

# 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**

result in a finding made by a majority of the panel against that party and that finding ~~shall have~~ has the same effect as a finding against that party under section 2857.

**Sec. 3. 24 MRSA §2855, sub-§1**, as amended by PL 1991, c. 505, §5, is further amended to read:

**1. Negligence and causation.** At the conclusion of the presentations, the panel shall make its findings in writing within 30 days by answering the following questions:

A. Whether the acts or omissions complained of ~~or found by the panel to exist, or as agreed by the parties,~~ constitute a deviation from the applicable standard of care by the health care practitioner or health care provider charged with that care;

A-1. If the defendant is a participant in the medical liability demonstration project established under subchapter IX and has raised as an affirmative defense compliance with the practice parameters or risk management protocols adopted under section 2973, whether the defendant complied with an applicable parameter or protocol establishing the applicable standard of care;

B. Whether the acts or omissions complained of proximately caused the injury complained of ~~or as found by the panel or as agreed by the parties;~~ and

C. If negligence on the part of the health care practitioner or health care provider is found, whether any negligence on the part of the patient was equal to or greater than the negligence on the part of the practitioner or provider.

**Sec. 4. 24 MRSA §2857, sub-§1**, as amended by PL 1985, c. 804, §§12 and 22, is repealed and the following enacted in its place:

**1. Proceedings before panel confidential.** Except as provided in this section and section 2858, all proceedings before the panel, including its final determinations, must be treated in every respect as private and confidential by the panel and the parties to the claim.

A. The findings and other writings of the panel and any evidence and statements made by a party or a party's representative during a panel hearing are not admissible and may not otherwise be submitted or used for any purpose in a subsequent court action and may not be publicly disclosed, except that:

(1) Any testimony or writings made under oath may be used in subsequent proceedings for purposes of impeachment; and

(2) The party who made the statement or presented the evidence may agree to the submission, use or disclosure of that statement or evidence.

B. If the panel findings as to both the questions under section 2855, subsection 1, paragraphs A and B are unanimous and unfavorable to the person accused of professional negligence, the findings are admissible in any subsequent court action for professional negligence against that person by the claimant based on the same set of facts upon which the notice of claim was filed.

C. If the panel findings as to any question under section 2855 are unanimous and unfavorable to the claimant, the findings are admissible in any subsequent court action for professional negligence against the person accused of professional negligence by the claimant based on the same set of facts upon which the notice of claim was filed.

The confidentiality provisions of this section do not apply if the findings were influenced by fraud.

**Sec. 5. Application.** This Act applies to actions for professional negligence commenced under the Maine Revised Statutes, Title 24, section 2853 on or after the effective date of this Act.

See title page for effective date.

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**CHAPTER 524**

**H.P. 1522 - L.D. 2172**

**An Act Requiring That the Costs of Transporting Highway Construction and Maintenance Materials to Isle au Haut by Barge or Ferry be Paid from the Highway Fund**

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

**Sec. 1. 29-A MRSA §203-A** is enacted to read:

**§203-A. Shipping highway construction and maintenance materials to Isle au Haut; costs paid from Highway Fund**

The costs of transporting highway construction and maintenance materials to Isle au Haut by boat must be paid from the Highway Fund in the amount of

\$50,000 in fiscal year 1999-00 and \$10,000 in each fiscal year thereafter.

**Sec. 2. Allocation.** The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

	1999-00	2000-01
<b>TRANSPORTATION, DEPARTMENT OF</b>		
<b>Highway Maintenance</b>		
All Other	\$50,000	\$10,000
Allocates funds to pay for the costs of transporting highway construction and maintenance materials to Isle au Haut.		

See title page for effective date.

**CHAPTER 525**

**S.P. 839 - L.D. 2238**

**An Act to Clarify the Solid Waste Laws as They Relate to the Exception to the Ban on New Commercial Landfills**

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

**Whereas,** waste management has long been a priority of the State; and

**Whereas,** it is essential that the laws regarding waste management be clear to owners, operators and users of commercial waste facilities for effective waste management in the State; and

**Whereas,** the definition of "commercial waste facility" in the laws regarding waste management may be misinterpreted as the definition is presently written; and

**Whereas,** a misinterpretation of the waste management laws may result in the improper disposal of waste that, once done, can not be easily undone; 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. 38 MRSA §1303-C, sub-§6,** as enacted by PL 1989, c. 585, Pt. E, §4, is repealed and the following enacted in its place:

**6. Commercial solid waste disposal facility.** "Commercial solid waste disposal facility" means a solid waste disposal facility except as follows:

A. A solid waste facility owned by a public waste disposal corporation under section 1304-B, subsection 5 as long as the public waste disposal corporation controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility;

B. A solid waste facility owned by a municipality under section 1305 as long as the municipality controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility;

C. A solid waste facility owned by a refuse disposal district under chapter 17 as long as the refuse disposal district controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility;

D. A solid waste facility owned and controlled by the office under chapter 24;

E. A solid waste facility owned and controlled by a single entity that generates at least 85% of the solid waste disposed of at the facility, except that the facility may accept from other sources, on a nonprofit basis, an amount of solid waste that is no more than 15% of all solid waste accepted on an annual basis. For purposes of this paragraph, "single entity" means an individual, partnership, corporation or limited liability company that is not engaged primarily in the business of treating or disposing of solid waste or special waste. This paragraph does not apply if an individual partner, shareholder, member or other ownership interest in the single entity disposes of waste in the solid waste facility. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph; or

F. A private corporation that accepts material-separated, refuse-derived fuel as a supplemental fuel and does not burn waste other than its own.

**Sec. 2. 38 MRSA §1303-C, sub-§7,** as amended by PL 1995, c. 656, Pt. A, §20, is repealed.