

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

CHAPTER 99**H.P. 574 - L.D. 809****An Act To Facilitate Testimony in
Workers' Compensation Proceedings****Be it enacted by the People of the State of
Maine as follows:**

Sec. 1. 39-A MRSA §309, sub-§3, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

3. Witnesses; discovery. All witnesses must be sworn. Sworn written evidence may not be admitted unless the author is available for cross-examination or subject to subpoena; except that sworn statements by a medical doctor or osteopathic physician relating to medical questions, by a psychologist relating to psychological questions ~~or~~, by a chiropractor relating to chiropractic questions, by a certified nurse practitioner who qualifies as an advanced practice registered nurse relating to advanced practice registered nursing questions or by a physician's assistant relating to physician assistance questions are admissible in workers' compensation hearings only if notice of the testimony to be used is given and service of a copy of the letter or report is made on the opposing counsel 14 days before the scheduled hearing.

Depositions or subpoenas of health care practitioners who have submitted sworn written evidence are permitted only if the hearing officer finds that the testimony is sufficiently important to outweigh the delay in the proceeding.

The board may establish procedures for the prefilming of summaries of the testimony of any witness in written form. In all proceedings before the board or its designee, discovery beyond that specified in this section is available only upon application to the board, which may approve the application in the exercise of its discretion.

See title page for effective date.

CHAPTER 100**S.P. 91 - L.D. 271****An Act To Allow Counties To
Recover the Cost of Cleaning Up
Hazardous Spills****Be it enacted by the People of the State of
Maine as follows:**

Sec. 1. 38 MRSA §1318-A, as amended by PL 1991, c. 817, §33, is further amended to read:

**§1318-A. Recovery by State, counties and
municipalities for expenditures for
removal of discharges**

1. Responsible party. The responsible party or the person causing the discharge is liable for all acts and omissions of its servants and agents ~~which~~ that are committed within the course and scope of their employment.

2. State, counties and municipalities to recover for expenditures for removal. Any person who permits, causes or is responsible for a prohibited discharge shall reimburse the State, counties and municipalities for all costs incurred, including personnel costs, in removing the discharge, including costs for ensuring public safety. Funds recovered under this section must be deposited to the account from which they were expended. Requests from the State for reimbursement, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191, or, for county or municipal cost, to the District Attorney for collection.

In any suit to enforce claims of the State, a county or a municipality under this section, it is not necessary for the State, county or ~~a~~ municipality to plead or prove negligence in any form or manner on the part of the person causing, permitting or responsible for the discharge. The State, county or municipality need only plead and prove the fact of the prohibited discharge and that the discharge occurred while the hazardous matter was in the custody or control of the person causing, permitting or responsible for the discharge.

At the request of one or more municipalities, a county may bring legal action for recovery under this section on behalf of the municipality or municipalities. If the county is successful in the action, the county is entitled to recover the cost of the action and reasonable attorney's fees.

See title page for effective date.

CHAPTER 101**H.P. 235 - L.D. 311****An Act To Prohibit Steering in
Automobile Insurance****Be it enacted by the People of the State of
Maine as follows:**

Sec. 1. 24-A MRSA §2164-C, as amended by PL 1993, c. 203, §1, is repealed and the following enacted in its place:

§2164-C. Free competition

1. Appraisals or repairs to motor vehicle glass.

A domestic or foreign insurer or its agent or employee may not require, directly or indirectly, that appraisals or repairs to motor vehicle glass be made or not be made in a specified place of business.

A domestic or foreign insurer or its agent or employee may not contract with any person to act as its agent for purposes of managing, handling or arranging repair or replacement of motor vehicle glass when that person is compensated by payment of a portion of the difference between the list price of the product or services provided and the amount paid to the person providing repair and replacement service.

2. Appraisals or repairs to motor vehicles for collision damage. A domestic or foreign insurer or its agent or employee may not require, directly or indirectly, that appraisals or repairs to motor vehicles with collision damage be made or not be made in a specified place of business.

A domestic or foreign insurer or its agent or employee may not contract with any person to act as its agent for purposes of managing, handling or arranging repair or replacement of motor vehicles for collision damage when that person is compensated by payment of a portion of the difference between the list price of the product or services provided and the amount paid to the person providing repair and replacement service.

A domestic or foreign insurer or its agent or employee may not recommend the use of a particular motor vehicle repair service or network of repair services without informing the claimant that the claimant is under no obligation to use the recommended repair service or network of repair services.

Sec. 2. Bureau of Insurance bulletin. On or before November 1, 2005, the Department of Professional and Financial Regulation, Bureau of Insurance shall issue to insurance companies and insurance producers who place motor vehicle insurance a bulletin regarding the amended provisions of the Maine Revised Statutes, Title 24-A, section 2164-C related to motor vehicle repairs.

See title page for effective date.

CHAPTER 102

S.P. 260 - L.D. 793

An Act To Reauthorize Funding for the Lobster Promotion Council

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

Sec. 1. 12 MRSA §6455, sub-§5, as amended by PL 2001, c. 226, §1, is further amended to read:

5. Fund established; license surcharge assessed. The Lobster Promotion Fund, referred to in this subchapter as the "fund," is established to carry out the purposes of this subchapter. The department shall pay to the fund all money appropriated or received by the department for the purposes of this subchapter, except that the department may retain funds necessary to reimburse the department for the actual cost of collecting the license surcharges established in this subsection. The fund is capitalized from the following annual surcharges assessed on the following licenses issued by the department for calendar years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 to 2020:

- A. Class I crab and lobster licenses for persons 18 to 69 years of age, \$31.25;
- B. Class II crab and lobster licenses, \$62.50;
- C. Class III crab and lobster licenses, \$93.75;
- D. Wholesale seafood licenses with lobster permits, \$250; and
- E. Lobster transportation licenses, \$250.

A person holding more than one of the licenses listed in this subsection is assessed a surcharge only on the highest surchargeable license held.

The Treasurer of State shall hold all surcharges assessed by this subsection in the fund and invest all money in the fund until disbursed to the council upon request of the council. Interest from investments accrues to the fund.

All money in the fund is subject to allocation by the Legislature. Unexpended balances in the fund at the end of the fiscal year may not lapse but must be carried forward to be used for the same purposes.

In addition to payment of the regular license fee and the surcharge, a person purchasing a license subject to the surcharges established in this subsection may make voluntary contributions to the fund at the time the license is purchased. Voluntary contributions received