

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

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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

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

Sec. 1. 35-A MRSA §117, sub-§3, as amended by PL 2003, c. 505, §13, is further amended to read:

3. Administrative penalties. All Except as provided in this subsection, all administrative penalties collected by the commission must be deposited into the Public Utilities Commission Reimbursement Fund. Administrative penalties not needed to reimburse the commission for additional expenses associated with the enforcement activities that resulted in the collection of the penalty must be transferred to the General Fund of the State Treasury.

A. The commission may use amounts collected as administrative penalties and deposited in the Public Utilities Commission Reimbursement Fund to reimburse the commission for additional expenses associated with the enforcement activities that resulted in the collection of the penalty.

B. After deducting any amount used pursuant to paragraph A, the commission may, to the extent practicable and in as equitable and fair a manner as possible, apply administrative penalties, along with any accrued interest, in accordance with this paragraph. The commission shall seek to apply the amount in a manner that benefits those customers affected or potentially affected by the violation, if they can reasonably be identified or, if the commission determines this application of the amount to be impractical or unreasonable, in a manner that benefits the class or group of customers affected or potentially affected by the violation. In order to achieve the purposes of this paragraph, the commission may apply the funds:

(1) In the form of a direct payment or credit to the customers or group or class of customers affected or potentially affected by the violation resulting in the administrative penalty;

(2) To supplement a low-income assistance or outreach program that the commission determines would benefit customers affected or potentially affected by the violation resulting in the administrative penalty;

(3) To supplement the conservation program fund established pursuant to section 3211-A, subsection 5;

(4) To supplement the telecommunications education access fund established pursuant to section 7104-B; or

(5) To supplement any other program or fund that the commission determines would benefit customers affected or potentially affected by the violation.

Amounts applied pursuant to this paragraph to supplement an existing program or fund may not result in a reduction in other funding provided for the program or fund unless the reduction is outside the commission's control and the commission finds that application of the penalty amount to the fund or program is the most appropriate use of the penalty and the net effect will be an increase in total funding available to the program or fund.

Sec. 2. 35-A MRSA §1510-A, as enacted by PL 2003, c. 505, §26, is repealed and the following enacted in its place:

§1510-A. Disposition of administrative penalty

The disposition of administrative penalties collected by the commission is governed by section 117, subsection 3.

See title page for effective date.

CHAPTER 433

H.P. 1026 - L.D. 1463

An Act To Amend the Motor Vehicle 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 take effect before the expiration of the 90-day period in order to ensure the State is in compliance with the federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, 113 Stat. 1748 by September 30, 2005 as required by federal law; 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. 24-A MRSA §2187, sub-§1, ¶B, as enacted by PL 1997, c. 675, §2 and amended by PL 2001, c. 44, §11 and affected by §14, is further amended to read:

B. "Authorized agency" or "authorized agencies" means:

- (1) The Attorney General;
- (2) A district attorney responsible for prosecution in the municipality where the fraud occurred;
- (3) The Federal Bureau of Investigation, or any other federal agency, only for the purposes of subsection 2;
- (4) The State Fire Marshal;
- (5) The Superintendent of Insurance;
- (6) The Superintendent of Financial Institutions;
- (7) The United States Attorney's office when authorized or charged with investigation or prosecution of the insurance fraud in question, only for the purposes of subsection 2;
- (8) The State Police, state law enforcement officials or local law enforcement officials; or
- (9) The National Association of Insurance Commissioners.

Sec. 2. 29-A MRSA §101, sub-§28-A, as enacted by PL 1999, c. 674, §1, is repealed and the following enacted in its place:

28-A. Immediate family member. "Immediate family member" means a grandparent, stepgrandparent, parent, stepparent, brother, stepbrother, sister, stepsister, child, stepchild or spouse.

Sec. 3. 29-A MRSA §101, sub-§1-A is enacted to read:

1-A. Access aisle. "Access aisle" means a designated space for maneuvering a wheelchair or other mobility device when entering or exiting a vehicle, and that is immediately adjacent to a properly designated parking space for a person with a disability. An access aisle must be marked so as to discourage parking in it.

Sec. 4. 29-A MRSA §252, sub-§1, as amended by PL 2003, c. 434, §5 and affected by §37, is further amended to read:

1. Reports furnished. The Secretary of State shall provide a copy of a record pertaining to convictions, adjudications, accidents, suspensions and revocations of a driver's license for a fee of \$5 each for a driving record covering 3 years and \$10 each for

a driving record covering more than 3 years. Certified copies are an additional \$1. A person receiving a report by electronic transmittal shall pay the fee associated with that transmittal. The Secretary of State shall adopt rules to establish a fee schedule and procedures governing electronic transmittal of a record.

Sec. 5. 29-A MRSA §351, sub-§1-A, as amended by PL 1999, c. 68, §1, is further amended to read:

1-A. Residents required to register. An owner of a vehicle who becomes a resident of this State shall register that vehicle in this State within 30 days of establishing residency. A person who operates or allows a vehicle that is not registered in accordance with this subsection to remain on a public way commits ~~a traffic infraction pursuant to subsection 1, paragraph A.~~

A. A traffic infraction for which a fine of not more than \$50 may be adjudged if more than 30 days but less than 150 days has elapsed since establishing residency; or

B. A Class E crime if more than 150 days have elapsed since establishing residency.

Sec. 6. 29-A MRSA §410, as enacted by PL 1995, c. 482, Pt. A, §3, is amended to read:

§410. Voluntary surrender or cancellation

A registrant may voluntarily surrender vehicle registration. The Secretary of State shall record that the registration has been cancelled. The Secretary of State may require the return of any certificate of registration or registration plate issued to the registrant for the vehicle. The registrant may activate the registration at any time prior to the original expiration of the registration. ~~The fee for reactivation is \$10.~~

Sec. 7. 29-A MRSA §521, sub-§9-A, as amended by PL 2003, c. 633, §2, is further amended to read:

9-A. Enforcement of disability parking restrictions. A law enforcement officer may enforce disability parking restrictions. The State Police shall enforce disability parking restrictions at service facilities established on the Maine Turnpike and on the interstate highway system in the State. A person commits a traffic infraction if that person parks in a parking space or access aisle designated and clearly marked for persons with physical disabilities and has not been issued or is not transporting a person who has been issued a disability registration plate or a removable windshield placard pursuant to this section or section 523 or a disability registration plate or placard issued by another state.

Sec. 8. 29-A MRSA §523, sub-§5, ¶¶P and Q, as enacted by PL 2001, c. 453, §2 and affected by §4, are amended to read:

P. Armed Forces Expeditionary Medal; ~~and~~

Q. Kosovo Service Medal;

Sec. 9. 29-A MRSA §523, sub-§5, ¶¶R to U are enacted to read:

R. Korea Defense Service Medal;

S. Global War on Terrorism Medal;

T. Iraq Campaign Medal; and

U. Afghanistan Campaign Medal.

Sec. 10. 29-A MRSA §659, sub-§4 is enacted to read:

4. Violation. Violation of this section is a traffic infraction for which a fine of not less than \$100 and not more than \$500 may be adjudged.

Sec. 11. 29-A MRSA §752-A is enacted to read:

§752-A. Exempted odometer information

A vehicle's odometer reading is not required to be disclosed on transfers of the following vehicles:

A. A vehicle that is not self-propelled; or

B. A vehicle that is 10 years old or older.

Notwithstanding any other provisions of this Title, the Secretary of State may require odometer information for any vehicle, as set forth in section 752, upon showing by records or other sufficient evidence that vehicle mileage discrepancies exist.

Sec. 12. 29-A MRSA §903, sub-§3, as amended by PL 2003, c. 544, §1, is further amended to read:

3. Plate reduction. Upon renewal of a dealer license, the number of plates allowed a motor vehicle dealer who fails to sell a minimum of one vehicle per month or 12 vehicles within a 12-month period must be reduced to one dealer plate, and the motor vehicle dealer may not be issued a dealer plate under section 1002, subsection 1, paragraph B. Upon a 2nd application for renewal of a dealer license, a motor vehicle dealer must be denied renewal if the Secretary of State determines that the dealer sold fewer than 4 vehicles in the previous license year, at which time all dealer credentials issued previously must be returned to the Secretary of State.

A motor vehicle dealer who is denied a license renewal under this subsection may not reapply until the license has been expired at least one year.

A motor vehicle dealer who holds a vehicle auction business license under section 1051 is exempt from this subsection.

A motor vehicle dealer who engages primarily in the sale of ~~classic~~ vehicles more than 15 years old, emergency vehicles or industrial or farm equipment is exempt from this subsection.

Sec. 13. 29-A MRSA §951, sub-§2, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

2. Dealers must be licensed. A person may not engage in the business of buying, selling, exchanging, offering to negotiate, negotiating or advertising a sale of vehicles unless that person has been issued a license under this subchapter. A dealer licensed by any other jurisdiction who sells vehicles only to licensed dealers in this State is exempt from this subsection. Violation of this subsection is a Class E crime.

Sec. 14. 29-A MRSA §1002, sub-§4, ¶D is enacted to read:

D. A vehicle to which a service vehicle plate is attached must have the name of the licensed dealership on the sides of the vehicle in letters at least 3 inches in height and clearly visible. The name of any other business may not be displayed on the sides of the vehicle to which the service vehicle plate is attached.

Sec. 15. 29-A MRSA §1253, sub-§2, as amended by PL 2003, c. 652, Pt. B, §6 and affected by §8, is further amended to read:

2. Compliance with federal law. The State must comply with the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, Title XII, the federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, 113 Stat. 1748 and regulations adopted under ~~that Act~~ those Acts in issuing or suspending a commercial license. In the case of any conflict between the federal statute or regulation and a statute or rule of this State, the federal statute or regulation must apply and take precedence. To ensure compliance, the Secretary of State shall adopt rules, administrative procedures, practices and policies, organizational structures, internal control mechanisms and resource assignments.

These compliance measures must include, but are not limited to, provisions that:

A. Provide for full state participation in the national commercial driver's license clearinghouse;

B. Require commercial drivers to have a single license;

C. Reduce and prevent commercial motor vehicle accidents, fatalities and injuries by disqualifying commercial drivers who have committed serious traffic or other designated offenses from operating commercial motor vehicles;

D. Protect public safety by removing from public ways a commercial driver who has:

(1) Operated or attempted to operate a commercial vehicle while having 0.04% or more by weight of alcohol in that driver's blood;

(2) Refused to submit to or complete a lawfully requested test to determine blood-alcohol level; or

(3) Operated or attempted to operate a motor vehicle while under the influence of intoxicating liquor or drugs; and

E. Provide maximum safety on public ways.

Sec. 16. 29-A MRSA §1258, sub-§8 is enacted to read:

8. Reporting. Notwithstanding the provisions of Title 5, section 12005-A, the board is not required to file an annual report with the Secretary of State unless the board meets and exercises any of its powers and duties during a calendar year. In any calendar year in which the board meets and exercises any of its powers and duties, the board is subject to the provisions of Title 5, section 12005-A.

Sec. 17. 29-A MRSA §1258, sub-§2, ¶A, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

A. The board shall meet at least ~~annually~~ once every 2 years and may hold as many meetings as necessary.

Sec. 18. 29-A MRSA §2106, sub-§1, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

1. Odometer. A person is guilty of a Class ~~D~~ C offense if that person:

A. Disconnects, changes or tampers with the odometer of a motor vehicle with the intent to misrepresent or change the number of miles indicated on the odometer; or

B. When the odometer reading differs from the number of miles a vehicle has been driven, knowingly offers for sale that motor vehicle

without disclosing that the actual mileage is unknown or is known to be different than the odometer reading.

Sec. 19. 29-A MRSA §2115, as corrected by RR 2003, c. 2, §93, is amended to read:

§2115. Operating motor vehicle on Pickerel Pond

A person may not operate a motor vehicle as defined in section 101, subsection 42 on Pickerel Pond located in Township 32 Middle Division. This section does not apply to motor vehicles of the Department of Inland Fisheries and Wildlife, airmobiles as defined in Title 12, section 13001, subsection 2 and authorized emergency vehicles as defined in section 2054, subsection 1, paragraph B. A person who violates this section commits a ~~civil violation~~ traffic infraction for which a fine of not less than \$100 nor more than \$500 may be adjudged.

Sec. 20. 29-A MRSA §2301, sub-§5, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is repealed and the following enacted in its place:

5. School bus. "School bus" means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home to school, from school to home or to and from school-sponsored events. "School bus" does not include a bus used as a common carrier or a private school activity bus.

Sec. 21. 29-A MRSA §2353, sub-§5, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

5. Maximum tire weight. Notwithstanding any other provision of this Title, a ~~A~~ vehicle may not be operated when the load on the road surface is greater than 600 pounds per inch of tire width, manufacturer's rating, except ~~farm trucks transporting potatoes directly from the fields to the place of storage or to a processing facility during the potato harvesting season.~~ for:

A. Farm trucks transporting potatoes directly from the fields to the place of storage or to a processing facility during the potato harvesting season; or

B. A vehicle operating under an overweight permit issued pursuant to section 2381.

A tractor, the propulsive power of which is exerted not through wheels resting on the ground but by means of a flexible band or chain known as a movable track, is not subject to this subsection if the portions of track in contact with the surface of the way present plane surfaces.

Sec. 22. 29-A MRSA §2458, sub-§2, ¶Q, as amended by PL 2003, c. 434, §31 and affected by §37, is further amended to read:

Q. Has, as a condition of bail pursuant to Title 15, chapter 105-A or, if a juvenile, as a condition of release pursuant to Title 15, chapter 505, been ordered not to operate a motor vehicle. If the conditions of bail or release allow a person to operate a motor vehicle only under certain conditions or with restrictions on time, place or purpose, the Secretary of State may, without hearing, issue a restricted license reflecting the restrictions imposed; ~~or~~

Sec. 23. 29-A MRSA §2458, sub-§2, ¶R, as enacted by PL 2003, c. 434, §32 and affected by §37, is amended to read:

R. Is not in compliance with the conditions and requirements of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107-56, 115 Stat. 272-;

Sec. 24. 29-A MRSA §2458, sub-§2, ¶¶S to U are enacted to read:

S. Has failed to deliver or assign the certificate of title upon the request of the Secretary of State;

T. Has failed to comply with the provisions of Title 36, chapter 457 or 459; or

U. Has failed to provide the information required in section 401, subsection 2.

Sec. 25. 29-A MRSA §2458, sub-§2, as amended by PL 2003, c. 25, §1 and c. 434, §§30 to 32 and affected by §37, is further amended by repealing the last 2 blocked paragraphs.

Sec. 26. 29-A MRSA §2472, sub-§1, as amended by PL 1997, c. 737, §15 and affected by §22, is further amended to read:

1. Licensee not yet 21 years of age. A license issued to a person who has not yet attained the age of 21 years is a provisional license for a period of 2 years following the date of issue or until the holder attains 21 years of age, whichever occurs last. That license remains in force as a nonprovisional license to the next normal expiration date. A license issued by another jurisdiction to a person who has not yet attained the age of 21 years is a provisional license for the purpose of operating a motor vehicle within this State.

A license of a person who has not yet attained 21 years of age includes the condition that the person not operate a motor vehicle with any amount of alcohol in

the blood. When a person who has not yet attained 21 years of age operates a motor vehicle with any amount of alcohol in the blood, the provisions of section 1251, subsection 1, paragraph B apply.

Sec. 27. 29-A MRSA §2486, sub-§4 is enacted to read:

4. Electronic payment. A person electronically transmitting the fee pursuant to this section shall pay the fee associated with that transmittal.

Sec. 28. Effective date; contingency. This Act takes effect 90 days after adjournment of the First Special Session of the 122nd Legislature, except as otherwise indicated, and except that that portion of this Act that enacts the Maine Revised Statutes, Title 29-A, section 523, subsection 5, paragraphs T and U takes effect January 1, 2006 or when the United States Secretary of Defense approves the Iraq Campaign Medal and Afghanistan Campaign Medal designs, whichever occurs first, but in no event may that portion of this Act that enacts the Maine Revised Statutes, Title 29-A, section 523, subsection 5, paragraphs T and U take effect until 90 days after adjournment of the First Special Session of the 122nd Legislature. If the Secretary of Defense approves the Iraq Campaign Medal and Afghanistan Campaign Medal designs before January 1, 2006, the Secretary of State shall provide the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes written notice of the date the Secretary of Defense approved these designs.

Emergency clause. In view of the emergency cited in the preamble, that section of this Act that amends the Maine Revised Statutes, Title 29-A, section 1253, subsection 2 takes effect when approved.

Effective June 23, 2005, unless otherwise indicated.

CHAPTER 434

H.P. 1013 - L.D. 1449

An Act To Amend Maine's Shellfish Laws To Maintain Compliance with Federal Law and Protect Maine's Shellfish Industry

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

Sec. 1. 12 MRSA c. 420, as amended, is repealed.

Sec. 2. 12 MRSA §6103, as amended by PL 1991, c. 784, §4, is further amended to read: