

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

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
2002

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

Effective April 5, 2002.

CHAPTER 627

H.P. 1435 - L.D. 1932

An Act to Protect Police Horses

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

Sec. 1. 17-A MRSA §752-D is enacted to read:

§752-D. Unlawful interference with law enforcement horses

1. A person is guilty of unlawful interference with a law enforcement horse if the person intentionally or knowingly:

A. Kills, mutilates or permanently disables a horse that the person knows or reasonably should have known is used for law enforcement purposes. Violation of this paragraph is a Class C crime; or

B. Torments, beats, strikes, injures, temporarily disables or otherwise mistreats a horse that the person knows or reasonably should have known is used for law enforcement purposes. Violation of this paragraph is a Class D crime.

See title page for effective date.

CHAPTER 628

H.P. 1611 - L.D. 2108

An Act to Amend the Maine Overtime Pay Provisions Regarding Certain Drivers and Drivers' Helpers

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

Whereas, this Act is important to the economy of this 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. 26 MRSA §664, sub-§3, ¶E, as enacted by PL 1995, c. 305, §1, is amended to read:

E. Restaurants and other eating establishments; and

Sec. 2. 26 MRSA §664, sub-§3, ¶F, as amended by PL 1997, c. 136, §1, is further amended to read:

F. The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:

- (1) Agricultural produce;
- (2) Meat and fish products; and
- (3) Perishable foods.

Individuals employed, directly or indirectly, for or at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection-;

Sec. 3. 26 MRSA §664, sub-§3, ¶¶G to J are enacted to read:

G. A driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section. This paragraph is repealed August 31, 2003;

H. Effective September 1, 2003, a driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section if the driver or driver's helper is paid overtime pay reasonably equivalent to that required by this section for all hours worked in excess of 40 per week. The Department of Labor may adopt rules governing the determination of payment methods that satisfy the "reasonably equivalent" standard set forth in this paragraph. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A;

I. A driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section and who is represented for purposes of collective bargaining by a labor organization certified by the National Labor Relations Board that is a party to a collective bargaining agreement that intends to regulate the rate of pay to be paid the driver or driver's helper; and

J. A driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section and who is employed by an entity that is party to a contract with the Federal Government or an agency of the Federal Government that dictates the minimum hourly rate of pay to be paid the driver or driver's helper.

Sec. 4. Legislative intent; findings. The Legislature finds that the practice in the State for at least 30 years has been that interstate truck drivers and other employees involved in interstate trucking have been considered exempt from the Maine overtime law. This practice was developed in reliance on a 1966 written interpretation by the Department of the Attorney General and an interpretation of the Department of Labor that federal overtime law superseded Maine law. These interpretations led the Department of Labor to routinely defer enforcement of overtime laws to the Federal Government. As a result of this longstanding practice, a majority of employers and employees have adjusted their expectations and developed compensation practices that take into account the Department of Labor's interpretation that there is no statutory requirement for overtime pay.

As a result of cases pending before Maine courts in early 2002, the Legislature was asked to enact this interpretation of law. The Legislature now intends to enact the interpretation, retroactive to January 1, 1995. However, in deference to the authority of the judiciary to redress disputes, the Legislature exempts cases pending in Maine courts as of March 20, 2002 from the application of section 3 of this Act.

Sec. 5. Retroactivity. This Act applies retroactively to January 1, 1995 but does not apply to cases pending on March 20, 2002.

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

Effective April 5, 2002.

CHAPTER 629

H.P. 1666 - L.D. 2171

An Act to Withdraw from the Texas Low-level Radioactive Waste Disposal Compact

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

Whereas, prior action of the Maine Legislature and the Congress of the United States calls for

payment to the State of Texas by Maine of \$25,000,000 in 2 or more payments, all of which are initially to be paid by the customers of the State's only nuclear-generating unit pursuant to Maine law and federal regulation; and

Whereas, the Legislature in 1993 enacted Public Law 1993, chapter 400, "An Act Authorizing a Referendum to Ratify the Texas Low-Level Radioactive Waste Disposal Compact with Maine and Vermont and Approving the Compact's Terms," which was subsequently signed by the Governor of this State; and

Whereas, in November 1993 the voters of the State approved Maine's entrance into a low-level radioactive waste compact with Texas and Vermont; and

Whereas, action in the Legislatures of Texas and Vermont and subsequent approval of the Congress of the United States of the "Texas Low-Level Radioactive Waste Disposal Compact Consent Act" (Public Law 105-236) in 1998 caused the Texas Low-level Radioactive Waste Compact to come into existence under both federal and state law; and

Whereas, the State's only nuclear-generating unit ceased operations permanently in 1997 and began the process of physical dismantlement and decommissioning in 1998; and

Whereas, the State's only nuclear-generating unit has completed more than 50% of that decommissioning process and has entered into contractual relationships for the disposal of low-level radioactive waste at commercial facilities in the states of South Carolina and Utah; and

Whereas, the State of Texas has made no progress in siting, licensing, constructing or opening for commercial operation a low-level waste disposal facility as had been contemplated by the compact members; and

Whereas, no other generator of low-level radioactive waste in this State continues to have a need for disposal capacity in Texas in view of the facilities currently accepting such waste in South Carolina and Utah; 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: