MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

A. The conviction is for murder;

B. The statute ~~which~~ that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person ~~shall~~ must be sentenced to the imprisonment and required to pay the fine authorized therein; or

C. ~~The court finds that there is an undue risk that during the period of probation the convicted person would commit another crime; or~~

D. The court finds that such a sentence would diminish the gravity of the crime for which ~~he~~ that person was convicted.

2. A convicted person who is eligible for sentence under this chapter, as provided in subsection 1, ~~shall~~ may be sentenced to a sentencing alternative that includes a period of probation if ~~he~~ the person is in need of the supervision, guidance, assistance or direction that probation can provide. ~~If there is no such need, and no proper purpose would be served by imposing any condition or supervision on his release, he shall be sentenced to an unconditional discharge. A sentence of unconditional discharge is for all purposes a final judgment of conviction.~~

Sec. 3. 17-A MRSA §1203, sub-§1, as amended by PL 1995, c. 425, §1, is further amended to read:

1. The court may sentence a person to a term of imprisonment, not to exceed the maximum term authorized for the crime, an initial portion of which ~~shall~~ must be served and the remainder of which ~~shall~~ must be suspended, and accompany that term with a period of probation not to exceed the maximum period authorized for the crime. As to both the suspended and unsuspended portions of the ~~sentence~~ term of imprisonment, the place of imprisonment must be as follows.

A. For a Class D or Class E crime the court ~~must~~ shall specify a county jail as the place of imprisonment.

B. For a Class A, Class B or Class C crime the court ~~must~~ shall:

    (1) Specify a county jail as the place of imprisonment for any portion of the sentence that is 9 months or less; and

    (2) Commit the person to the Department of Corrections for any portion of the sentence that is more than 9 months.

The period of probation commences on the date the person is released from the initial unsuspended portion of the term of imprisonment, unless the court orders it

to commence on an earlier date. If the period of probation commences upon release of the person from the initial unsuspended portion of the term of imprisonment, the court may revoke probation for any criminal conduct committed during that initial period of imprisonment.

Sec. 4. 17-A MRSA §1203-C is enacted to read:

§1203-C. Wholly suspended sentence with probation

The court may sentence a person to a term of imprisonment not to exceed the maximum term authorized for the crime, suspend the entire term of imprisonment and accompany the suspension with a period of probation not to exceed the maximum period authorized for the crime, to commence on the date the person goes into actual execution of the sentence.

Sec. 5. 17-A MRSA c. 54-D is enacted to read:

CHAPTER 54-D
UNCONDITIONAL DISCHARGE

§1346. Sentencing alternative of unconditional discharge

A convicted person who is eligible for sentence under section 1201, subsection 1 and for whom a court determines that no other authorized sentencing alternative is appropriate punishment must be sentenced by the court to an unconditional discharge. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

See title page for effective date.

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CHAPTER 25

S.P. 101 - L.D. 240

An Act to Amend the Maine Banking Code as it Pertains to ATM Surcharges

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

Whereas, the passage of this legislation will benefit Maine consumers by allowing banks and credit unions to enter into agreements not to impose automatic teller machine surcharges; and

Whereas, Maine banks and credit unions have currently entered into these agreements and are seeking to enter into these agreements; and

Whereas, this legislation clarifies that these agreements are permissible under Maine law; 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-B MRSA §243-A, sub-§3, as corrected by RR 1997, c. 2, §36, is amended to read:

3. Agreement to share electronic terminals. An agreement to share electronic terminals may not prohibit, limit or restrict the right of a financial institution authorized to do business in this State to charge a customer any fees allowed by state or federal law, or require a financial institution to limit or waive its rights or obligations under this section. ~~This subsection applies to all agreements to share use of electronic terminals in existence on or entered into after June 30, 1992~~ , except that a financial institution or credit union authorized to do business in this State may mutually agree with one or more other financial institutions or credit unions not to charge foreign transaction fees, as that term is defined in subsection 1, to the customers or members of those financial institutions or credit unions that are parties to the agreement.

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

Effective March 22, 1999.

CHAPTER 26

S.P. 284 - L.D. 802

An Act to Make Technical Changes in the Marine Resources Laws

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

Sec. 1. 12 MRSA §6431-E, sub-§1, ¶A, as enacted by PL 1997, c. 693, §1 and affected by §3, is amended to read:

A. "Family member" means a spouse, brother, sister, son-in-law, daughter-in-law, parent by blood, parent by adoption, mother-in-law, father-in-law, child by blood, child by adoption, stepchild, stepparent, grandchild or grandparent.

Sec. 2. 12 MRSA §6749-W, sub-§§4 and 5, as enacted by PL 1997, c. 177, §6, are repealed.

Sec. 3. 12 MRSA §6749-Z, sub-§§4 and 5 are enacted to read:

4. Limitation on approving zone changes. The commissioner may not authorize a zone change between August 1st and December 31st.

5. Effective date of zone change. The effective date of a zone change authorized by the commissioner is August 1st.

Sec. 4. 12 MRSA §6858, sub-§5-C is enacted to read:

5-C. Exception for certain lobster meat. This section does not apply to lobster meat processed under a lobster tail permit issued under section 6862.

See title page for effective date.

CHAPTER 27

H.P. 12 - L.D. 22

An Act to Designate Wintergreen as the State Herb

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

Sec. 1. 1 MRSA §221 is enacted to read:

§221. State herb

The herb wintergreen (gaultheria procumbens) is the official state herb.

See title page for effective date.

CHAPTER 28

H.P. 128 - L.D. 159

An Act to Allow the Bureau of Labor Standards to Better Secure Payment of Unpaid Wages and Severance Pay for Workers

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

Sec. 1. 26 MRSA §52 is enacted to read:

§52. Liens

1. Form; effect. Upon the failure of an employer to pay the amount assessed for unpaid wages or