

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

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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

the joint standing committee of the Legislature having jurisdiction over natural resources matters on:

1. The public utility's progress toward removing those transformers that contain polychlorinated biphenyls in concentrations at or above 50 parts per million and that are located within 100 feet of any surface water or school; and
2. A plan for the removal of those transformers that contain polychlorinated biphenyls in concentrations at or above 50 parts per million and that are located in underground vaults.

Sec. 3. Report; sources of polychlorinated biphenyls in environment. The Department of Environmental Protection shall work within its budgeted resources to gather information on sources of polychlorinated biphenyls that may be released into the environment. In gathering the information, the department shall consult with the United States Environmental Protection Agency. The department shall submit a report by January 15, 2001 to the joint standing committee of the Legislature having jurisdiction over natural resources matters with its findings and recommendations related to polychlorinated biphenyls in the environment.

See title page for effective date.

CHAPTER 194

H.P. 529 - L.D. 736

An Act to Further Discourage the Field Theft of Wild Blueberries

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

Sec. 1. 36 MRSA §4315, sub-§1, as amended by PL 1997, c. 511, §23, is further amended to read:

1. Transportation of wild blueberries without permit. It is unlawful for a person to transport wild blueberries in quantities exceeding 25 pounds without first obtaining a transportation permit on an official form to be furnished by the Wild Blueberry Commission of Maine. The Wild Blueberry Commission of Maine shall issue upon request official transportation permit forms to ~~owners who~~ shippers and processors certified under section 4305. Shippers and processors may issue the transportation permits to ~~individuals~~ owners or owner's transportation agents with written authorization from owners. Each permit issued must bear a different number and expire at the end of the calendar year. When ~~an owner~~ a shipper or processor issues a transportation permit, the ~~owner~~ shipper or processor shall immediately send a copy to the Wild

Blueberry Commission of Maine. The commission shall keep a permanent record of all permits issued. The commission ~~may adopt rules establishing~~ shall establish the form and content of transportation permits ~~and governing the means of their issuance and establishing~~ establish the record-keeping ~~functions~~ requirements of the commission ~~and the owners, shippers and processors.~~ Notwithstanding any provision of Title 1, chapter 13, subchapter I to the contrary, records pertaining to transportation permits required to be kept by the Wild Blueberry Commission of Maine under this section are confidential to the extent necessary to preserve the identity of parties to individual business transactions. The confidential status does not apply when records kept by the Wild Blueberry Commission of Maine are needed as evidence in any proceeding to enforce any provision of section 4314 or this section, or in any prosecution for a violation of any other criminal law. This subsection does not apply to wild blueberries that have been received by a certified shipper or processor and have been weighed, logged into a permanent record-keeping system and reloaded onto a vehicle for shipping under a bill of lading.

See title page for effective date.

CHAPTER 195

H.P. 1267 - L.D. 1821

An Act to Expressly Treat Involuntary Conduct as a Defense in the Maine Criminal Code

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

Sec. 1. 17-A MRSA §31, as enacted by PL 1981, c. 324, §14, is repealed.

Sec. 2. 17-A MRSA §103-B is enacted to read:

§103-B. Involuntary conduct

1. It is a defense that, when a person causes a result or engages in forbidden conduct, the person's act or omission to act is involuntary.

2. An omission to act is involuntary if the person fails to perform an act and:

A. The person is not capable of performing the act;

B. The person has no legal duty to perform the act; or

C. The person has no opportunity to perform the act.

3. Possession of something is involuntary if the person:

A. Did not knowingly procure or receive the thing possessed; or

B. Was not aware of the person's control of the possession for a sufficient period to have been able to terminate the person's possession of the thing.

See title page for effective date.

CHAPTER 196

H.P. 950 - L.D. 1347

An Act Addressing an Allegation of Prior Conviction When the Sentence Is Enhanced

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

Sec. 1. 15 MRSA §757, as repealed and replaced by PL 1981, c. 679, §1, is repealed.

Sec. 2. 17-A MRSA §9-A is enacted to read:

9-A. Allegation of prior conviction when sentence enhanced

1. Except as otherwise provided by law, a prior conviction must be specially alleged if the sentencing provision of a crime requires that a present sentence be enhanced because the person has been previously convicted of a specified crime. For the purpose of this section, a sentence is enhanced only if the maximum sentence that may be imposed is increased or a mandatory minimum nonsuspendable sentence must be imposed. The Supreme Judicial Court shall provide by rule the manner of alleging the prior conviction in a charging instrument and conditions for using that prior conviction at trial.

2. If the name and date of birth of the person charged with the current principal offense are the same as those of the person who has been convicted of the prior offense, it is presumed that the person charged with the current principal offense is the same person as that person convicted of the prior offense.

Sec. 3. 29-A MRSA §2412-A, sub-§3, as amended by PL 1995, c. 645, Pt. B. §19, is further amended by amending the last paragraph to read:

A separate reading of the allegation and a separate trial as are not required by Title 15, section 757 do not apply to a proceeding under this subsection.

Sec. 4. 29-A MRSA §2433, sub-§1, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

1. Permissible considerations. Notwithstanding the provisions of Title ~~15~~ 17-A, section ~~757~~ 9-A, in determining the appropriate sentence, the court shall consider whether the defendant operated with a passenger under 16 years of age, the record of convictions for criminal traffic offenses, adjudications of traffic infractions or suspensions of license for failure to submit to a test.

In determining the appropriate sentence, the court may rely on oral representations based on records maintained by the courts, the State Bureau of Identification or the Secretary of State, including telecommunications of records maintained by the Secretary of State.

If the defendant disputes the accuracy of a representation concerning a conviction or adjudication, the court shall grant a continuance to determine the accuracy of the record.

See title page for effective date.

CHAPTER 197

H.P. 1161 - L.D. 1672

An Act Concerning Service Relating to the Disclosure of Financial Records

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

Sec. 1. 9-B MRSA §163, sub-§1, as amended by PL 1997, c. 537, §2 and affected by §62, is further amended to read:

1. Service. A fiduciary institution shall disclose financial records under section 162 pursuant to a subpoena, summons, warrant or court order that on its face appears to have been issued upon lawful authority only if the subpoena, summons, warrant or court order is served upon the customer prior to disclosure by the fiduciary institution. The agency or person requesting the disclosure of financial records shall certify in writing to the fiduciary institution the fact that the subpoena, summons, warrant or court order has been served upon the customer. The court for good cause shown may delay or dispense with service of the subpoena, summons, warrant or court order upon the customer. The court shall delay or dispense with service of the subpoena, summons, warrant or court