

# 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.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1999**

**6. Death of employee.** If an employee dies as a result of a work-related injury, a petition is barred unless filed within one year after the death or 2 years from the date of injury, whichever is later, but in any event not later than 6 years from the date of last payment.

**Sec. 7. 39-A MRSA §313, sub-§1,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**1. Procedure.** ~~Upon~~ Except as provided in section 205, subsection 9, paragraph D, upon filing of notice of controversy or other indication of controversy, the matter must be referred by the board to mediation.

**Sec. 8. 39-A MRSA §324, sub-§3, ¶B,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

B. The employer is liable to pay a civil penalty of up to \$10,000; or an amount equal to 108% of the premium, calculated using Maine Employers' Mutual Insurance Company's standard discounted standard premium, that should have been paid during the period the employer failed to secure coverage, whichever is larger, payable to the Employment Rehabilitation Fund.

**Sec. 9. 39-A MRSA §354, sub-§3,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**3. Subrogation.** Any insurer determined to be liable for benefits under subsection 2 must be subrogated to the employee's rights under this Act for all benefits the insurer has paid and for which another insurer may be liable. ~~Any such insurer may, in accordance with rules adopted by the Superintendent of Insurance, file a request for appointment of an arbitrator to determine apportionment of liability among the responsible insurers. The arbitrator's decision is limited to a choice between the submissions of the parties and may not be calculated by averaging. Within 30 days of the request, the Superintendent of Insurance shall appoint a neutral arbitrator who shall decide, in accordance with the rules adopted by the Superintendent of Insurance, respective liability among or between insurers. Arbitration pursuant to this subsection is the exclusive means for resolving apportionment disputes among insurers and the decision of the arbitrator is conclusive and binding among all parties involved. Apportionment decisions made under this subsection may not affect an employee's rights and benefits under this Act. The board has jurisdiction over proceedings to determine the apportionment of liability among responsible insurers.~~

**Sec. 10. Application.** That section of this Act that repeals and replaces the Maine Revised Statutes, Title 39-A, section 306 applies to injuries occurring on or after January 1, 1993.

**Sec. 11. Allocation.** The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1999-00	2000-01
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#### WORKERS' COMPENSATION BOARD

##### Administration - Workers' Compensation Board

Personal Services	\$24,008	\$34,824
Provides funds for the range change of 3 Deputy Director positions from range 82 to range 85.		

See title page for effective date.

## CHAPTER 355

S.P. 572 - L.D. 1639

### An Act to Amend the Laws Governing the Maine State Pilotage Commission

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

**Whereas,** this bill is intended to reduce safety risks in harbors resulting from unskilled navigation, protect shoreline environment and wildlife from the risk of spills in harbors and protect harbor economies and the fishing industry from safety risks and environmental risks; and

**Whereas,** in light of the imminent safety, environmental and economic risks, it is essential to authorize the Maine State Pilotage Commission to implement this legislation and proceed with rulemaking as soon as possible; 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. 5 MRSA §12004-A, sub-§40**, as enacted by PL 1987, c. 786, §5, is amended to read:

**40. Maine State** Not Autho- 38 MRSA §89  
Pilotage Commission rized

**Sec. 2. 38 MRSA §85**, as amended by PL 1985, c. 389, §32, is further amended to read:

**§85. Declaration of policy**

It is declared to be the policy and intent of the Legislature and the purpose of this ~~section and sections 86 to 106~~ subchapter to provide for a system of state pilotage in order to provide maximum safety from the dangers of navigation for vessels entering or leaving the waters described in this subchapter, to maintain a state pilotage system devoted to the preservation and protection of lives, property, the environment and vessels entering or leaving these waters at the highest standard of efficiency and to insure ~~an adequate supply~~ the availability of pilots well qualified for the discharge of their duties in aid of commerce and navigation.

**Sec. 3. 38 MRSA §85-A**, as amended by PL 1997, c. 727, Pt. C, §17, is repealed.

**Sec. 4. 38 MRSA §85-B** is enacted to read:

**§85-B. Definitions**

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

**1. Actively piloting.** "Actively piloting" means a person licensed as a pilot by the commission who is engaged in providing pilot services on a regular and ongoing basis within the area for which that person is licensed.

**2. Coastal waters.** "Coastal waters" means the jurisdictional area of the commission, which waters are all coastal navigable waters that are contained within, flow through, or border upon the State or any portion thereof, including those portions of the Atlantic Ocean within the jurisdiction of the State, up to state or international boundaries, and including all waters between Isle au Haut and Seal Island westward of a straight line between Western Ear Ledge on Isle au Haut drawn to Eastern Ledge on Seal Island.

**3. Coastal zones.** "Coastal zones" means the 3 areas of Maine coastal waters relevant to the commission membership, Calais to Schoodic Point, Schoodic Point to Port Clyde, and Port Clyde to Kittery, excepting the port of Portland and Casco Bay.

**4. Commission.** "Commission" means the Maine Pilotage Commission.

**5. Commissioner.** "Commissioner" means the Commissioner of Transportation.

**6. Department.** "Department" means the Department of Transportation.

**7. Pilotage areas.** "Pilotage areas" means specific areas of the Maine coast where the commission has established licensing requirements.

**Sec. 5. 38 MRSA §86**, as amended by PL 1991, c. 698, §2, is further amended to read:

**§86. Vessels required to take pilot**

Every foreign vessel and every American vessel under register, with a draft of 9 feet or more, entering or departing from any port or harbor within the waters described in section 86-A ~~shall~~ must take a pilot licensed under this chapter. Any master, owner, agent or consignee that fails to take a pilot licensed under this subchapter is subject to a civil penalty not to exceed ~~\$5,000~~ \$15,000 per day, payable to the State. This penalty is recoverable in a civil action.

**Sec. 6. 38 MRSA §86-A, sub-§2**, as repealed and replaced by PL 1987, c. 689, §1, is amended to read:

**2. Exempt waters.** Those waters specifically exempted by the Maine ~~State~~ Pilotage Commission; or

**Sec. 7. 38 MRSA §87-A**, as enacted by PL 1985, c. 389, §35, is amended to read:

**§87-A. Exceptions**

**1. Vessels exempt.** ~~Sections 85 to 106 shall~~ This subchapter does not apply to:

- A. Vessels under enrollment;
- B. Fishing vessels;
- C. Vessels powered predominantly by sail;

~~D. The motor vessel Bluenose, or any vessel substituted for the Bluenose, operating on a published regular schedule sailing between Bar Harbor, Maine, and Yarmouth, Nova Scotia, provided that: The vessel on regularly scheduled ferry operations between Bar Harbor, Maine and Yarmouth, Nova Scotia, provided that the master of such vessel has completed an appropriate number of trips, as established by commission rules and has met any appropriate federal requirements.~~

~~(1) The qualifications and experience of any licensed master of the Bluenose, or its substitute, meet those established by regulations of the United States Coast Guard;~~

(2) ~~A federal pilot, or a pilot licensed under this subchapter, shall pilot the Bluenose, or its substitute, on the licensed master's initial arrival and departure during each calendar year, except that a relief licensed master may make his initial arrival and departure trip for the calendar year, with another licensed master who has made a familiarization trip during the calendar year; and~~

(3) ~~The licensed master of any substitute vessel has piloted the Bluenose, or a substitute, in the waters of Frenchman's Bay for not less than 12 trips between Bar Harbor, Maine, and Yarmouth, Nova Scotia, within a period of 2 years;~~

E. All military and commercial ships navigating the Kennebec River to and from the Bath Iron Works Corporation for the purpose of accomplishing overhaul, repair, post shakedown availability and sea trials.

**2. Limitation.** If any such vessel employs a pilot, the pilot ~~shall be~~ is entitled to receive as compensation for ~~his~~ that pilot's service pilotage fees in ~~an~~ the amount ~~not to exceed the rates~~ established by the commission.

**Sec. 8. 38 MRSA §88**, as amended by PL 1977, c. 696, §332, is further amended to read:

#### **§88. Piloting without license**

~~It shall be~~ is unlawful for any person not licensed as a pilot under ~~sections 85 to 105~~ this subchapter to pilot or offer to pilot a vessel not exempt from ~~sections 85 to 105~~ this subchapter. Any person found to be in violation of this subchapter must be assessed a fine not to exceed \$5,000 for each instance of piloting, or offering to pilot without a license. Violation of this provision ~~shall be~~ is a Class E crime.

**Sec. 9. 38 MRSA §89**, as amended by PL 1993, c. 600, Pt. A, §281, is further amended to read:

#### **§89. Maine Pilotage Commission members**

The Maine State Pilotage Commission, as established by Title 5, section 12004-A, subsection 40, consists of ~~5~~ 7 members who are citizens of the United States and the State of Maine appointed by the Governor as follows: ~~Three must be licensed pilots representing the Penobscot Bay and the Penobscot River, Bar Harbor to Eastport and Bath; one must represent the marine industry interests; and one, with a marine background, must represent the public. Three licensed pilots who are actively piloting, one member from each of the coastal zones; 2 members who are not licensed pilots but are from a maritime industry~~

that utilizes the services of pilots; and 2 members representing the public who are not licensed pilots but have a maritime background. Appointments are for 3-year terms. Appointments of members must comply with Title 32, section 60. The members of the commission are entitled to compensation according to Title 5, chapter 379.

**Sec. 10. 38 MRSA §90, sub-§1, ¶¶A and B**, as enacted by PL 1969, c. 410, §1, are amended to read:

A. Make, establish and enforce such rules and regulations not inconsistent with law, ~~which shall be that are binding and effectual~~ upon all pilots licensed by the commission, and upon all parties employing such pilots;

B. Make and establish rates of pilotage for ~~such those vessels as that are subject to sections 85 to 105~~ this subchapter;

**Sec. 11. 38 MRSA §90, sub-§1, ¶D**, as amended by PL 1977, c. 694, §747, is further amended to read:

D. Issue any pilot's license in accordance with ~~sections 85 to 105~~ this subchapter and initiate proceedings ~~in the Administrative Court~~ to suspend or revoke these licenses;

**Sec. 12. 38 MRSA §90, sub-§1, ¶¶F and I**, as enacted by PL 1969, c. 410, §1, are amended to read:

F. Hear and decide complaints made in writing or initiated on its own motion against any pilot for any misbehavior ~~or~~ neglect of, or breach of rules or regulations, ~~which that it shall deem determines~~ material to be investigated;

I. To do all other things reasonable, necessary and expedient to insure proper and safe pilotage and to facilitate the efficient administration of ~~sections 85 to 105~~ this subchapter.

**Sec. 13. 38 MRSA §90-A, first ¶**, as amended by PL 1981, c. 456, Pt. A, §121, is further amended to read:

On or before August 1st of each year, the commission shall submit to the ~~Commissioner of Business Regulation, commissioner~~ for the preceding fiscal year ending June 30th its annual report of its operations and financial position, together with ~~such those~~ comments and recommendations as that the commission deems considers essential.

**Sec. 14. 38 MRSA §91**, as amended by PL 1985, c. 389, §38, is further amended to read:

#### **§91. Qualifications of licensees**

Every person who ~~shall apply~~ applies for a license to act as a pilot in the waters covered in this subchapter ~~shall must~~ be a citizen of the United States and the State of Maine. ~~He shall~~ If applicable, the applicant must possess a federal first class pilot's endorsement, issued by a duly constituted authority of the United States, covering ~~the waters described in section 86-A~~ areas for which the applicant is making application. The commission shall set standards for application, testing and granting of a state license. In those areas where no federal endorsement is available, the commission may set additional standards for a state license. An applicant for a license ~~shall must~~ satisfy the commission that ~~he the applicant~~ has or will have proper means available ~~to him~~ for boarding and leaving vessels which ~~he the applicant~~ may be called upon to pilot.

An applicant must complete a training trip in the area for which that person is making application under the direction of a licensed pilot actively piloting in that area. These training trips must be on vessels of at least 1600 gross tons. The commission shall establish standards for proof of such training and the minimum number of trips required. Once those standards are established, they may be amended only upon a 2/3 vote of the commission.

**Sec. 15. 38 MRSA §92**, as amended by PL 1991, c. 509, §47, is further amended to read:

#### **§92. Duration and renewal of licenses**

Licenses issued by the ~~pilot pilotage~~ commission must be renewed every ~~year on or before the expiration date established by the commissioner~~ 5 years to coincide, if possible, with the renewal of the individual's federal license.

**Sec. 16. 38 MRSA §93**, as amended by PL 1991, c. 509, §48, is further amended to read:

#### **§93. License fees**

Every new application for a license to act as a pilot on ~~these coastal~~ waters must be accompanied by an application fee of ~~\$100~~ \$500 for the first pilotage area and \$50 for each successive pilotage area. Original and ~~annual~~ renewal license fees are ~~\$10~~ \$375 for 5 years, regardless of number of areas being renewed. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee of ~~\$10~~ \$100 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the licensing renewal date is subject to all requirements governing new applicants under this chapter.

A holder of a license on the effective date of this paragraph is not required to renew that license until its

~~expiration the next expiration and renewal of the federal license.~~

**Sec. 17. 38 MRSA §94**, as amended by PL 1991, c. 509, §49, is repealed.

**Sec. 18. 38 MRSA §97**, as enacted by PL 1969, c. 410, §1, is amended to read:

#### **§97. Authority of pilots**

A pilot licensed under ~~sections 85 to 105~~ this subchapter may pilot any vessel required to take a state pilot anywhere upon the pilotage ~~grounds~~ area for which ~~he the pilot~~ is licensed.

**Sec. 19. 38 MRSA §98**, as amended by PL 1977, c. 696, §333, is further amended to read:

#### **§98. Commissions prohibited**

~~No A~~ master, agent, owner, charterer or consignee ~~shall may not~~ charge a commission or receive any payment directly or indirectly, for the assignment of pilotage, nor ~~shall may~~ any pilot pay or offer to pay to any person any commission for the assignment of pilotage. Any person violating this section commits a civil violation for which a forfeiture not to exceed ~~\$500~~ \$5,000 may be adjudged for each violation.

**Sec. 20. 38 MRSA §99**, as amended by PL 1985, c. 389, §39, is further amended to read:

#### **§99. Grounds for disciplinary action**

The ~~Administrative Court~~ commission may suspend any pilot for any period that it may ~~deem~~ consider proper; and may suspend, revoke or annul any pilot's license ~~which shall be that is~~ which is issued under ~~sections 85 to 106~~ this subchapter, upon satisfactory proof that ~~such a~~ pilot has willfully disobeyed or violated any of the provisions of ~~sections 85 to 106~~ this subchapter or any rule established by the commission; or ~~such a~~ pilot has negligently lost or damaged any vessel under ~~his that pilot's~~ his or her care; or ~~such a~~ pilot is habitually intemperate in the use of alcohol or habitually uses narcotic or hypnotic or other substances so as to be unfit to be entrusted with the charge of a vessel; or the pilot is so mentally or physically incapable as to be unfit to carry on the duties of a pilot.

**Sec. 21. 38 MRSA §99-A** is enacted to read:

#### **§99-A. Pilot liability**

**1. Acts or omissions of another pilot; no liability.** A pilot is not liable directly or as a member of an organization of pilots for a claim that arises from an act or omission of another pilot or organization of pilots or that relates directly or indirectly to pilot services.

**2. Limitation on liability.** A pilot providing pilot services is not liable for more than \$5,000 in damages or loss caused by any negligent act or omission in the performance of pilot services. A pilot providing piloting services is liable for:

A. Damages or loss arising from the intentional, willful or reckless misconduct of the pilot; or

B. Liability for exemplary damages for intentional, willful or reckless conduct of the pilot for which no other person is jointly or severally liable.

Nothing in this section may be construed to exempt an owner or operator of a vessel from liability for damage or loss caused by that vessel.

**Sec. 22. 38 MRSA §100-A** is enacted to read:

**§100-A. Confidentiality of complaints and investigative records**

**1. During investigation.** All complaints and investigative records of the commission are confidential during the pendency of an investigation. Those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this section, an investigation is concluded when:

A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter IV has been issued;

B. The complaint has been listed on a meeting agenda of the commission;

C. A consent agreement has been executed; or

D. A letter of dismissal has been issued or the investigation has otherwise been closed.

**2. Exceptions.** Notwithstanding subsection 1, during the pendency of an investigation, a complaint or investigative record may be disclosed:

A. To department employees designated by the commissioner;

B. To designated complaint officers of the commission;

C. By a department employee or complaint officer designated by the commissioner when and to the extent considered necessary to facilitate the investigation;

D. To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;

E. When and to the extent considered necessary by the commissioner to avoid imminent and serious harm. The authority of the commissioner to make such a disclosure may not be delegated;

F. Pursuant to rules adopted by the department, when it is determined that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; and

G. To the person investigated on that person's request. The commissioner may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the commissioner determines that disclosure would prejudice the investigation. The authority of the commissioner to make such a determination may not be delegated.

**3. Violation.** A person who knowingly or intentionally makes a disclosure in violation of this section commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.

**Sec. 23. 38 MRSA §101**, as repealed and replaced by PL 1977, c. 696, §334, is amended to read:

**§101. Surrender of suspended or revoked license**

A pilot whose license has been revoked or suspended shall surrender ~~his~~ the license to the commission, which shall retain it until the period of ~~his~~ the pilot's suspension ~~shall expire~~ expires. Any ~~such~~ such suspended pilot who refuses to surrender ~~his~~ the license on demand or continues to pilot commits a civil violation for which a ~~forfeiture penalty~~ penalty not to exceed ~~\$500~~ \$5,000 may be adjudged for each week after demand that ~~he~~ the pilot refuses to ~~so~~ surrender or for each vessel piloted without a license, and the commission may cause to be published in a newspaper of general circulation published in the State a notice that that person has no authority to act as pilot unless and until reinstated by law.

**Sec. 24. 38 MRSA §103**, as enacted by PL 1969, c. 410, §1, is amended to read:

**§103. Lapsed**

Any pilot heretofore licensed by the ~~board~~ commission whose license ~~shall lapse~~ lapses for any reason may be reinstated upon compliance with sections 91 and 93, as if applying for an initial license.

**Sec. 25. 38 MRSA §105**, as amended by PL 1979, c. 127, §206, is repealed.

**Sec. 26. Initial terms of Maine Pilotage Commission members.** Notwithstanding the Maine Revised Statutes, Title 38, section 89 the initial

term for the commission member from the Coastal Zone of Schoodic Point to Port Clyde is 2 years; the initial term for the commission member from the Coastal Zone of Port Clyde to Kittery is one year; the initial term of one member representing the maritime industry is 2 years; and the initial term of one member representing the public is 2 years.

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

Effective May 28, 1999.

## CHAPTER 356

### S.P. 381 - L.D. 1082

#### **An Act to Reauthorize and Amend the Diesel-powered Motor Vehicle Emission Opacity Testing Program**

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

**Whereas,** it is important that this Act takes effect before the diesel-powered motor vehicle emission opacity testing program is repealed on June 30, 1999, which may be before the expiration of the 90-day period; 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. 29-A MRSA §2114**, as enacted by PL 1997, c. 786, §7, is amended to read:

#### **§2114. Diesel-powered Motor Vehicle Emission Opacity Testing Program**

**1. Program established.** The Diesel-powered Motor Vehicle Emission Opacity Testing Program, referred to in this section as the "program," is established within the Department of Environmental Protection. The Department of Environmental Protection shall administer the program in cooperation with the Department of Public Safety.

**2. Diesel-powered motor vehicle.** As used in this section, "diesel-powered motor vehicle" refers only to diesel-powered motor vehicles that have a gross vehicle weight rating of ~~26,001~~ 18,000 or more

pounds ~~and that are used in commerce~~. "Diesel-powered motor vehicle" does not include a truck registered as a farm truck.

#### **3. Testing and repair requirement; penalties.**

A person who causes operation of a diesel-powered motor vehicle shall comply with the requirements of the program, including emission opacity standards and testing and repair requirements. Owners or operators of diesel-powered motor vehicles that have failed opacity standards for the first time have 30 days from the date that the operator was notified of the failure of the test to certify to the department that repairs were made to bring the vehicle into compliance with the opacity standards established pursuant to this section. If certification is not made within 30 days, then owners or operators are assessed a \$250 fine for the first violation; 2nd or subsequent violations are assessed a \$500 fine. A person may not be found in violation of this section until after January 1, 2000.

Only diesel-powered motor vehicles identified by certified inspectors as potential violators of the program's emission opacity standards are subject to testing under this section. Inspectors must be certified pursuant to the procedures for certification specified in 40 Code of Federal Regulations, Part 60, Appendix A, Method 9.

**4. Standards and procedures.** ~~The Commissioner~~ Board of Environmental Protection shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A, that establish standards and procedures to implement ~~continue~~ the program. ~~The standards and procedures~~ These rules must include the following:

A. Emission opacity standards for diesel-powered motor vehicles that are consistent with emission opacity standards for diesel-powered motor vehicles recommended by an interstate association of air quality control divisions in the northeast states;

B. Standards and procedures, including testing methods and standards for test equipment, for safe and effective roadside testing of diesel-powered motor vehicles that operate on public ways of the State for the purpose of enforcing compliance with emission opacity standards;

C. Standards and procedures for the administration and enforcement of the program. The rules may establish reciprocity agreements with other states that recognize enforcement actions related to diesel-powered motor vehicle testing programs in other states; ~~and~~

D. Repair requirements and standards and procedures for certification of repairs; and