# 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**

**Sec. 3. 5 MRSA §19203-A, sub-§4-A** is enacted to read:

**4-A. Occupational exposure in health care setting.** When a bona fide occupational exposure occurs in a health care setting, authorization to test the source patient for HIV must be obtained from that patient if the patient is present or can be contacted at the time of exposure and is capable of providing consent. At the time of exposure, if the source patient is not present and can not be contacted or is incapacitated, then any reasonably available member of the following classes of individuals, in descending order of priority, may authorize an HIV test on a blood or tissue sample from the source patient:

A. The patient's legal guardian;

B. An individual known to have power of attorney for health care for the patient;

C. An adult relative, by blood, marriage or adoption;

D. An adult with whom the patient has a meaningful social and emotional relationship; and

E. A physician who is familiar with occupational exposures to HIV.

The individual authorizing the HIV test must be informed of the nature, reliability and significance of the HIV test and the confidential nature of the test.

If the person contacted for authorization refuses to authorize the test, the test may not be conducted unless consent is obtained from the source patient or from the court pursuant to section 19203-C.

This subsection does not authorize a person described in paragraphs A to D to receive the test result. Test results must be given to the exposed person, to a personal physician if designated by the exposed person and to either the physician who authorizes the test or the health care provider who manages the occupational exposure.

The patient may choose not to be informed about the result of the HIV test. Without express patient authorization, the results of the HIV test and the fact that an HIV test was done as a result of an occupational exposure in a health care setting may not appear in the patient's health care records. The exposed individual's occupational health care record may include documentation of the occupational exposure and, if the record does not reveal the source patient's identity, the results of the source patient's HIV test.

**Sec. 4. 5 MRSA §19203-C, sub-§1, ¶C,** as amended by PL 1995, c. 404, §7, is further amended to read:

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, or, in the event of an occupational exposure in a health care setting when the source patient was not present and could not be contacted or was incapacitated, the individual contacted for authorization to test the source patient's blood or tissue sample denied the authorization.

**Sec. 5. Study.** The Department of Human Services, Bureau of Health, shall convene a study group to examine options for expanding the application of this Act to other groups of employers and employers subject to the federal OSHA regulation on blood-borne pathogens. The group must include representatives of the Maine HIV Advisory Committee, hospitals and other health care providers, employers, labor and state or federal officials with expertise in the OSHA blood-borne pathogen standard.

By December 31, 1999, the department shall present a report to the Joint Standing Committee on Judiciary with information regarding various options and a recommendation on expansion of the application of this Act. The Joint Standing Committee on Judiciary is authorized to report out legislation to the Second Regular Session of the 119th Legislature by March 1, 2000 in response to the report.

See title page for effective date.

## CHAPTER 430

**H.P. 1537 - L.D. 2192**

### An Act to Prohibit Law Suits by Municipalities Against Firearm or Ammunition Manufacturers

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

**Sec. 1. 30-A MRSA §2005** is enacted to read:

**§2005. Civil action against firearm and ammunition manufacturers**

A municipality may not commence a civil action against any firearm or ammunition manufacturer for damages, abatement or injunctive relief resulting from or relating to the lawful design, manufacture, marketing or sale of firearms or ammunition to the public. This section does not prohibit a municipality from bringing an action against a firearm or ammunition manufacturer or dealer for breach of contract or

warranty for firearms or ammunition purchased by a municipality.

See title page for effective date.

## CHAPTER 431

### S.P. 732 - L.D. 2082

### An Act to Reduce the Cost of Prescription Drugs to Qualifying Residents of the State

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

**Sec. 1. 22 MRSA §254-B** is enacted to read:

**§254-B. Maine resident low-cost prescription drug program**

The department shall conduct a program, referred to in this section as the "Maine resident low-cost prescription drug program" or the "program," to provide low-cost prescription drugs to qualifying residents of this State.

**1. Agreement.** A drug manufacturer that sells prescription drugs in this State may voluntarily elect to enter into a rebate agreement with the department. The agreement must be modeled after Section 1927 of the United States Social Security Act and must include the requirement that the manufacturer make rebate payments to the State each calendar quarter or according to a schedule established by the department.

**2. Rebate amount.** The rebate amount required from a manufacturer to the State is equivalent to the rebate amount calculated under the Medicaid Rebate Program pursuant to 42 United States Code, Section 1396r-8.

**3. Discount to qualifying residents.** Any participating retail pharmacy that sells drugs covered by an agreement pursuant to subsection 1 shall discount the retail price of those drugs sold to qualifying residents. The department shall adopt rules to establish discounts for covered drugs and rules that promote the use of efficacious and lower-cost drugs. The amount of the discount for covered drugs must be determined by considering an average of all rebates provided pursuant to subsection 2, weighted by sales of drugs subject to these rebates over the most recent 12-month period for which the information is available. The total aggregate discount amount for all covered drugs must be equivalent to the total aggregate rebate amount for all covered drugs sold, less the administrative costs of the program pursuant to subsection 6.

**4. Operation of program.** Participating retail pharmacies shall submit claims to the department to verify the amount of discount due the resident. The department may not impose charges on retail pharmacies that submit claims or receive payments under the program. The retail pharmacies shall charge residents the current retail price charged by each retail pharmacy for that prescription drug to persons purchasing that drug who are not covered by insurance or 3rd-party payor plans, less the discount amount, pursuant to subsection 3.

The amount of the discount must be indicated on the resident's receipt. On a weekly or biweekly basis, the retail pharmacy must be reimbursed by the department for drug discounts provided to residents. The department shall collect the necessary utilization data from the retail pharmacies submitting claims in order to comply with 42 United States Code, Section 1396r-8. The department shall protect the confidentiality of all information subject to confidentiality protection under state and federal law, rule or regulation.

**5. Discrepancies in rebate amounts.** Discrepancies in rebate amounts must be resolved using the process established in this subsection.

A. If there is a discrepancy in the manufacturer's favor between the amount claimed by a pharmacy and the amount rebated by the manufacturer, the department, at the department's expense, may hire a mutually agreed-upon independent auditor. Following the audit, if a discrepancy still exists, the manufacturer shall justify the reason for the discrepancy or make payment to the department for any additional amount due.

B. If there is a discrepancy against the interest of the manufacturer in the information provided by the department to the manufacturer regarding the manufacturer's rebate, the manufacturer, at the manufacturer's expense, may hire a mutually agreed-upon independent auditor to verify the accuracy of the data supplied to the department. Following the audit, if a discrepancy still exists, the department shall justify the reason for the discrepancy or refund to the manufacturer any excess payment made by the manufacturer.

C. Following the procedures established in paragraph A or B, either the department or the manufacturer may request a hearing before the Administrative Hearings Unit. Supporting documentation must accompany the request for a hearing.

**6. Administrative and associated computer costs for program.** Administrative and computer costs for the program must be funded solely from the