

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.

J.S. McCarthy Company
Augusta, Maine
2001

conducted at agricultural fairs may be conducted only with tickets, tokens or other device approved by the Chief of the State Police by rule distributed by the agricultural fair society.

4. Games conducted at agricultural fairs by members of agricultural society or bona fide nonprofit. Beginning January 1, ~~2001~~ 2002, games of chance operated and conducted solely by members of an agricultural fair society or games of chance operated and conducted by members of bona fide nonprofit organizations on the grounds of the agricultural society and during the annual fair of the agricultural society may use cash, tickets, tokens or other device approved by the Chief of the State Police by rule.

Notwithstanding any other provision of this section, the tickets, tokens or other device approved by the Chief of the State Police must be unique to the agricultural society and may be in denominations from 25¢ to 50¢. The tickets, tokens or device approved by the Chief of the State Police may be sold and redeemed only by a person who has been a member or active volunteer of the agricultural society for at least 2 fair seasons. The agricultural society has the burden of proof for demonstrating the qualification of members or active volunteers.

Sec. 2. Review by January 15, 2002 and 2003. The Chief of the State Police or the chief's designee and a representative from the Department of Agriculture, Food and Rural Resources shall report regarding the operation of games of chance at agricultural fairs to the joint standing committee of the Legislature having jurisdiction over games of chance by January 15, 2002 and again by January 15, 2003.

Sec. 3. Retroactivity. This Act applies retroactively to January 1, 2001.

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

Effective June 11, 2001.

CHAPTER 385

S.P. 429 - L.D. 1409

An Act to Address the Health Effects of Mercury Fillings

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

Sec. 1. 32 MRSA §1094-C is enacted to read:

§1094-C. Brochure and poster

1. Display. Beginning July 1, 2002, a dentist who uses mercury or a mercury amalgam in any dental procedure shall display the poster adopted by the Department of Human Services, Bureau of Health under this section in the public waiting area of that dentist's office and must provide each patient with a copy of the brochure adopted by the bureau under this section.

2. Rules. The Director of the Bureau of Health within the Department of Human Services shall develop a brochure that explains the potential advantages and disadvantages to oral health, overall human health and the environment of using mercury or mercury amalgam in dental procedures. The brochure must describe what alternatives are available to mercury amalgam in various dental procedures and what potential advantages and disadvantages are posed by the use of those alternatives. The brochure may also include other information that contributes to the patient's ability to make an informed decision when choosing between the use of mercury amalgam or an alternative material in a dental procedure, including, but not limited to, information on the durability, cost, aesthetic quality or other characteristics of the mercury amalgam and alternative materials. The director shall also develop a poster that informs patients of the availability of the brochure.

The Director of the Bureau of Health shall, in consultation with the Department of Environmental Protection, adopt the brochure and the poster described in this subsection as major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. The brochure and poster must be provisionally adopted and submitted to the Legislature for consideration during the Second Regular Session of the 120th Legislature. Copies of the brochure and poster must be provided to dentists in the State at cost.

See title page for effective date.

CHAPTER 386

S.P. 580 - L.D. 1758

An Act to Amend the Laws Pertaining to the Department of Corrections

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

Sec. 1. 17-A MRSA §101, sub-§5, as enacted by PL 1981, c. 324, §24, is amended to read:

5. For purposes of this chapter, use by a law enforcement officer ~~or~~, a corrections officer or a corrections supervisor of chemical mace or any similar substance composed of a mixture of gas and chemicals

which has or is designed to have a disabling effect upon human beings is use of nondeadly force.

Sec. 2. 17-A MRSA §757-A is enacted to read:

§757-A. Trafficking of tobacco in adult correctional facilities

1. A person is guilty of trafficking tobacco in an adult correctional facility if:

A. That person intentionally conveys or attempts to convey tobacco or tobacco products to a person confined in an adult correctional facility that has banned the use of tobacco or tobacco products by prisoners; or

B. That person is confined in an adult correctional facility that has banned the use of tobacco or tobacco products by prisoners and the person intentionally obtains or possesses tobacco or tobacco products.

2. As used in this section, "adult correctional facility" means a county jail or correctional facility other than a juvenile facility under the control of the Department of Corrections.

3. Trafficking of tobacco in an adult correctional facility is a Class E crime.

Sec. 3. 17-A MRSA §1202, sub-§1-B, as enacted by PL 1999, c. 492, §1, is amended to read:

1-B. Notwithstanding subsection 1, the period of probation for a person convicted of a Class D or Class E crime involving domestic violence must be 2 years, except that the term of probation must be terminated at the time the probationer completes a certified batterers' intervention program as defined in Title 19-A, section 4014, unless there is another condition of probation that has yet to be met.

Sec. 4. 19-A MRSA §4014, sub-§2, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. 5. 22 MRSA §2883, as amended by PL 1995, c. 560, Pt. K, §82 and affected by §83, is further amended by adding at the end a new paragraph to read:

As used in this section, "burial" includes cremation and burial of the cremated remains of the body.

Sec. 6. 25 MRSA §2804-D, as amended by PL 1997, c. 14, §1, is further amended to read:

§2804-D. Basic corrections training

1. Required. As a condition to the continued employment of any person as a full-time corrections officer by a municipality, a county, the State or any other nonfederal employer, that person must successfully complete, within the first 12 months of employment, a basic training course of not less than 80 hours as approved by the board. Thereafter, as a condition of continued employment as a full-time corrections officer, the officer must satisfactorily maintain the basic certification. The board, under extenuating and emergency circumstances in individual cases, may extend the 12-month period for not more than 90 days. The board, in individual cases, may waive basic training requirements when the facts indicate that an equivalent course has been successfully completed in another state or federal jurisdiction within the 2 years immediately preceding employment. This section applies to any person employed as a full-time corrections officer on or after July 6, 1978. Administrators of facilities where there are corrections officers who are not full-time are encouraged to develop an orientation program for those persons. A full-time correctional trade instructor hired after January 1, 2002 must meet the training requirements established under this subsection for full-time corrections officers.

Sec. 7. 32 MRSA §7154, 2nd ¶, as amended by PL 1979, c. 541, Pt. B, §41, is further amended to read:

~~It shall be~~ is unlawful for ~~any~~ a polygraph examiner conducting a polygraph examination to ask any questions pertaining to sexual behavior of any type or questions that could be construed as being sexually oriented, unless the examination is conducted in the course of either a criminal investigation by law enforcement officials or in the course of civil litigation in which sexual behavior is at issue or is conducted for the purpose of ensuring compliance with court-ordered sex offender treatment. This prohibition does not apply to polygraph examinations for applicants for positions in law enforcement agencies. If the polygraph examination is conducted for the purpose of ensuring compliance with court-ordered sex offender treatment, the results of the examination are not admissible into evidence in a court proceeding.

Sec. 8. 34-A MRSA §1205, sub-§§1 and 2, as enacted by PL 1983, c. 459, §6, are repealed.

Sec. 9. 34-A MRSA §1205, sub-§3, as amended by PL 1991, c. 314, §15, is further amended to read:

3. Additional expenses. ~~All funds appropriated for the purposes of this section and all grants and other funds received by the department for the purposes of this section shall be credited to a special revenue account in the department to be known as the Corre-~~

~~tional Program Improvement Fund~~ Additional expenses must be paid as follows.

~~A. Any state funds appropriated to this special revenue account unexpended at the end of the fiscal year for which the funds are appropriated do not lapse, but shall carry forward into subsequent fiscal years to be expended for the purposes of this section.~~

~~B. No funds appropriated or received under this section may be used for the construction of new facilities or for the reconstruction, renovation or expansion of any existing facilities, except that the funds may be used for minor renovations necessary to meet state or local licensing requirements.~~

C. The commissioner shall pay for additional expenses incurred by the counties in providing security and transportation services to clients who commit new offenses while serving their sentences in state correctional facilities. The effective date of this paragraph is July 1, 1989.

Sec. 10. 34-A MRSA §1205-A is enacted to read:

§1205-A. Correctional Medical Services Fund

This section establishes the Correctional Medical Services Fund to provide the means for the development, expansion, improvement and support of correctional medical services.

1. Commissioner's powers. The commissioner may receive and use, for the purpose of this section, money appropriated by the State, grants from the United States and funds from other sources.

2. Correctional Medical Services Fund. All funds appropriated for the purpose of this section and all grants and other funds received by the department for the purpose of this section must be credited to a special account in the department to be known as the Correctional Medical Services Fund. State funds appropriated to this special account that are unexpended at the end of the fiscal year for which the funds are appropriated do not lapse, but must carry forward into subsequent fiscal years to be expended for the purpose of this section.

Sec. 11. 34-A MRSA §1403, sub-§2, ¶C, as amended by PL 1999, c. 731, Pt. G, §2, is further amended to read:

C. The commissioner shall appoint the following officials to serve at the pleasure of the commissioner:

(1) Associate Commissioner for Adult Services;

(1-A) Associate Commissioner for Juvenile Services; and

~~(2) Assistant to the Commissioner; and~~

(3) Associate Commissioner for Legislative and Program Services.

Sec. 12. 34-A MRSA §3003, sub-§5 is enacted to read:

5. Assessment tools. Documents in the possession of the department used to screen or assess clients, including, but not limited to, questionnaires and test materials, are not public records for purposes of Title 1, chapter 13, subchapter I. The department shall release these documents on request to any other state agency if necessary to carry out the statutory functions of that agency and to any committee or study commission established by the Legislature with authority to examine issues related to mental health.

Sec. 13. 34-A MRSA §3031-A is enacted to read:

§3031-A. Transportation outside the State for medical care

1. Transportation. A person residing in a correctional or detention facility may be transported by the department for medical care outside the State if the facility's treating physician determines the care is necessary and unavailable within the State.

2. Costs. The person, if able, shall pay the cost of transportation and the per diem compensation of the accompanying officers.

Sec. 14. 34-A MRSA §3046, first ¶, as amended by PL 1991, c. 314, §50, is further amended to read:

At the discretion of and under conditions prescribed by the commissioner, a client confined in a correctional or detention facility may attend the funeral of the client's spouse, natural, foster or adoptive mother, father, son, daughter, grandfather or grandmother, grandchild, brother or sister, or the client's stepmother, stepfather, stepson, stepdaughter, stepgrandfather or stepgrandmother, stepgrandchild or stepbrother or stepsister and may be permitted deathbed visits to any of those persons, if the funeral or visit is held within the State.

Sec. 15. Department of Corrections; re-name program. The following General Fund program is renamed as follows: the "Correctional Program Improvement Fund" is renamed the "Correctional Medical Services Fund."

See title page for effective date.

CHAPTER 387

S.P. 546 - L.D. 1692

An Act to Revise Certain Provisions of Maine's Fish and Wildlife Laws

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

Whereas, this legislation needs to be an emergency to prevent laws that will be repealed on April 1, 2001 from being repealed; and

Whereas, confusion exists as to the application of certain laws administered by the Department of Inland Fisheries and Wildlife; and

Whereas, this confusion poses difficulties for the sporting public and those charged with enforcement of these laws; and

Whereas, it is vitally necessary that this confusion be resolved to prevent any injustice or hardship to the hunters, anglers, trappers and recreational vehicle owners of the State; 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. 10 MRSA §1250-K is enacted to read:

§1250-K. Unlawful sale of new snowmobile and new all-terrain vehicle

1. Unlawful sale. A person is guilty of an unlawful sale of a new snowmobile or a new all-terrain vehicle if that person sells more than 2 snowmobiles or all-terrain vehicles per year and does not possess a franchise agreement or contract with a snowmobile or all-terrain vehicle manufacturer and does not possess a dealer's license.

For the purposes of this subsection, "new snowmobile" means a snowmobile, as defined in Title 12, section 7821, subsection 5, that has not been registered in this State or any other state or for which sales tax has not been paid in this State or any other state; and "new all-terrain vehicle" means an all-terrain vehicle, as defined in Title 12, section 7851, subsection 2, that has not been registered in this State or any other state or for which sales tax has not been paid in this State or any other state.

2. Penalty. A violation of this section is a civil violation for which a forfeiture of not less than \$500 and a penalty of not more than \$5,000 may be adjudged.

Sec. 2. 12 MRSA §7014, sub-§5, as enacted by PL 1983, c. 819, Pt. A, §17, is amended to read:

5. Safety. ~~The administration of Assistance with~~ Assistance with programs for hunter safety and for the safe operation of snowmobiles ~~and~~ and watercraft ~~and~~ and all-terrain vehicles;

Sec. 3. 12 MRSA §7016, as enacted by PL 1983, c. 819, Pt. A, §17, is amended to read:

§7016. Division of Public Information and Education

There ~~shall be~~ is, within the Department of Inland Fisheries and Wildlife, ~~a the~~ the Division of Public Information and Education, which ~~shall be~~ is responsible for the administration of programs to increase the public's knowledge and understanding of the inland fisheries and wildlife resources and the management of these resources, including the administration of education programs for hunter safety and for the safe operation of snowmobiles, watercraft and all-terrain vehicles. The division's responsibilities ~~shall~~ include public education, promotion of the inland fisheries and wildlife resources and the dissemination of information.

Sec. 4. 12 MRSA §7035, sub-§1, ¶A, as amended by PL 1985, c. 369, §3, is further amended to read:

A. Fishing rules as set forth in the ~~1986 annual~~ 1986 annual Open Water Fishing Regulations folder and the ~~1986 annual~~ 1986 annual Ice Fishing Regulations folder, as printed and distributed to the public, are declared to be official consolidations of fishing rules. ~~Each subsequent biennial revision of these publications shall, upon filing with the Secretary of State, constitute an official consolidation as printed.~~

Sec. 5. 12 MRSA §7035, sub-§16-B is enacted to read: