

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTIETH LEGISLATURE**  
**FIRST REGULAR SESSION**  
**December 6, 2000 to June 22, 2001**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 21, 2001**

**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**  
**2001**

Allocates additional funds for the Lobster Promotion Council.

See title page for effective date.

**CHAPTER 227**

**H.P. 581 - L.D. 736**

**An Act to Require State Approval Prior to Introducing Wolves into Maine**

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

**Sec. 1. 12 MRSA §7001, sub-§45** is enacted to read:

**45. Wolf.** "Wolf" means the Gray Wolf (*Canis lupus*).

**Sec. 2. 12 MRSA §7760** is enacted to read:

**§7760. Introduction of wolves to State; approval required**

A person may not release a wolf in the State for the purpose of reintroducing that species into the State without the prior approval of both Houses of the Legislature and the commissioner.

See title page for effective date.

**CHAPTER 228**

**H.P. 805 - L.D. 1060**

**An Act to Relieve Counties from the Expense and Responsibility of Transporting Certain Prisoners Between Correctional Facilities and Courts**

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

**Sec. 1. 34-A MRSA §1205, sub-§3, ¶C,** as amended by PL 1991, c. 314, §15, is repealed.

**Sec. 2. 34-A MRSA §3073** is enacted to read:

**§3073. Transportation to and from courts**

Notwithstanding any other provision of law, transportation of a prisoner between a correctional facility and a court in connection with the prosecution of the prisoner for a crime committed within a correctional facility is the responsibility of the

department, unless the department and the sheriff agree that the sheriff will undertake the responsibility of the transportation at an agreed-upon rate of reimbursement to the county by the department.

See title page for effective date.

**CHAPTER 229**

**S.P. 509 - L.D. 1596**

**An Act to Amend the Maine Emergency Medical Services Act of 1982**

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

**Sec. 1. 4 MRSA §152, sub-§9,** as amended by PL 1999, c. 731, Pt. ZZZ, §4 and affected by §42, is further amended to read:

**9. Licensing jurisdiction.** Except as provided in Title 5, section 10004; Title 8, section 279-B; Title 10, section 8003, subsection 5; Title 20-A, sections 10712 and 10713; Title 29-A; Title 32, chapters 2-B, 105 and 114; and Title 35-A, section 3132, exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the agency. The District Court has original jurisdiction upon complaint of a licensing agency to determine whether renewal or reissuance of a license of that agency may be refused. The District Court has original concurrent jurisdiction to grant equitable relief in proceedings initiated by an agency or the Department of the Attorney General alleging any violation of a license or licensing laws or rules.

Notwithstanding any other provisions of law, a licensing agency may not reinstate or otherwise affect a license suspended, revoked or modified by the District Court pursuant to a complaint filed by the Attorney General without the approval of the Attorney General;

**Sec. 2. 5 MRSA §10051, sub-§1,** as amended by PL 1999, c. 547, Pt. B, §19 and affected by §80, is further amended to read:

**1. Jurisdiction.** Except as provided in section 10004; Title 8, section 279-B; Title 10, section 8003; Title 20-A, sections 10712 and 10713; Title 29-A; Title 32, chapters 2-B, 105 and 114; and Title 35-A, section 3132, the District Court has exclusive jurisdiction upon complaint of any agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the

agency and has original jurisdiction upon complaint of an agency to determine whether renewal or reissuance of a license of that agency may be refused.

**Sec. 3. 32 MRSA §85, sub-§2**, as amended by PL 1991, c. 742, §1, is further amended to read:

**2. Advanced emergency medical treatment.**

With the advice and consultation noted in subsection 1, the board may provide, by rule, which advanced skills, techniques and judgments may be supervised by a physician by means of standing orders, by voice radio and by other means. ~~Nothing in this section may preclude protocols in a particular region from imposing controls more strict than those permitted by the board's rules on the use of a skill, technique or judgment.~~ In every case, advanced emergency medical treatment must be given in accordance with protocols adopted by the Medical Direction and Practices Board.

The board may establish by rule appropriate licensure levels for advanced emergency medical technicians and fix the qualifications for persons to hold those licenses.

**Sec. 4. 32 MRSA §88, sub-§§3 and 4** are enacted to read:

**3. Authority.** In addition to authority otherwise conferred, the board or, as delegated, its subcommittee or staff may, for each violation of applicable laws, rules or conditions of licensure or registration, in accordance with the procedures established in section 90-A and any rules adopted by the board, take one or more of the following actions:

A. Issue warnings, censures or reprimands to a licensee. Each warning, censure or reprimand issued must be based upon violations of different applicable laws, rules or conditions of licensure or must be based upon separate instances of actionable conduct or activity;

B. Suspend a license or registration for up to 90 days for each violation of applicable laws, rules and conditions of licensure or registration or for each instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively and may not exceed one year in total. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the licensee's record;

C. Impose civil penalties of up to \$1,500 for each violation of applicable laws, rules and conditions of licensure or for each instance of actionable conduct or activity;

D. Impose conditions of probation upon an applicant or licensee. Probation may run for that time period as the board, its subcommittee or staff determines appropriate. Probation may include conditions such as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or licensee; and other conditions as the board, its subcommittee or staff determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant or licensee. Failure to comply with the conditions of probation is a ground for disciplinary action against a licensee; or

E. Execute a consent agreement that resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the applicant or licensee, the board, its subcommittee or staff and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the District Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a professional license. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

**4. Authority to issue letters of guidance.** In addition to authority otherwise conferred, the board or, as delegated, its subcommittee or staff may issue a letter of guidance or concern to an applicant or licensee.

A. Letter of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations and express concern over action or inaction by the licensee or applicant that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action of any form. Notwithstanding any other provision of law, a letter of guidance or concern is not confidential. The board or, as delegated, its subcommittee or staff may place a letter of guidance or concern, together with any underlying complaint, report and investigation materials, in a licensee's or applicant's file for a specified amount of time, not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and considered by the board, its subcommittee or staff in any subsequent action commenced

against the applicant or licensee within the specified time frame.

**Sec. 5. 32 MRSA §90-A, sub-§1**, as amended by PL 1991, c. 588, §19, is further amended to read:

**1. Disciplinary proceedings and sanctions.**

The board ~~or, as delegated, its subcommittee or staff,~~ shall investigate a complaint, ~~on the board's~~ its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or of any rules adopted by the board. Investigation may include an informal conference ~~or a hearing or both~~ before the board, its subcommittee or staff to determine whether grounds exist for suspension, revocation or denial of a license or ~~as otherwise determined necessary by the board to the fulfillment of its responsibilities under for taking other disciplinary action pursuant to this chapter.~~ Hearings must be conducted in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable. The board, its subcommittee or staff may subpoena witnesses, records and documents, including records and documents maintained by a health care facility or other service organization or person related to the delivery of emergency medical services, in any investigation or hearing it conducts.

**Sec. 6. 32 MRSA §90-A, sub-§3**, as amended by PL 1993, c. 600, Pt. A, §35, is further amended to read:

**3. Informal conference.**

If, in the opinion of the board, the factual basis of the complaint is or may be true and the complaint is of sufficient gravity to warrant further action, the board or staff may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The conference must be conducted in executive session of the board, subcommittee or staff, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent formal administrative or judicial hearing unless all parties consent. The licensee may, without prejudice, refuse to participate in an informal conference if the licensee prefers to ~~immediately hold a formal~~ request an adjudicatory hearing. If the licensee participates in the informal conference, the licensee waives the right to object to a participant at the hearing who participated at the informal conference.

**Sec. 7. 32 MRSA §90-A, sub-§4**, as amended by PL 1999, c. 547, Pt. B, §58 and affected by §80, is further amended to read:

**4. Further action.** If the board, its subcommittee or staff finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, ~~the board it~~ may take any of the following actions.

A. The board, its subcommittee or staff may enter into a consent agreement, with the consent of the licensee, that fixes the period and terms of probation necessary to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Department of the Attorney General.

B. If a licensee voluntarily surrenders a license, the board, its subcommittee or staff may negotiate stipulations necessary to ensure protection of the public health and safety and the rehabilitation or education of the licensee. These stipulations may be set forth only in a consent agreement signed by the board, the licensee and the Department of the Attorney General.

C. If the board, its subcommittee or staff concludes that modification, nonrenewal ~~or~~ nonissuance or suspension pursuant to section 88, subsection 3 of a license or imposition of a civil penalty pursuant to section 88, subsection 3 is in order, the board shall so notify the applicant-licensee and inform the applicant-licensee of the applicant-licensee's right to request an adjudicatory hearing. If the applicant-licensee requests an adjudicatory hearing in a timely manner, the adjudicatory hearing must be held by the board in accordance with ~~the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.~~ At the conclusion of the hearing, the board shall forward a written finding of facts and recommended decision to the commissioner. Opportunity must then be given for the applicant-licensee and the board to file comments on the findings of fact and recommended decision to the commissioner. The commissioner, after considering the findings, recommendations and comments, shall either adopt or reject the recommended decision within a reasonable period of time. If the commissioner rejects the recommendation or issues a modified decision, the commissioner's written decision must contain the specific reasons for modifying or rejecting the recommended decision. The commissioner's decision is the department's final decision. If the applicant-licensee wishes to appeal the final decision of the board, the applicant-licensee shall file a petition for review with the Superior Court within 30 days of receipt of the board's decision. Review under this paragraph must be conducted pursuant to Title 5, chapter 375, subchapter VII.

D. Except in the specific circumstances where Title 5, section 10004 may be invoked, if the board or its staff concludes that suspension beyond the authority conferred by section 88 or revocation of the license is in order, the board or its staff shall ~~hold a hearing or~~ request the Attorney General to file a complaint in the District Court in accordance with Title 4, chapter 5 and the Maine Administrative Procedure Act to commence either full or emergency proceedings.

**Sec. 8. 32 MRSA §90-A, sub-§5**, as amended by PL 1993, c. 575, §3 and c. 600, Pt. A, §36, is further amended to read:

**5. Grounds for licensing action.** ~~The board may suspend or revoke a license pursuant to Title 5, section 10004. Refusal to issue or renew a license or to modify, suspend or revoke a license of a person, service or vehicle may be predicated on the following grounds:~~ A decision to take action against any applicant or licensee pursuant to this chapter or any rules adopted pursuant to this chapter, including, but not limited to, a decision to impose a civil penalty or to refuse to issue or renew a license or to modify, suspend or revoke a license of a person, service or vehicle, may be predicated on the following grounds:

A. Fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued;

B. Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of the licensee's patients;

C. A professional diagnosis of a mental or physical condition that has affected or is likely to affect the licensee's performance in a manner that endangers the health or safety of the licensee's patients;

D. Aiding or abetting the practice of emergency care by a person not duly licensed under this chapter who purports to be so;

E. Incompetent professional practice as evidenced by:

(1) Demonstrated inability to respond appropriately to a client, patient or the general public; or

(2) Inability to apply principles, skills or knowledge necessary to successfully carry out the practice for which the licensee is licensed;

F. Violation of any reasonable standard of professional behavior, conduct or practice that has

been established in the practice for which the licensee is licensed;

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement that relates directly to the practice for which the licensee is licensed, conviction of a crime for which incarceration for one year or more may be imposed or conviction of a crime defined in Title 17-A, chapter 11 or 45;

H. Any violation of this chapter or any rule adopted by the board; or

I. For other purposes as specified by rules or law.

**Sec. 9. 32 MRSA §91-A**, as amended by PL 1991, c. 588, §20, is repealed and the following enacted in its place:

#### **§91-A. Appeals**

Any person or organization aggrieved by the decision of the staff or a subcommittee of the board in waiving the application of any rule, in modifying or refusing to issue or renew a license, in taking any disciplinary action pursuant to this chapter or rules adopted pursuant to this chapter or in the interpretation of this chapter or rules adopted pursuant to this chapter may appeal the decision to the board for a final decision. The staff's or subcommittee's decision stands until the board issues a decision to uphold, modify or overrule the staff's or subcommittee's decision. In the case of nonrenewal, the person or organization must be afforded an opportunity for hearing in accordance with this chapter and the Maine Administrative Procedure Act.

Any person or organization aggrieved by a final decision of the board in waiving the application of any rule, in refusing to issue or renew a license, in taking any disciplinary action pursuant to this chapter or rules adopted pursuant to this chapter or in the interpretation of this chapter or any rule adopted pursuant to this chapter may appeal the board's decision to the Superior Court in accordance with Title 5, chapter 375, subchapter VII.

**Sec. 10. 32 MRSA §92**, as amended by PL 1991, c. 588, §§21 and 22, is further amended to read:

#### **§92. Confidentiality of information**

Any reports, information or records provided to the board or department pursuant to this chapter must be provided to the licensee and are confidential insofar as the reports, information or records identify or permit identification of any patient, provided that the board may disclose any confidential information as follows:

**1. Hearings or proceedings.** ~~It~~ Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which information is relevant; and,

**2. Consent agreements or settlement.** ~~It~~ Confidential information may be released in a consent agreement or other written settlement, when the information constitutes or pertains to the basis of board action.

**3. During investigation.** All complaints and investigative records of the board 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 subsection, an investigation is concluded when:

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

B. A consent agreement has been executed; or

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

**4. Exceptions.** Notwithstanding subsection 3, during the pendency of an investigation, a complaint or investigative record may be disclosed:

A. To Maine Emergency Medical Services employees designated by the director;

B. To designated complaint officers of the board;

C. By a Maine Emergency Medical Services employee or complaint officer designated by the board 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 director to avoid imminent and serious harm. The authority of the director 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; or

G. To the person investigated on request of that person. The director may refuse to disclose part

or all of any investigative information, including the fact of an investigation when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated.

**Sec. 11. 32 MRSA §92-A, sub-§2,** as amended by PL 1991, c. 588, §23, is repealed and the following enacted in its place:

**2. Confidentiality.** All proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be obtained by discovery from the committee, the board or its staff.

See title page for effective date.

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**CHAPTER 230**

**H.P. 1011 - L.D. 1348**

**An Act to Ensure the Financial Stability and Effectiveness of Certain Pollution Abatement Programs Administered by the Department of Environmental Protection**

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

**Sec. 1. 38 MRSA §353-B, sub-§2,** as enacted by PL 1997, c. 794, Pt. B, §7, is amended to read:

**2. Maximum fee amounts and rates.** Waste discharge license fees are as set out in this section.

A. The base and maximum fees that may be assessed to categories of discharge activities are as follows.

Discharge Group	Base fee not to exceed	Maximum fee for individual in group
Publicly owned treatment facilities, greater than 6,000 gallons per day but less than 5 million gallons per day and no significant industrial waste	annual fee \$175	none