

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2004

1. Term of license; renewal. All licenses to practice dental radiography issued by the board are valid for 5 years from the date of issuance and may be renewed upon application to the board and payment of a renewal fee, which may not exceed ~~\$50~~ \$125.

Sec. 17. 32 MRSA §1100-S is enacted to read:

§1100-S. Mental or physical examination

For the purposes of this section, by application for and acceptance of a license to practice, a licensed dental radiographer is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a dental radiographer to submit to an examination whenever the board determines the dental radiographer may be suffering from a mental illness that may be interfering with the competent practice of dental radiography or from the use of intoxicants or drugs to an extent that they are preventing the dental radiographer from practicing dental radiography competently and with safety to patients. A dental radiographer examined pursuant to an order of the board may not prevent the testimony of the examining individual or prevent the acceptance into evidence of the report of an examining individual. Failure to comply with an order of the board to submit to a mental or physical examination results in the immediate suspension of the license of the dental radiographer by order of the District Court until the dental radiographer submits to the examination.

Sec. 18. Existing members. The dentist members of the Board of Dental Examiners holding office on the effective date of this Act hold office as members of the board for the terms for which they were appointed. The first dentist board member position that expires after the effective date of this Act is terminated upon expiration. Upon termination of the dentist board member position, the dental hygienist board member position created pursuant to this Act is established.

Sec. 19. Denturist scope of practice and sunrise review. The Commissioner of Professional and Financial Regulation shall, pursuant to the Maine Revised Statutes, Title 32, chapter 1-A, subchapter 2, conduct an independent assessment concerning expansion of the scope of practice of denturists under Title 32, section 1100-B to include fabrication and insertion of partial dentures and dentures over implants. The commissioner shall submit a report to the joint standing committee of the Legislature having jurisdiction over business, research and economic development issues no later than January 15, 2005. That joint standing committee is authorized to introduce a bill to the First Regular Session of the 122nd Legislature expanding the scope of practice of

denturists to include partial dentures and dentures over implants.

Sec. 20. Appropriations and allocations. The following appropriations and allocations are made.

**PROFESSIONAL AND FINANCIAL REGULATION,
DEPARTMENT OF**

Board of Dental Examiners 0384

Initiative: Provides funds for one Clerk Typist III position, per diem and all other costs associated with the operation of the newly formed Subcommittee on Denturist Discipline and the Subcommittee on Dental Hygienist Submissions as well as the additional per diem and all other costs for one additional member of the Board of Dental Examiners.

| Other Special Revenue Funds | 2003-04 | 2004-05 |
|------------------------------------|----------------|----------------|
| Positions - Legislative Count | (0.000) | (1.000) |
| Personal Services | \$0 | \$51,910 |
| All Other | 0 | 42,343 |
| | ----- | ----- |
| Other Special Revenue | | |
| Funds Total | \$0 | \$94,253 |

See title page for effective date.

CHAPTER 670

H.P. 972 - L.D. 1318

**An Act To Promote the Public
Interest by Providing for Reasonable
Rates of Compensation for Forest
Products Harvesting and Hauling
Services**

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

Sec. 1. 26 MRSA §931, first ¶, as amended by PL 1991, c. 798, §3, is further amended to read:

The State Board of Arbitration and Conciliation, in this subchapter called the "board," consists of 3 members appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. One member must be an employer of labor or selected from some association representing employers of labor, and another must be an employee or selected from some bona fide trade or labor union. The 3rd member must represent the public interests of the State and serves as chair. Vacancies occurring during a term must be filled for the unexpired term. Members of the board are entitled to receive \$75 a day for their services for the time actually employed in the discharge of their official duties. They are entitled to receive their traveling and all other necessary expenses. The costs for services rendered and expenses incurred by the State Board of

Arbitration and Conciliation and any state allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by the State Board of Arbitration and Conciliation is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. The executive director shall, annually, on or before July 1st, make a report of the activities of the State Board of Arbitration and Conciliation to the Governor. The board shall from time to time adopt rules of procedure as it determines necessary, including rules of procedure for proceedings under chapter 18. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 26 MRSA §931-B is enacted to read:

§931-B. Forestry rate proceedings panel

1. Membership of forestry rate proceedings panel. There is established, under the authority of the board, a forestry rate proceedings panel, referred to in this section as "the panel," to conduct proceedings under chapter 18. The panel consists of the following 3 members:

A. One member representing forest products harvesters and forest products haulers, as defined in section 1352;

B. One member representing forest landowners, as defined in section 1352; and

C. One member representing the public interests of the State.

2. Appointment of members and alternates; terms. Members serve for terms of 3 years or until their successors are appointed. A vacancy occurring during a term must be filled for the unexpired portion of the term. Members are appointed as follows.

A. The member representing the public interests of the State must be the person appointed under section 931 to represent the public interests of the State. The member representing forest products harvesters and forest products haulers must be appointed from a list provided by the International Loggers Association or a successor organization. The member representing the forest landowners must be appointed from a list provided by the Maine Forest Products Council or a successor organization. If an organization named in this subsection ceases to exist and does not have a successor, the Governor shall solicit names from similar organizations and may appoint any person the Governor considers appropriate to represent the appropriate interests.

B. The Governor shall appoint 2 alternate members to represent each interest set forth in subsection 1, paragraphs A and B. Alternates representing the public interests of the State appointed under section 931 serve as alternate members to represent the interests set forth in subsection 1, paragraph C. Alternate members serve for the same terms, have the same responsibilities and duties and are entitled to the same privileges and emoluments as members. When for any reason a member of the panel does not serve in a particular case, an alternate member having the same qualifications shall act as a member of the panel in that case.

C. Members and alternates are subject to restrictions on participating in proceedings in which they have a financial interest, as provided in section 1358.

3. Costs of proceedings. The parties to a proceeding brought under chapter 18 shall share equally in the cost of the services rendered and expenses incurred, in the same manner as provided in section 931. Notwithstanding Title 5, section 12004-B, subsection 1, the member of the panel representing the public interests of the State is entitled to \$750 a day and the other 2 members of the panel are entitled to \$250 a day for services for the time actually employed in the discharge of duties under chapter 18. All panel members are entitled to travel and other expenses, in the same manner as for board members under section 931.

4. Appeal of decisions. Decisions by the panel under chapter 18 constitute final agency action and are subject to judicial review pursuant to Title 5, chapter 375, subchapter 7.

5. Applicability of general board provisions. The provisions of section 931 that are not inconsistent with this section, and the provisions of sections 932 and 939, apply to panel proceedings under this section and chapter 18. Section 931-A does not apply to such panel proceedings.

Sec. 3. 26 MRSA c. 18 is enacted to read:

CHAPTER 18

RATES OF COMPENSATION FOR FOREST PRODUCTS HARVESTING AND HAULING SERVICES

§1351. Legislative findings

The Legislature finds that Maine's forest products industry is a vital component of Maine's economy and has a direct relationship to the economic health and welfare of workers, communities and businesses. Central to the viability of the forest products industry is a stable workforce of loggers and wood haulers available to harvest wood from Maine's forests and bring the wood to mills and other wood-using industry. The erosion of the logger and wood hauler infrastructure in any major region of the State can have a serious negative effect on wood products manufacturing throughout the State. The Legislature further finds that, based upon patterns and configurations of forest landownership, the harvesting and hauling of forest products are performed by numerous loggers and truckers who, in many cases, are not able individually to bargain effectively with forest landowners who possess overwhelming market power. The Legislature finds that such market power exists whenever a forest landowner owns, possesses or acquires economic control over more than 400,000 acres in a labor market area. Accordingly, the Legislature finds it necessary, in the absence of sufficiently vigorous competitive market forces, to displace competition as provided in this chapter. The inequity of power in determining compensation and the lack of opportunity to join together in bargaining over compensation can result in unfair contract rates for the services of loggers and wood haulers. The Legislature finds evidence of unfairness in the fact that contract rates for harvesting and hauling services are considerably lower on the land of such owners. The Legislature finds that it is in the public interest to ensure a reasonable rate of compensation for harvesting and hauling services and therefore creates in this chapter a process whereby the State displaces existing market forces and, upon request, sets the rates of compensation for such services.

§1352. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affiliated person. "Affiliated person" means a person in the same corporate system as a parent or member organization by virtue of common ownership, control, operation or management.

2. Association. "Association" includes an incorporated or unincorporated entity.

3. Economic control. "Economic control" means the legal right, whether through ownership, contract or otherwise, to make or influence decisions regarding the harvesting of trees and disposition in general of forest products on subject land.

4. Forest land. "Forest land" means land used primarily for growth of trees to be harvested for commercial use.

5. Forest landowner. "Forest landowner" means:

A. A person that owns directly or through affiliated persons, or possesses economic control over, more than 400,000 acres in a labor market area; or

B. An agent or subsidiary of a person described in paragraph A if that agent or subsidiary is involved in contracting or negotiating contracts or other arrangements, written or oral, with forest products harvesters or forest products haulers.

6. Forest products harvester. "Forest products harvester" or "harvester" means a person having a place of business in this State who is engaged in harvesting trees from forest land in the State under a contract or subcontract, directly or indirectly, for a forest landowner.

7. Forest products hauler. "Forest products hauler" or "hauler" means a person having a place of business in this State who is engaged in hauling harvested trees to mills under a contract or subcontract, directly or indirectly, for a forest landowner.

8. Labor market area. "Labor market area" means an area designated as such by the United States Department of Labor, Bureau of Labor Statistics for purposes of implementing a comprehensive labor market information system.

9. Panel. "Panel" means the forestry rate proceedings panel, constituted under the State Board of Arbitration and Conciliation pursuant to section 931-B.

10. Person. "Person" includes one or more individuals, partnerships, corporations and associations.

§1353. State role in determining rates of compensation; panel powers and duties

1. Rate determinations. The panel, upon petition made pursuant to section 1357 and in accordance with the procedures and standards set forth in this chapter, shall determine reasonable rates of compensation to be paid by a forest landowner for forest products hauling services and forest products harvesting services in a specified area of the State.

2. Panel powers and duties. For the purposes of carrying out its responsibilities under this chapter, the panel has the powers of the State Board of Arbitration and Conciliation as set forth in chapter 9, subchapter 2-A. The State Board of Arbitration and Conciliation as established pursuant to section 931 may adopt rules to implement this chapter, including rules specifying what information held by the panel is confidential and not subject to public disclosure. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Compensation; costs of rate determination proceeding. Members of the panel are entitled to the compensation provided for in section 931-B for their services under this chapter. Costs incurred by the panel in making a rate determination under this chapter must be borne equally by the parties to the rate determination proceeding and may be collected by the Maine Labor Relations Board pursuant to section 931.

§1354. Participation of harvesters and haulers in rate determination process

For the purpose of effectively representing their interests in contemplated or pending rate determination proceedings under this chapter, 2 or more harvesters or haulers may join together and form an association to meet, confer, share information and take other collective action as may support their participation in rate determination proceedings.

§1355. Negotiations preceding rate determination

One or more harvesters or haulers may meet and negotiate with a forest landowner on the issue of determining reasonable rates to be paid for harvesting services and hauling services in the State, as long as any agreement reached by the parties regarding rates of compensation is made contingent upon review and approval by the panel.

§1356. Activities are not restraint of trade

The provisions of this chapter are intended to displace existing market forces based on a legislative

finding that such forces are insufficient to permit the affected market to function normally. Activities carried out pursuant to this chapter do not constitute a conspiracy, or a combination in restraint of trade or an illegal monopoly, nor are they carried out for the purposes of lessening competition or fixing prices arbitrarily, as long as the activities are carried out for the purpose of preparing, initiating or participating in a rate determination proceeding under this chapter. A contract or agreement entered into pursuant to negotiations between a forest landowner and a group of harvesters or haulers is not an unlawful restraint in trade or part of a conspiracy or combination to accomplish an improper or illegal purpose or act, as long as the contract or agreement is approved by the panel as provided in section 1358.

§1357. Rate determination petition

1. Who may file petition. A forest landowner or a person representing at least 3 harvesters or haulers may file a petition with the panel to initiate a proceeding to determine reasonable rates of compensation to be paid for harvesting or hauling services.

2. Required contents of petition. The petition under subsection 1 must include the following information:

A. The service for which the rate is to be determined;

B. The identity of the forest landowner who owns or possesses economic control over the land on which the rates are to apply and the geographic area in which the rates are to apply;

C. The rate, if any, proposed by the filing party, including any rate agreed to in negotiations between forest landowners and harvesters or haulers;

D. Information relevant to the factors set forth in section 1358, subsection 4 needed for the panel to make a decision;

E. A summary of any negotiations between harvesters and haulers and forest landowners; and

F. Any other information the panel specifically requests.

§1358. Rate determination proceedings

1. Public notice. Upon receipt of a properly filed petition, the panel shall publish notice in newspapers of general circulation in the areas of the State affected by the petition filing. The panel shall also provide notice to any person who has requested to be notified of filings. Notice must be provided at least 30 days before any hearing to be held, and at least 30

days before the close of a comment period on the filing, unless the panel determines that a shorter notice period is required by extraordinary circumstances.

2. Written comment; hearing. The panel shall solicit written comment from persons interested in the rates of compensation for harvesting and hauling services. The panel may also hold a public hearing to collect information and shall hold a public hearing if requested by any party to the proceeding.

3. Panel decision. After the close of the comment period and completion of any public hearing on the petition, the panel shall issue a decision determining reasonable rates to be paid by a forest landowner for services that are the subject of the petition and reasonable geographic applicability for the rates, as the panel determines appropriate. The panel's decision is a final agency action for purposes of Title 5, chapter 375, subchapter 7 and may be appealed pursuant to that subchapter. Rates determined by the panel are not stayed pending the appeal.

4. Standard for determining reasonable rate. In determining a reasonable rate to be paid by a forest landowner for harvesting or hauling services, the panel shall consider, to the extent relevant, the following factors:

- A. Prices or projected prices for the harvesting services or hauling services currently paid by forest landowners in the State and in other states;
- B. The quantity of forest products available in the market area or competing areas;
- C. The relationship between the quantity produced and the quantity handled by the forest landowner;
- D. The harvester's or hauler's costs, including, but not limited to, wages, overhead, fuel, insurance and the cost of replacing equipment;
- E. Environmental and highway laws or rules;
- F. The impact of the rate determination on the competitive position of the landowner in the market area or competing market areas;
- G. A fair return on investment;
- H. The species of tree, type of machinery and method of tree harvesting involved;
- I. The extent to which hauling is conducted on private or public roads;
- J. Safety considerations;
- K. Prior agreements of the parties; and

L. Any factors that are normally or traditionally taken into consideration when determining prices for the services involved.

5. Interested panel members may not participate. A member or alternate member of the panel who has a financial interest in a rate determination proceeding brought before the panel, or in any party to the rate determination proceeding, may not participate in the proceeding affecting that financial interest.

6. Limitation on petitions. Unless the panel's rate determination decision specifies an earlier time, a person may not file a petition to change the rate set by that decision until one year after the rate determination decision was issued.

§1359. Violation

1. Violation. A forest landowner violates this chapter if that forest landowner:

- A. Pays a rate for harvesting or hauling services in the State other than the applicable panel-determined rate, if any, for that service in that geographic area; or
- B. Discriminates against any person for initiating or participating in a rate determination proceeding under this chapter.

2. Maine Unfair Trade Practices Act. Violation of this chapter constitutes a violation of the Maine Unfair Trade Practices Act.

§1360. Other agreements not precluded

This chapter does not prohibit the negotiation and execution of a contract between a forest landowner and an individual harvester or hauler that provides for the payment of compensation rates other than those determined under this chapter, as long as there is no panel-determined rate applicable to the service being provided and as long as there is no properly filed rate determination petition that would apply to the service pending before the panel at the time the contract is entered into.

Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

**LABOR, DEPARTMENT OF
Labor Relations Board 0160**

Initiative: Provides funds for the per diem and related costs of the State Board of Arbitration and Conciliation associated with the rate determination process for forest products hauling and harvesting services.

| | | |
|---------------------|----------------|----------------|
| General Fund | 2003-04 | 2004-05 |
| Personal Services | \$0 | \$900 |

| | | |
|------------------------------------|----------------|----------------|
| All Other | 0 | 3,300 |
| General Fund Total | \$0 | \$4,200 |
| Other Special Revenue Funds | 2003-04 | 2004-05 |
| Personal Services | \$0 | \$12,500 |
| All Other | 0 | 5,860 |
| Other Special Revenue Funds Total | \$0 | \$18,360 |

See title page for effective date.

CHAPTER 671

S.P. 692 - L.D. 1853

An Act To Amend the Laws Relating to Property and Casualty Insurance and To Authorize the Superintendent of Insurance To Establish a Mandatory Market Assistance Program

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

PART A

Sec. A-1. 24-A MRSA §2304-A, sub-§1, as repealed and replaced by PL 1991, c. 377, §10, is amended to read:

1. Every insurer shall file with the superintendent, except as to inland marine risks, which by general custom of the business are not written according to manual rates or rating plans, every manual rate, minimum premium, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing ~~which that~~ it proposes to use. ~~Every such~~ The filing must state the effective date of the filing, and indicate the character and extent of the coverage contemplated. Every such The filing must be made not less than 30 days in advance of the stated effective date unless that 30-day requirement is waived by the superintendent. The effective date may be suspended by the superintendent for a period of time not to exceed 60 days, except that the effective date for filings made electronically may not be suspended.

Sec. A-2. 24-A MRSA §2412, sub-§2, as amended by PL 1973, c. 585, §12, is further amended to read:

2. Every ~~such~~ filing ~~shall~~ must be made not less than 30 days in advance of any ~~such~~ delivery. At the expiration of ~~such~~ the 30 days, the form so filed ~~shall be~~ is deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the superintendent. Approval of ~~any such~~ the form by the

superintendent ~~shall constitute~~ constitutes a waiver of any unexpired portion of ~~such~~ the waiting period. The superintendent may extend by not more than an additional 30 days the period within which ~~he~~ the superintendent may ~~so~~ affirmatively approve or disapprove any ~~such~~ form, by giving notice to the insurer of ~~such~~ the extension before expiration of the initial ~~30 days~~ 30-day period, except that the effective date of a filing made electronically for a coverage under a health, life or annuity product may not be extended. At the expiration of any such the period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be is deemed approved. The superintendent may at any time, after hearing and for cause shown, withdraw any ~~such~~ approval.

Sec. A-3. 24-A MRSA §3049, sub-§3, as enacted by PL 1973, c. 239, is amended to read:

3. Discovery of fraud or material misrepresentation by ~~either~~ any one of the following:

- A. The insured or ~~his~~ the insured's representative in obtaining the insurance; or
- B. The named insured in pursuing a claim under the policy;

Sec. A-4. 24-A MRSA §3049, sub-§4, as enacted by PL 1973, c. 239, is repealed and the following enacted in its place:

4. Discovery of either:

- A. Negligent acts or omissions by the insured substantially increasing any of the hazards insured against; or
- B. A failure to disclose a material fact in relation to the application for insurance that would, if coverage is effectuated without knowledge by the insurer, substantially alter the terms of the policy;

Sec. A-5. 24-A MRSA §3049, sub-§5, as enacted by PL 1973, c. 239, is amended to read:

5. Physical changes in the insured property ~~which that~~ result in the property becoming uninsurable;

Sec. A-6. 24-A MRSA §3049, sub-§§6 to 10 are enacted to read:

- 6. The insured property is vacant and custodial care is not maintained on the property;
- 7. The presence of a trampoline on the premises if the insured is notified that the policy will be cancelled if the trampoline is not removed and the