

# 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.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2005**

**Sec. 5. 30-A MRSA §4452, sub-§5, ¶R**, as enacted by PL 1989, c. 287, §4, is amended to read:

R. The laws pertaining to harbors in Title 38, chapter 1, subchapter 1, local harbor ordinances adopted in accordance with Title 38, section 7 and regulations adopted by municipal officers pursuant to Title 38, section 2; and

**Sec. 6. 30-A MRSA §4452, sub-§5, ¶S** is enacted to read:

S. Local ordinances and ordinance provisions regarding storm water, including, but not limited to, ordinances and ordinance provisions regulating nonstorm water discharges, construction site runoff and postconstruction storm water management, enacted as required by the federal Clean Water Act and federal regulations and by state permits and rules.

See title page for effective date.

## CHAPTER 241

H.P. 355 - L.D. 480

### **An Act To Reduce Costs Caused by New Procedure Changes for Health Care Providers**

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

**Sec. 1. 22 MRSA §42, sub-§9** is enacted to read:

**9. Effective date of newly adopted rules.** Notwithstanding any other provision of law, when the department adopts a rule affecting a process or procedural change for licensed health care providers, the rule may not take effect for at least 30 days unless the department determines that an emergency rule is necessary pursuant to Title 5, section 8054 or unless the rule affects reimbursement rates applicable to those licensed health care providers. For the purposes of this subsection, "licensed health care provider" means a physician, clinic, hospital, health maintenance organization, home health agency, private clinical laboratory or other person who provides primary health care services and is registered or licensed by the State.

See title page for effective date.

## CHAPTER 242

S.P. 509 - L.D. 1483

### **An Act To Amend the Laws Governing Reimbursement of Nursing Facilities and Nursing Home Admission Contracts**

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

**Sec. 1. 22 MRSA §1720** is enacted to read:

#### **§1720. Nursing facility medical director reimbursement**

The department shall include in its calculation of reimbursement for services provided by a nursing facility an allowance for the cost of a medical director in a base year amount not to exceed \$10,000, with that amount being subject to an annual cost-of-living adjustment.

See title page for effective date.

## CHAPTER 243

S.P. 190 - L.D. 581

### **An Act Regarding Identity Theft Deterrence**

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

**Sec. 1. 10 MRSA §1312, sub-§6-B** is enacted to read:

**6-B. Identity theft.** "Identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money or property.

**Sec. 2. 10 MRSA §1312, sub-§§10-B and 10-C** are enacted to read:

**10-B. Proper identification.** "Proper identification" means that information generally considered sufficient to identify a person.

**10-C. Security freeze or freeze.** "Security freeze" or "freeze" means a notice placed in a consumer report at the request of the consumer pursuant to section 1313-C that prohibits a consumer reporting agency from releasing the consumer's report or any information in the report without that consumer's express authorization.

**Sec. 3. 10 MRSA §§1313-C, 1313-D and 1313-E** are enacted to read:

**§1313-C. Security freeze by consumer reporting agency; time in effect**

**1. Procedure.** A consumer may place a security freeze on the consumer's report as follows.

A. A consumer who has been the victim of identity theft may place a security freeze on the consumer's report by making a request in writing by certified mail to a consumer reporting agency with a valid copy of a police report, investigative report or complaint the consumer has filed with a law enforcement agency about unlawful use of personal information by another person. In the case of a victim of identity theft, a consumer reporting agency may not charge a fee for placing, removing or suspending for a specific party or period of time a security freeze on a consumer report.

B. A consumer who has not been the victim of identity theft may place a security freeze on the consumer's report by making a request in writing by certified mail to a consumer reporting agency. A consumer reporting agency may charge a fee of no more than \$10 to a consumer for each freeze, removal of a freeze or temporary suspension of a freeze for a period of time or for reissuing the same or a new personal identification number if the consumer fails to retain the original personal identification number provided by the agency. A consumer reporting agency may charge a fee of not more than \$12 for a temporary suspension of a freeze for a specific party.

C. Subject to the exceptions in subsection 12, when a security freeze has been placed on an account the consumer reporting agency may not:

(1) Release the consumer report or any information from it without the express authorization of the consumer; or

(2) Release information from a consumer report to a 3rd party without express authorization of the consumer. This subparagraph does not prevent a consumer reporting agency from advising a 3rd party that a security freeze is in effect with respect to the consumer report.

**2. Time to place security freeze.** A consumer reporting agency shall place a security freeze on a consumer report no later than 5 business days after receiving a written request from the consumer.

**3. Confirmation; personal identification number.** The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days and shall provide the consumer with a personal identification number or

password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of the consumer report to a specific party or for a period of time.

**4. Access during freeze.** If the consumer wishes to allow access to the consumer report by a specific party or for a period of time while a freeze is in place, the consumer may contact the consumer reporting agency, request that the freeze be temporarily suspended and provide the following:

A. Proper identification;

B. The personal identification number or password provided by the consumer reporting agency pursuant to subsection 3; and

C. The proper information regarding the specific party granted access or the time period for which the report is to be available to users.

**5. Electronic access.** A consumer reporting agency may develop procedures involving the use of telephone, facsimile transmission, the Internet or other electronic media to receive and process a request from a consumer to temporarily suspend a freeze on a consumer report pursuant to subsection 4 in an expedited manner. A consumer reporting agency may not charge a fee to a consumer for use of these procedures in excess of those fees otherwise permitted under this section.

**6. Time to suspend freeze.** A consumer reporting agency that receives a request from a consumer to temporarily suspend a freeze on a consumer report pursuant to subsection 4 shall comply with the request no later than 3 business days after receiving the request.

**7. Suspension or removal of freeze.** A consumer reporting agency shall remove or temporarily suspend a freeze placed on a consumer report only:

A. Upon consumer request, pursuant to subsection 4 or 10; or

B. If the consumer report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer report.

**8. Effect of freeze.** If a 3rd party requests access to a consumer report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow access to the consumer

report for that specific party or period of time, the 3rd party may treat the application as incomplete.

**9. Explanation of process.** If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the processes of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer report for a specific party or period of time while the security freeze is in place. A consumer reporting agency shall provide a sample copy of the agency's disclosure form to the administrator at the first annual registration or reregistration under section 1328 following the effective date of this section and any time there is a material change in the disclosure form required by this subsection.

**10. Duration of freeze; removal.** A security freeze must remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within 3 business days of receiving a request for removal from a consumer who provides:

A. Proper identification; and

B. The personal identification number or password provided by the consumer reporting agency pursuant to subsection 3.

**11. Proper identification.** A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

**12. Exceptions.** The provisions of this section, including the security freeze, do not apply to the use of a consumer report by the following:

A. A person or person's subsidiary, affiliate, agent or assignee with which the consumer has or, prior to assignment, had an account, contract or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract or debt or extending credit to a consumer with a prior or existing account, contract or debtor-creditor relationship, subject to the requirements of section 1313-A. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases and account upgrades and enhancements;

B. A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted under subsection 4 for purposes of facilitating the extension of credit or another permissible use;

C. A person acting pursuant to a court order, warrant or subpoena;

D. Child support enforcement officials when investigating a child support case pursuant to Title 19-A or to Title IV-D of the federal Social Security Act;

E. The Department of Health and Human Services or its agents or assignees acting to investigate Medicaid fraud;

F. The Department of Administrative and Financial Services, Maine Revenue Services; municipal taxing authorities; the Secretary of State, Bureau of Motor Vehicles; or any of their agents or assignees, acting to investigate or collect delinquent taxes or assessments, including interest and penalties and unpaid court orders, or to fulfill any of their other statutory or charter responsibilities;

G. A person's use of credit information for pre-screening as provided by the federal Fair Credit Reporting Act or this chapter;

H. A person for the sole purpose of providing a credit file monitoring subscription service to which the consumer has subscribed;

I. A consumer reporting agency for the sole purpose of providing a consumer with a copy of that consumer's report upon the consumer's request; and

J. The administrator pursuant to section 1328.

#### **§1313-D. Duties of consumer reporting agency if security freeze is in place**

If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a consumer report without sending written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings and transposition of numbers or letters. In the case of an address change, the written confirmation must be sent to the new address and the former address.

#### **§1313-E. Persons not required to place security freeze**

The following persons are not required to place on a consumer report a security freeze pursuant to section 1313-C, except that any person that is not required to place a security freeze on a consumer

report under the provisions of section 1313-C is subject to a security freeze placed on a consumer report by another consumer reporting agency from which it obtains information:

**1. Check services or fraud prevention services company.** A check services or fraud prevention services company that reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers or similar methods of payment;

**2. Deposit account information service company.** A deposit account information service company that issues reports regarding account closures due to fraud, overdrafts, automated teller machine abuse or similar negative information regarding a consumer to inquiring financial institutions for use only in reviewing that consumer's request for a deposit account at the inquiring financial institution; and

**3. Consumer reporting agency.** A consumer reporting agency that:

A. Acts only to resell credit information by assembling and merging information contained in a database of one or more consumer reporting agencies; and

B. Does not maintain a permanent database of credit information from which new consumer reports are produced.

**Sec. 4. Effective date.** This Act takes effect February 1, 2006.

Effective February 1, 2006.

## CHAPTER 244

S.P. 331 - L.D. 991

### An Act To Restore Municipal Authority To Review Development Using Flexible Standards

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

**Sec. 1. 30-A MRSA §4301, sub-§1-A** is enacted to read:

**1-A. Cluster development.** "Cluster development" means a form of development that allows a subdivision design in which individual lot sizes and setbacks are reduced in exchange for the creation of common open space and recreation areas, the preservation of environmentally sensitive areas, agriculture and silviculture and the reduction in the size of road and utility systems.

**Sec. 2. 30-A MRSA §4353, sub-§4-C,** as enacted by PL 1997, c. 148, §2, is amended to read:

#### **4-C. Variance from dimensional standards.**

A municipality may adopt an ordinance that permits the board to grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;

B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;

D. No other feasible alternative to a variance is available to the petitioner;

E. The granting of a variance will not unreasonably adversely affect the natural environment; and

F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Under its home rule authority, a municipality may, in an ordinance adopted pursuant to this subsection, adopt additional limitations on the granting of a variance from the dimensional standards of a zoning ordinance. A zoning ordinance also may explicitly delegate to the municipal reviewing authority the ability to approve development proposals that do not meet the dimensional standards otherwise required, in order to promote cluster development, to accommodate lots with insufficient frontage or to provide for reduced setbacks for lots or buildings made nonconforming by municipal zoning. As long as the development falls within the parameters of such an ordinance, the approval is not considered the granting