission of any closure or relocation of facilities and any action or reorganization that will result in layoffs. The notice must include a description of the actions, the reasons for them and an assessment of their effects on the utility's employees.

**4. Collective bargaining.** If an investor-owned electric utility company or one or more of its subsidiary or parent companies is party to a collective bargaining agreement recognized by federal or state law, and if as a result of retail competition any of those companies creates, acquires or merges with any other entity, that entity shall continue to recognize and bargain with the union representing the employees of the company at the time of the creation, acquisition or merger and shall refrain from making unilateral changes in the employees' terms and conditions of employment. In addition, any successor employer is bound to the terms of the collective bargaining agreement to the extent permitted by federal law. Nothing in this section prevents any company, corporation or other business from entering into any collective agreement as allowed by state or federal law.

**5. Cost recovery.** The commission shall allocate the reasonable accrual increment cost of the services and benefits required under this section to ratepayers through charges collected by the transmission and distribution utility. All charges collected must be transferred to a system benefits administrator in the transmission and distribution utility and used to provide services and benefits pursuant to the requirements of this section.

**6. Rules.** The commission shall adopt rules necessary to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

### **§3217. Reports**

**1. Annual restructuring report.** On December 31st of each calendar year, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over utility matters a report describing the commission's activities in carrying out the requirements of this chapter and the activities relating to changes in the regulation of electric utilities in other states.

In its report the commission shall provide an accounting of the commission's actual and estimated future costs of enforcing and implementing the provisions of this chapter governing the relationship between a transmission and distribution utility and an affiliated competitive electricity provider and the costs incurred by transmission and distribution utilities in complying with those provisions. The commission shall also provide an assessment of the effects of imposing these

costs on ratepayers and the potential effects of assessing transmission and distribution utilities for these costs and prohibiting the costs from being passed through to ratepayers.

**2. Proposed changes.** If the commission determines, after providing interested parties an opportunity to be heard, that any provision in this chapter is not in the public interest, the commission shall present a report to the joint standing committee of the Legislature having jurisdiction over utility matters stating the basis for the commission's conclusion and including draft legislation designed to modify this chapter consistent with the public interest.

**3. Independent system operator.** The commission shall monitor events in the region pertaining to:

A. The development of an independent system operator with responsibility for transmission reliability;

B. The management of competitive access to the regional transmission system; and

C. Rights to negotiate potential contracts between sellers and buyers of electricity.

If the commission determines that there exists insufficient independence on the part of the independent system operator from any provider of wholesale transmission, competitive electricity provider or electric utility, or if it determines any other problem threatens regional transmission reliability, the commission shall provide a report to the joint standing committee of the Legislature having jurisdiction over utility matters with a recommendation as to what actions within the authority of the State are available to remedy this problem.

**Sec. 4. Rules on filings by competitive electricity providers.** In adopting by rule requirements for competitive electricity providers pursuant to the Maine Revised Statutes, Title 35-A, section 3203, subsection 3 the commission may consider any requirements that the commission believes appropriate and shall consider the following filing requirements:

1. A statement of average prices at representative levels of kilowatt-hour usage in the most recent 6-month period;

2. A description of the average duration of supply arrangements with retail customers in the most recent 6-month period;

3. An explanation addressing whether pricing arrangements are fixed or will vary over a specified time period;

4. A statement indicating percentages of electricity supply over the recent 6-month period

under categories of generation, including, but not limited to, oil-fired, nuclear, hydroelectric, coal, biomass or other renewable resources and regional spot market purchases; and

5. A listing of expected air emissions and a comparison of those emissions to a regional average, as determined by the commission, for nitrous oxide, sulfur dioxide, mercury, fine particulates, radionuclides and carbon dioxide, calculated for a competitive electricity provider's supply sources in the aggregate over the most recent 6-month period.

**Sec. 5. Conservation and qualifying facility contracts.** All existing contracts and agreements in effect as of March 1, 2000 between electric utilities and energy resource providers, including but not limited to qualifying facilities, continue in effect notwithstanding any other provision of this Act, and the rights of the parties to these contracts and agreements may not be abrogated or diminished as a result of implementing this Act.

All existing electric utilities shall provide each qualifying facility and each demand-side management or conservation provider, broker or host with whom it has contracts as of March 1, 2000 the option to have the contract or contracts:

1. Retained by the transmission and distribution utility if it is the same legal entity as the electric utility that entered into the contract or contracts; or
2. Assigned by the existing electric utility to the transmission and distribution utility if it exists as a distinct legal entity after implementation of the provisions of this Act.

If contracts with qualifying facilities in existence on March 1, 2000 contain provisions for the simultaneous purchase of energy, or energy and capacity, by an electric utility from a qualifying facility and by a qualifying facility from an electric utility, the transmission and distribution utility shall continue to sell at retail all transmission and distribution services to the qualifying facility, including the transmission of any energy, or energy and capacity, the qualifying facility may obtain in the competitive market. In the case of each such qualifying facility contract and each demand-side management or conservation contract assigned or retained as provided for in this section, any requirement pursuant to the contract that the qualifying facility or customer or host implementing demand-side management or conservation measures remain a customer of the electric utility that was an original party to the contract or any requirement pursuant to the contract to purchase a certain amount of electricity from that electric utility is deemed to be fully satisfied by the qualifying facility, customer, or host (a) remaining a customer of the transmission and distribution utility that has retained the contract, or to

whom it has been assigned pursuant to the option provided for in this section, (b) receiving any such required amounts of electricity by making purchases in the competitive energy market, and (c) receiving such purchases over the facilities of the transmission and distribution utility. The transmission and distribution utility shall make payments required under any such demand-side management or conservation contracts or this Act and is entitled to collect those payments in rates and charges as provided for in the Maine Revised Statutes, Title 35-A.

**Sec. 6. Qualifying facility contracts tied to retail tariffs.** Certain contracts for the sale of energy, or energy and capacity, by qualifying facilities contain terms that establish or adjust the purchase rate based upon the retail tariff rate or changes to that retail tariff rate paid by the qualifying facility to the electric utility for its purchases of electricity or upon reference to a particular retail tariff rate or changes in such retail tariff rate. The Legislature finds that after the date of retail access as provided for in this Act, a question may arise as to whether there is a retail tariff rate that provides for a comparable standard for sale of combined generation and transmission or distribution services. Following the implementation of retail access as provided for in this Act, the Public Utilities Commission shall, at the request of any qualifying facility, annually establish a rate using the same terminology as may be found in the contract, such as "industrial tariff" or "Principal Base Rate" or other reference term. Such rate or reference term will then be used to establish or adjust the rate for the purchase of energy, or energy and capacity, under the contract. Any such rate or reference term will be established by adjusting the applicable rate or reference term or actual contract rate, as the case may be, as it stood as of the date of implementation of deregulation, by the applicable annual change in the average of the total price paid for electric services by all retail customers in Maine taking service at the same voltage level as the customer whose rate or reference term is being established. The total price paid for electric services for this purpose includes the price paid by customers for transmission and distribution services, including any access charges, for electric energy and capacity, for stranded costs included in transmission and distribution company charges, for metering services and for any special facilities or equipment necessary for the customers to take service and any other fee, levy, premium, license, surcharge or other charge imposed by or pursuant to the act of any transmission and distribution utility, any competitive electricity provider or any arm, agency or institution of government collected from such customers as a condition of obtaining those electric services. If the average price can not be determined in any year due to the absence or unavailability of data, then the commission shall use changes in the federally established Gross

Domestic Product Price Index to determine the rate or reference term for that year. Solely for purposes of establishing a purchase rate under the applicable contract, the rate or reference term so established is deemed to be the applicable retail tariff or other reference term used in the contract for the qualifying facility's purchases of retail electric services from the utility purchaser under the contract, notwithstanding the actual price paid for such services established in accordance with this Act.

**Sec. 7. Short term energy rate contracts.**

After March 1, 2000, the Public Utilities Commission, no less frequently than annually, shall establish, for the 12-month period succeeding the annual date of establishment of such rates, short-term-energy-only rates for use in the purchase of energy by an electric utility where such a short-term-energy-only rate is used in a contract between a qualifying facility and an electric utility. The commission shall amend chapter 36, section 3 of its rules to comply with requirements of this section. The commission shall establish short-term-energy-only rates for both on-peak and off-peak hours, as defined by the commission by rule as of January 1, 1997, and, at the request of an electric utility or a qualifying facility, establish time-differentiated, peak and off-peak short-term-energy-only rates for any other hours defined in the applicable contract. After March 1, 2000, short-term-energy-only rates are defined as the estimated cost for the wholesale purchase of energy in Maine that includes fuel costs, start-up costs and variable operating and maintenance costs expressed on a cents-per-kilowatt-hour basis using the number of significant digits as employed in the establishment of the short-term-energy-only rate as of January 1, 1997 and adjusted to reflect the line loss costs or savings for deliveries at the various voltage levels for which the commission established adjustments as of January 1, 1997. In making estimates of short-term-energy-only rates, the commission shall be guided by the average market price for purchases of short-term energy in Maine during the 12 months previous to the period for which the rates will be estimated. In determining this average market price, the commission shall use, to the extent available, generally accepted and publicly available indicators of the market price or the components of market price as published or, if unavailable, the market price elsewhere in New England that the commission determines to represent a market price similar to the market price that would exist in Maine given relevant market conditions in the State at the time of the estimation.

**Sec. 8. Other contracts.** Consistent with this Act, the Public Utilities Commission by rule shall establish methods for establishing any rate, term, condition or other provision of any contract between an electric utility and a qualifying facility that may arguably be rendered impractical or impossible to perform or implement as a result of the restructuring

of the electric industry pursuant to this Act, including but not limited to a method for establishing terms related to long-term avoided costs, as defined in chapter 36 of the commission's rules, as in effect on the effective date of this Act. By November 1, 1997, the commission shall commence a rulemaking establishing the method for establishing terms related to long-term avoided costs. The rules must establish methods that preserve the intent and purposes embodied in the contractual provisions. At the request of a party to a qualifying facility contract or pursuant to the terms of a contract, the commission shall employ the methodology established by the rules to address the impracticability or impossibility associated with provisions of the contract so as to preserve the intent and purposes embodied in the contract. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

**Sec. 9. New contracts.** Notwithstanding the Maine Revised Statutes, Title 35-A, chapter 33, an electric utility or transmission and distribution utility may not be required pursuant to Title 35-A, chapter 33 to enter into a contract to purchase power from a qualifying facility after the effective date of this Act. Nothing in this section abrogates existing law or rules that provide qualifying facilities with the right to sell energy to an electric utility prior to March 1, 2000 on an as-available basis at the utility's short-term-only rate or to sell capacity and energy to an electric utility at any time before or after March 1, 2000 on a basis voluntarily and mutually agreed to by the qualifying facility and the electric utility.

**Sec. 10. Recommendation for low-income assistance program.** On or before January 1, 1998, the Public Utilities Commission and the State Planning Office shall provide to the Joint Standing Committee on Utilities and Energy, the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on Taxation, and to any other committees of relevant jurisdiction, legislation that funds assistance to low-income consumers of electricity through the General Fund or through a tax on all energy sources in the State. The commission and the State Planning Office shall solicit public comment prior to the production of draft legislation and also solicit public comment before finalizing its legislative proposal.

**Sec. 11. Conforming amendments.** By December 31, 1998, the Public Utilities Commission shall identify and submit to the joint standing committee having jurisdiction over utilities and energy matters legislation proposing amendments required to conform other statutes to the provisions of this Act.

**Sec. 12. Authority.** The joint standing committee having jurisdiction over utilities and energy

matters may report out legislation concerning electric industry restructuring to the Second Regular Session of the 118th Legislature or to the First Regular Session of the 119th Legislature or the Second Regular Session of the 119th Legislature.

See title page for effective date.

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## CHAPTER 317

H.P. 1058 - L.D. 1490

### An Act Allowing Appellate Review by an Aggrieved Contemnor

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

#### PART A

**Sec. A-1. 15 MRSA §1004**, as enacted by PL 1987, c. 758, §20, is amended to read:

##### **§1004. Applicability and exclusions**

This chapter applies to the setting of bail for a defendant in a criminal proceeding, including the setting of bail for an alleged contemnor in a plenary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66. It does not apply to the setting of bail in extradition proceedings under sections 201 to 229 or post-conviction review proceedings under sections 2121 to 2132 or probation revocation proceedings under Title 17-A, sections 1205 to 1207, except to the extent and under the conditions stated in those sections. This chapter applies to the setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a material witness only as specified in sections 1103 and 1104, respectively.

**Sec. A-2. 15 MRSA §§1103 and 1104** are enacted to read:

##### **§1103. Summary contempt proceeding involving a punitive sanction**

The setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, including any appeal under section 2115-B, is a matter wholly within the discretion of the court. Subchapters IV and V apply.

##### **§1104. Material witness; arrest and bail**

If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure the presence of that person by subpoena, the court may order the arrest of that person and may require that person to give bail for that person's appearance as a witness, utilizing the same standards for release as for a defendant preconviction bailable as of right under subchapter II. Subchapters IV and V also apply.

#### PART B

**Sec. B-1. 15 MRSA §2115-B** is enacted to read:

##### **§2115-B. Appeal by aggrieved contemnor**

**1. Summary contempt proceedings involving punitive sanctions.** In a summary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, before a Judge of the District Court, Probate Court or Administrative Court, a contemnor who is aggrieved by an order and imposition of a punitive sanction may appeal, as provided under section 2111 and the applicable Maine Rules of Criminal Procedure, to the Superior Court and, if unsuccessful, to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure. In a like proceeding, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, before a Justice of the Superior Court or a Justice of the Supreme Judicial Court, any contemnor aggrieved by an order and imposition of a punitive sanction may appeal to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure.

**2. Plenary contempt proceedings involving punitive sanctions.** In a plenary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, any contemnor aggrieved by an adjudication and imposition of a punitive sanction tried other than in the Superior Court or Supreme Judicial Court may appeal, as provided under section 2111 and the applicable Maine Rules of Criminal Procedure, to the Superior Court, and if unsuccessful, to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure. In a like proceeding instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule

66, any contemnor aggrieved by an adjudication and imposition of a punitive sanction tried in the Superior Court or Supreme Judicial Court, may appeal to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure.

See title page for effective date.

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## CHAPTER 318

H.P. 865 - L.D. 1182

### An Act to Amend Coded Licenses

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

**Sec. 1. 29-A MRSA §1404, sub-§2,** as amended by PL 1995, c. 645, Pt. B, §14 and affected by §24, is further amended to read:

**2. Prior convictions.** A person convicted of operating under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, as defined in section 2453, subsection 2, within 10 years of the date the license is issued, reissued or returned after a period of suspension bears a coded notation of that fact.

The Secretary of State may, at the request of a licensee, remove the coded notation from the license of a person convicted for a first operating-under-the-influence offense as defined in section 2453, subsection 2 after 6 years from the date of the conviction if the person has not been convicted or adjudicated of any traffic offense or had a license suspended or revoked within that 6-year period.

See title page for effective date.

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## CHAPTER 319

S.P. 59 - L.D. 169

### An Act Concerning Theft of Rental Property

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

**Sec. 1. 17-A MRSA §360, sub-§1, ¶C,** as amended by PL 1975, c. 740, §56, is further amended to read:

C. Having custody of property pursuant to a rental or lease agreement with the owner thereof whereby such property is to be returned to the owner at a specified time and place, ~~he~~ the per-

son knowingly fails to comply with the agreed terms concerning return of such property without the consent of the owner, for so lengthy a period beyond the specified time for return as to render ~~his~~ the retention or possession or other failure to return a gross deviation from the agreement. For purposes of this paragraph, a gross deviation may be presumed when the person fails to return the property within 5 days of receiving a written demand from the owner, mailed by certified or registered mail after the expiration of the rental period to the most current address known to the owner.

See title page for effective date.

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## CHAPTER 320

H.P. 1064 - L.D. 1502

### An Act to Enable Victims to Benefit from the Profits from Crimes

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

**Sec. 1. 14 MRSA §752-E** is enacted to read:

#### §752-E. Crime victims; profits from crime

**1. Limitation period.** Actions based upon a criminal offense in which, as that offense is defined, there is a victim, as defined in Title 17-A, section 1171, subsection 2, brought by or on behalf of a victim against the offender must be commenced within the limitation period otherwise provided or within 3 years of the time the victim discovers or reasonably should have discovered any profits from the crime, whichever occurs later.

**2. Notice to victims.** A person or organization that knowingly pays or agrees to pay any profits from a criminal offense in which, as that offense is defined, there is a victim to a person charged with or convicted of that crime shall make reasonable efforts to notify every victim, as defined in Title 17-A, section 1171, subsection 2, of the payment or agreement to pay as soon as practicable after discovering that the payment or intended payment constitutes profits from the crime. Reasonable efforts must include, but are not limited to, seeking information about victims from court records and the prosecuting attorney and mailing notice by certified mail to victims whose address is known and publishing, at least once every 6 months for 3 years, in newspapers of general circulation in the area where the crime occurred a legal notice to unknown victims or victims whose address is unknown.

**3. Definition.** As used in this section, "profits from the crime" means any property obtained through or income generated from the commission of a crime; any property obtained by or income generated from the sale, conversion or exchange of proceeds of a crime, including any gain realized by such a sale, conversion or exchange; and any property that the offender obtained by committing the crime or income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, the crime, as well as any property obtained by or income generated from the sale, conversion or exchange of the property and any gain realized by such a sale, conversion or exchange.

**4. Construction.** Nothing in this section may be construed to expand civil liability or to restrict any defense to civil liability except as specified in subsection 1 with respect to the limitation period.

See title page for effective date.

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**CHAPTER 321**

**H.P. 755 - L.D. 1032**

**An Act to Simplify the Filing of Claims in Probate Estates**

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

**Sec. 1. 18-A MRSA §3-804, sub-§(4)** is enacted to read:

(4) When a decedent's estate has not been commenced at the time a claimant wishes to present a claim, a claim is deemed presented when the claimant files with the clerk of the court a written statement of claim meeting the requirements of subsection (1) and a demand for notice pursuant to section 3-204. The provisions of subsection (3) apply upon the appointment of a personal representative.

See title page for effective date.

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**CHAPTER 322**

**H.P. 738 - L.D. 1002**

**An Act Directing the Department of Human Services to Submit an Annual Report on Children in Foster Care and on Adoption of Children in the Care and Custody of the Department**

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

**Sec. 1. 22 MRSA §4066** is enacted to read:

**§4066. Annual report**

The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1st each year covering the operations of the Bureau of Child and Family Services and the experience of the department with foster care and adoptions of children in the care and custody of the department, including but not limited to the following topics:

**1. Types of reports.** A listing of the types of reports on the operations of the Bureau of Child and Family Services that are available to the public, including a notice on how the public can request those reports;

**2. Listing of services.** A listing of services provided to children and their families and foster families and any services needed but not provided by the department, and a listing of problems experienced by children and their families and foster families;

**3. Custody.** The number of children in the care and custody of the department, the average and median lengths of their custody and the number who were previously in the custody of the department;

**4. Reunification efforts.** The number of children in the care and custody of the department in the process of reunification efforts, and the number in which parental rights have been terminated or are in the process of termination;

**5. Adoption.** The number of children in the care and custody of the department available for adoption and the number of children adopted, identifying special needs and nonspecial needs; the number receiving adoption assistance; and the number adopted by their foster parents;

**6. Out-of-state placement.** The number of children in the care and custody of the department placed out-of-state for hospitalization and residential care and the costs for each; and

**7. Analysis.** An analysis of any major initiatives planned by the department to improve the functioning of the Bureau of Child and Family Services and the delivery of services to children in the care and custody of the department and their families and foster families.

See title page for effective date.

## CHAPTER 323

H.P. 371 - L.D. 516

**An Act to Impose a Statute of  
Limitations for Violations of  
Municipal Subdivision Ordinances**

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

**Sec. 1. 30-A MRSA §4402, sub-§3**, as amended by PL 1997, c. 51, §1, is further amended to read:

**3. Previously recorded subdivisions.** A subdivision, a plan of which had been legally recorded in the proper registry of deeds before September 23, 1971; ~~or~~

**Sec. 2. 30-A MRSA §4402, sub-§4**, as enacted by PL 1997, c. 51, §2, is amended to read:

**4. Airports with an approved airport layout plan.** Any airport with an airport layout plan that has received final approval from the airport sponsor, the Department of Transportation and the Federal Aviation Administration; ~~or~~

**Sec. 3. 30-A MRSA §4402, sub-§5** is enacted to read:

**5. Subdivisions in existence for at least 20 years.** A subdivision in violation of this subchapter that has been in existence for 20 years or more, except a subdivision:

A. That has been enjoined pursuant to section 4406;

B. For which approval was expressly denied by the municipal reviewing authority, and record of the denial was recorded in the appropriate registry of deeds;

C. For which a lot owner was denied a building permit under section 4406, and record of the denial was recorded in the appropriate registry of deeds; or

D. That has been the subject of an enforcement action or order, and record of the action or order was recorded in the appropriate registry of deeds.

See title page for effective date.

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## CHAPTER 324

H.P. 564 - L.D. 755

**An Act to Amend the Watercraft  
Registration Laws**

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

**Sec. 1. 12 MRSA §7794, sub-§9-A**, as enacted by PL 1995, c. 695, §2, is repealed.

**Sec. 2. 12 MRSA §7794, sub-§9-B** is enacted to read:

**9-B. Certificate of number; term.** A certificate of number is issued to the owner of a watercraft or a dealer for a specific calendar year and is valid through December 31st of the year for which it was issued.

**Sec. 3. 36 MRSA §1503, sub-§8-A**, as enacted by PL 1995, c. 695, §4, is repealed.

**Sec. 4. 36 MRSA §1503, sub-§8-B** is enacted to read:

**8-B. Registration period.** "Registration period" means from January 1st to December 31st of the year for which the certificate of number is issued pursuant to Title 12, section 7794.

**Sec. 5. 36 MRSA §1503, sub-§9**, as amended by PL 1985, c. 726, §3, is further amended to read:

**9. Taxable year.** "Taxable year" for purposes of section 1504, subsection 5, means from January 1st to December 31st for watercraft subject to the excise tax but not required to be registered under Title 12, section 7794. For watercraft required to be registered under Title 12, section 7794, "taxable year" means the 12-month period of registration.

**Sec. 6. 36 MRSA §1504, sub-§2, ¶D** is enacted to read:

D. The tax payable for a watercraft registered to a new owner after September 1st of any year is 50% of the value due under subsection 1.

**Sec. 7. Retroactivity.** This Act applies retroactively to January 1, 1997.

See title page for effective date.

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## CHAPTER 325

H.P. 241 - L.D. 305

**An Act to Prohibit the Inhaling of Toxic Vapors for Effect****Be it enacted by the People of the State of Maine as follows:****Sec. 1. 22 MRSA §2383-C** is enacted to read:**§2383-C. Unlawful use or possession of inhalants****1. Prohibited acts.** A person may not intentionally or knowingly:

A. Inhale, ingest, apply or smell the gases, vapors or fumes of any gas, hazardous inhalant, substance containing a volatile chemical or substance containing a chemical material capable of releasing toxic vapors or fumes for the purpose of causing intoxication, euphoria, inebriation, excitement, stupefaction or the dulling of that person's brain or nervous system; or

B. Possess any gas, hazardous inhalant, substance containing a volatile chemical or substance containing a chemical material capable of releasing toxic vapors with the intent to violate paragraph A.

**2. Exclusions.** Nothing in this section applies to the inhalation of anesthesia for medical or dental purposes or the inhalation of the vapors or fumes of an alcoholic beverage, the sale and consumption of which is authorized by law.

**3. Presumption regarding violations.** Proof that a person intentionally or knowingly inhaled, ingested, applied or used a substance in a manner contrary to the directions for use, cautions or warnings on a label of a container of the substance gives rise to a presumption that the person violated subsection 1.

**4. Presumption regarding ingredients.** For the purposes of this section, it is presumed that the ingredients in a container are, in fact, the ingredients listed on a label of the container or the ingredients listed for that substance in databases maintained or relied upon by a poison control center certified by a national association of poison control centers.

**5. Penalties.** A person who violates this section commits a civil violation for which a forfeiture, which may not be suspended except as provided in subsection 6, must be adjudged as follows:

A. Not less than \$100 or more than \$300 for the first offense;

B. Not less than \$200 or more than \$500 for the 2nd offense; and

C. Five hundred dollars for the 3rd and each subsequent offense.

**6. Additional orders.** In addition to the civil forfeitures required by subsection 5, the judge may order the person to perform specified work for the benefit of the State, the municipality or other public entity or charitable institution or to undergo evaluation, education or treatment with a licensed social worker or a licensed substance abuse counselor. If the judge orders the person to perform specified work or to undergo evaluation, education or treatment, the judge may suspend a forfeiture imposed pursuant to subsection 5.

See title page for effective date.

## CHAPTER 326

S.P. 377 - L.D. 1236

**An Act to Amend the Laws Relating to State Agency Clients****Be it enacted by the People of the State of Maine as follows:****Sec. 1. 20-A MRSA §1, sub-§34-A,** as amended by PL 1995, c. 569, §1, is further amended to read:**34-A. State agency client.** "State agency client" means a child of eligible school age who is:

A. In the care or custody, or both, of the Department of Human Services; or the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Department of Corrections;

B. Placed, with the recommendation of a Division of Mental Retardation case manager or an employee of the Bureau of Children with Special Needs, Department of Mental Health, Mental Retardation and Substance Abuse Services by a caseworker from the Department of Human Services or an authorized agent of Children's Services, Department of Mental Health, Mental Retardation and Substance Abuse Services for reasons other than educational reasons, with a person who is not the child's parent, legal guardian or relative;

C. On entrustment or absent with leave status from the Maine Youth Center; or

D. Attending a public or private school while still a resident of a state-operated institution; or

E. In the custody or under the supervision of the Department of Corrections, including, but not limited to, a juvenile on conditional release, an informally adjusted juvenile, a probationer or a juvenile on aftercare status from the Maine Youth Center and who is placed, for reasons other than educational reasons, pursuant to a court order or with the agreement of an authorized agent of the Department of Corrections, outside the juvenile's home.

Notwithstanding paragraphs A to ~~D~~ E, a "state agency client" may in addition be either a child who is under 3 years of age and has a diagnosed, established condition or a biological factor that has a high probability of resulting in developmental delay or a child who is under 6 years of age and in need of early intervention of special education services due to a delay in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development.

**Sec. 2. 20-A MRSA §5205, sub-§3**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

**3. Students placed by state agencies.** A student who is placed by a state agency, ~~child placement agency or parent in a nonfamily foster home in a residential placement other than a residential treatment center, as defined in section 1, subsection 24-A, paragraph D, subparagraph 3, shall be is~~ considered a resident of the school administrative unit where the ~~foster home residential placement~~ is located, ~~if:~~

~~A. The state agency, child placement agency or parent proves to the school administrative unit's satisfaction that the costs of educating that student will be paid to the school administrative unit in the year they are incurred; and~~

~~B. The school administrative unit has agreed to accept tuition students under this Title.~~

**Sec. 3. 20-A MRSA §15604, sub-§1, ¶C**, as enacted by PL 1983, c. 859, Pt. G, §§2 and 4, is amended to read:

C. Special education tuition and board, excluding medical costs, defined as follows:

- (1) Tuition and board for pupils placed by school administrative units;
- (2) Tuition and board for pupils placed directly by the State in accordance with rules adopted or amended by the commissioner;

(3) Special education tuition and other tuition for institutional residents of state-operated institutions attending programs in school administrative units or private schools in accordance with rules adopted or amended by the commissioner; and

(4) Adjustments under section 15612, subsection 6;

**Sec. 4. 20-A MRSA §15607, sub-§9, ¶B**, as amended by PL 1989, c. 875, Pt. E, §28, is further amended to read:

B. Special educational tuition and other tuition for residents of state-operated institutions attending programs in school administrative units or private schools in accordance with rules adopted or amended by the commissioner.

**Sec. 5. 20-A MRSA §15613, sub-§6**, as enacted by PL 1983, c. 859, Pt. G, §§2 and 4, is amended to read:

**6. Education of institutional residents.** The commissioner may pay tuition to school administrative units or private schools for institutional residents within the limits of the appropriation made under section 15607, subsection 12.

See title page for effective date.

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## CHAPTER 327

### H.P. 14 - L.D. 39

#### An Act to Clarify the Authority of County Commissioners to Close Roads for Winter in the Unorganized Territories

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

**Sec. 1. 23 MRSA §2051**, as amended by PL 1975, c. 711, §1, is repealed and the following enacted in its place:

#### §2051. Power of commissioners

**1. Layout, maintenance and discontinuance of roads in unorganized areas.** County commissioners may lay out, alter, close for maintenance or discontinue highways within the unorganized areas of their counties and grade hills in such a highway. The county commissioners may close a county road for maintenance and preserve the right-of-way for the use of abutting landowners, any others using that way for access to their property and public utilities and corporations with facilities legally located within that

way, at their own risk. At a regular session of the commissioners, responsible persons may present a written petition describing a way and stating that the location, alteration, grading or closing for maintenance or discontinuance of that way, in whole or in part, or an alternative action, is desired. The commissioners may act upon the petition, conforming substantially to the description without adhering strictly to its bounds.

**2. Closing roads in unorganized areas for the winter.** The county commissioners may close any county road in the unorganized areas of their county under the same conditions and following the same procedure established in section 2953, subsections 1 to 4 for the closure of roads in municipalities by the municipal officers, except that the county commissioners approve the order closing a road and may annul, alter or modify any such order. A copy of the order must be filed with the county clerk or county administrator. Any person may appeal from a decision of the county commissioners to close a county road for the winter in the same manner as provided in Title 17, section 2852.

See title page for effective date.

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**CHAPTER 328**

**H.P. 1182 - L.D. 1673**

**An Act to Amend the Child and Family Services and Child Protection Act**

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

**Sec. 1. 22 MRSA §4008-A** is enacted to read:

**§4008-A. Child abuse and neglect investigations; disclosure**

**1. Disclosure permitted.** Notwithstanding any other provision of law, the commissioner, with the advice of the Attorney General, may disclose information as set forth in this section regarding the abuse or neglect of a child and the investigation of and any services related to the abuse and neglect if the commissioner determines that such disclosure is not contrary to the best interests of the child, the child's siblings or other children in the household and any one of the following factors is present:

A. The alleged perpetrator of the abuse or neglect has been charged with committing a crime related to the allegation of abuse or neglect maintained by the department;

B. A judge, a law enforcement agency official, a district attorney or another state or local investigative agency or official has publicly disclosed, as required by law in the performance of official duties, the provision of child welfare services or the investigation by child welfare services of the abuse or neglect of the child;

C. An individual who is the parent, custodian or guardian of the victim or a child victim over 14 years of age has made a prior knowing, voluntary, public disclosure; or

D. The child named in the report has died.

**2. Information.** For the purposes of this section, the following information may be disclosed:

A. The name and age of the abused or neglected child. If the child is under 13 years of age, the guardian ad litem must agree with the commissioner to release the information. If the child is 13 years of age or older, the guardian ad litem and the child must agree with the commissioner to release the information;

B. The determination by the local child protective service or the state agency that investigated the alleged abuse or neglect and the findings of the applicable investigating agency upon which the determination was based;

C. Identification of child protective or other services provided or actions, if any, taken regarding the child and the child's family;

D. Whether any report of abuse or neglect regarding the child has been substantiated as maintained by the department;

E. Any actions taken by child protective services in response to reports of abuse or neglect of the child to the department, including, but not limited to, actions taken after every report of abuse or neglect of the child and the dates of the reports;

F. Whether the child or the child's family has received care or services from the child welfare services prior to every report of abuse or neglect of the child; and

G. Any extraordinary or pertinent information concerning the circumstances of the abuse or neglect of the child and the investigation of the abuse or neglect, if the commissioner determines the disclosure is consistent with the public interest.

**3. Limitations.** The following limitations apply to information disclosed pursuant to this section.

A. Information released prior to the completion of the investigation of a report must be limited to a statement that a report is under investigation.

B. If there has been a prior disclosure pursuant to paragraph A, information released in a case in which the report has not been substantiated is limited to the statement that the investigation has been completed and the report has not been substantiated.

C. If the report has been substantiated, information may be released pursuant to subsection 2.

D. The disclosure may not identify or provide any identifying description of the source of the report, and may not identify the name of the abused or neglected child's siblings, the parent or other person legally responsible for the child or any other members of the child's household, other than the subject of the report.

4. Considerations. In determining pursuant to subsection 1 whether disclosure would be contrary to the best interests of the child, the child's siblings or other children in the household, the commissioner shall consider the privacy of the child and the child's family and the effects that disclosure may have on efforts to reunite and provide services to the family.

5. Other releases and disclosure. Except as it applies directly to the cause of the abuse or neglect of the child, nothing in this section authorizes the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or similar materials or information pertaining to the child or the child's family.

See title page for effective date.

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## CHAPTER 329

H.P. 727 - L.D. 991

### An Act to Address Issues Raised by the Select Committee to Study Rate Increases in Nursing Homes

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

**Sec. 1. 22 MRSA §1826, sub-§3,** as enacted by PL 1985, c. 291, §1, is amended to read:

**3. Other contract provisions.** The contract or agreement may contain any other provisions which that do not violate state law or rule or federal law or regulation and that are specifically allowed by the standardized contract under subsection 4.

**Sec. 2. 22 MRSA §1826, sub-§4** is enacted to read:

**4. Standardized contract.** The commissioner shall adopt rules to standardize nursing home contracts for all nursing home residents to clarify the rights and obligations of residents. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

See title page for effective date.

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## CHAPTER 330

H.P. 850 - L.D. 1155

### An Act to Create a Permanent Funding Source for the Saco River Corridor Commission

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

**Sec. 1. 38 MRSA §969** is enacted to read:

#### **§969. Saco River Corridor Fund**

**1. Fund established.** The Saco River Corridor Fund, referred to in this section as the "fund," is established as a nonlapsing dedicated, interest-bearing account. All charges collected pursuant to this section must be deposited into the fund. All interest earned by the account accrues to 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.

**2. Fund purpose.** The purpose of the fund is to preserve existing water quality and prevent the deterioration of water supplies in the Saco River, the Ossipee River and the Little Ossipee River within the Saco River Corridor, as created in section 953, by partially underwriting the administration and operation of the Saco River Corridor Commission, as established by Title 5, section 12004-G, subsection 13.

**3. Assessment on the sale of water.** For purposes of funding its activities, the commission shall impose a fee of 1% on the sale of water and fire protection services by a water utility that draws water either from the Saco River or from a groundwater source under the influence of the Saco River, as determined by the Department of Human Services, for sale and distribution to its customers. The fee must be levied on the rates of the water utility as authorized by the Public Utilities Commission to be charged for services provided by the utility. "Water utility" has the same meaning as the term is defined in Title 35-A, section 102, subsection 22.

The fee must be collected by the water utility and remitted quarterly to the commission. Notwithstanding any limitations set forth in Title 35-A regarding a water utility's right to increase its charges to its customers, a water utility with sales subject to this subsection is authorized to increase its overall charges for the purpose of collecting the fee set forth in this subsection.

Each water utility may retain a portion of the total fees collected equivalent to the utility's administrative costs incurred in the collection and remission of the fees, not to exceed 2% of the total fees collected. For purposes of the Public Utilities Commission's rate-making authority, costs actually incurred by the utility associated with the collection and remission of the fees for the fund are considered just and reasonable for rate-making purposes.

The commission shall adopt rules that are reasonably necessary to carry out the purposes of this section pursuant to section 954-C. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**4. Reporting requirements.** The commission shall submit a report by February 1, 1998 and each subsequent year to the joint standing committees of the Legislature having jurisdiction over natural resources matters, energy and utilities matters, fisheries and wildlife matters and appropriations and financial affairs, identifying the amount collected and how the fund was disbursed by the commission.

**5. Additional sources of revenue.** The commission shall study usage within the Saco River Corridor for the purpose of identifying additional management needs and funding sources. The commission shall take all steps necessary to obtain revenue from these funding sources to ensure that assessments on the sale of water are not the sole source of revenue for the fund.

**Sec. 2. Review.** It is the intent of the Legislature that assessments on the sale of water not be the sole source of revenue for the Saco River Corridor Fund. The Saco River Corridor Commission shall report to the joint standing committee of the Legislature having jurisdiction over natural resource matters by January 15, 2001 on the sources of revenue used to support the activity and operations of the Saco River Corridor Commission. The committee shall review the commission's funding by February 1, 2001 to determine whether sufficient sources of additional revenue have been obtained to support the activities of the commission.

**Sec. 3. Allocation.** The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1997-98      1998-99

**SACO RIVER CORRIDOR COMMISSION**

**Saco River Corridor Commission**

All Other	\$26,145	\$31,500
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Allocates additional funds for the operating expenses of the commission.

See title page for effective date.

**CHAPTER 331**

**H.P. 1000 - L.D. 1392**

**An Act to Require the Release of the Results of an HIV Test to a Person Who Has Experienced a Bona Fide Occupational Exposure**

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

**Sec. 1. 5 MRSA §19203-C, sub-§1,** as amended by PL 1995, c. 404, §7, is further amended to read:

**1. Petition.** Any person who experiences a bona fide occupational exposure may petition the District Court with jurisdiction over the facility or other place where the exposure occurred to require the person whose blood or body fluid is the source of the exposure to submit to an HIV test and to require that the results of the test be provided to the petitioner provided that the following conditions have been met:

A. The exposure to blood or body fluids creates a significant risk of HIV infection, as defined by the Bureau of Health through the adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375;

B. The authorized representative of the employer of the person exposed has informed the person whose blood or body fluid is the source of the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested.

**Sec. 2. 5 MRSA §19203-C, sub-§4**, as amended by PL 1995, c. 404, §10, is further amended to read:

**4. Determination.** The court ~~may~~ shall require the person whose blood or body fluid is the source of the exposure to obtain an HIV test ~~only~~ if the petitioner proves, by a preponderance of the evidence, that:

A. The exposure to blood or body fluids of the person created a significant risk of HIV infection as defined by the Bureau of Health through the adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375;

B. An authorized representative of the employer of the person exposed has informed the patient of the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested.

~~In determining whether to order the test, the court shall consider the balance of benefit and harm to both individuals if the test is ordered.~~

See title page for effective date.

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## CHAPTER 332

H.P. 849 - L.D. 1154

### **An Act Concerning the Requirement That Employers Garnish the Wages of Their Employees Who Owe Child Support**

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

**Sec. 1. 19-A MRSA §2366, first ¶**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

A person who fails to honor an order to withhold and deliver, an order for expedited withholding, or a duly executed assignment of earnings, or fails to surrender property under section 2363, is liable to the department ~~in an amount equal to the debt that is the basis of the~~ for the greater of \$500 or the amount the person was required to remit to the department under a lien, order to withhold and deliver, order for expedited withholding, demand for surrender or assignment of

earnings, together with costs, interest and reasonable attorney's fees.

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

Effective October 1, 1997.

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## CHAPTER 333

H.P. 1181 - L.D. 1672

### **An Act to Ensure Proper Training for Conducting Forensic Examinations of Victims of Sexual Assault**

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

Whereas, sexual assault continues to represent the most rapidly growing violent crime in America, claiming a victim every 45 seconds; and

Whereas, sexual assault can lead to serious biological and mental health trauma that must be addressed immediately; and

Whereas, the development of a community-based team approach may provide for the dignified and compassionate treatment of sexual assault victims; 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. 30-A MRSA §287, sub-§4**, as enacted by PL 1993, c. 27, §1, is amended to read:

**4. Standardized kit for evidence collection in cases of gross sexual assault.** The Department of Public Safety shall determine by rule what constitutes a standardized kit for evidence collection in cases of gross sexual assault. A physician or other health care professional who conducts a physical examination of an alleged victim of gross sexual assault shall use a standardized evidence collection kit that meets the requirements established by rule of the Department of Public Safety.

A health care professional, other than a physician, who conducts a physical examination of an alleged victim of gross sexual assault must be trained in the

proper evidence collection procedures for conducting such an examination.

Evidence collection results may not be excluded as evidence in any proceeding before any court of this State as a result of the failure to use the standardized evidence collection kit or as a result of the failure to be trained in the proper procedures for the collection of evidence required by this subsection.

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

Effective May 30, 1997.

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## CHAPTER 334

H.P. 1264 - L.D. 1791

### An Act to Bring the State into Conformity with the Firearms Provisions of the Violence against Women Provisions of the Federal Violent Crime Control Act

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

**Sec. 1. 15 MRSA §393, sub-§1, ¶¶B and C,** as enacted by PL 1993, c. 368, §1, are amended to read:

B. Has been convicted of a crime, under the laws of the United States, this State or any other state, that was committed with the use of a dangerous weapon or a firearm against a person, except for a violation of former Title 12, chapter 319, subchapter III; or

C. Has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction:

- (1) Under paragraph A and bodily injury to another person was threatened or resulted; or
- (2) Under paragraph B; or

**Sec. 2. 15 MRSA §393, sub-§1, ¶D** is enacted to read:

D. Is subject to an order of a court of the United States or a state, territory, commonwealth or tribe that restrains that person from harassing, stalking or threatening an intimate partner, as defined in 18 United States Code, Section 921(a), of that person or a child of the intimate partner of

that person, or from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the intimate partner or the child, except that this paragraph applies only to a court order that was issued after a hearing for which that person received actual notice and at which that person had the opportunity to participate and that:

(1) Includes a finding that the person represents a credible threat to the physical safety of an intimate partner or a child; or

(2) By its terms, explicitly prohibits the use, attempted use or threatened use of physical force against an intimate partner or a child that would reasonably be expected to cause bodily injury.

**Sec. 3. 15 MRSA §393, sub-§8,** as enacted by PL 1977, c. 225, §2, is amended to read:

**8. Penalty.** A violation of subsection 1, paragraph A, B or C is a Class C crime. A violation of subsection 1, paragraph D is a Class D crime.

**Sec. 4. 19-A MRSA §4007, sub-§1,** as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended by amending the first paragraph to read:

**1. Protection order; consent agreement.** The court, after a hearing and upon finding that the defendant has committed the alleged abuse, may grant a protective order or, upon making that finding, approve a consent agreement to bring about a cessation of abuse. This subsection does not preclude the parties from voluntarily requesting a consent agreement without a finding of abuse. The court may enter a finding that the defendant represents a credible threat to the physical safety of the plaintiff or a minor child residing in the plaintiff's household. Relief granted under this section may include:

**Sec. 5. 19-A MRSA §4007, sub-§1, ¶A-1** is enacted to read:

A-1. Directing the defendant not to possess a firearm or other dangerous weapon for the duration of the order;

**Sec. 6. 19-A MRSA §4007, sub-§3,** as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

**3. Consequences of violation.** A protective order or approved consent agreement must indicate, in a clear and conspicuous manner, the potential consequences of violation of the order or agreement, as