

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**SECOND SPECIAL SESSION**

**July 29, 2005**

**SECOND REGULAR SESSION**

**January 4, 2006 to May 24, 2006**

**THE GENERAL EFFECTIVE DATE FOR**

**SECOND SPECIAL SESSION**

**NON-EMERGENCY LAWS IS**

**OCTOBER 28, 2005**

**THE GENERAL EFFECTIVE DATE FOR**

**SECOND REGULAR SESSION**

**NON-EMERGENCY LAWS IS**

**AUGUST 23, 2006**

**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**

**2006**

## CHAPTER 538

H.P. 1313 - L.D. 1873

An Act Regarding Sexual Assault  
Forensic Examinations

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

**Sec. 1. 24 MRSA §2986, sub-§3**, as enacted by PL 1999, c. 719, §2 and affected by §11, is amended to read:

**3. Completed kit.** If the alleged victim has not reported the alleged offense to a law enforcement agency when the examination is complete, the hospital or health care practitioner shall then notify the nearest law enforcement agency, which shall transport and store the completed forensic examination kit for at least 90 days. The completed kit may be identified only by the tracking number. If during that 90-day period an alleged victim decides to report the alleged offense to a law enforcement agency, the alleged victim may contact the hospital or health care practitioner to determine the tracking number. The hospital or health care practitioner shall provide the alleged victim with the tracking number on the forensic examination kit and shall inform the alleged victim which law enforcement agency is storing the kit.

If the alleged victim reports the alleged offense to a law enforcement agency by the time the examination is complete, the investigating law enforcement agency shall transport the forensic examination kit directly to the Maine State Police Crime Laboratory.

If an examination is performed under subsection 5 and the alleged victim does not, within 60 days, regain a state of consciousness adequate to decide whether or not to report the alleged offense, the State may file a motion in the District Court relating to storing or processing the forensic examination kit. Upon finding good cause and after considering factors, including, but not limited to, the possible benefits to public safety in processing the kit and the likelihood of the alleged victim's regaining a state of consciousness adequate to decide whether or not to report the alleged offense in a reasonable time, the District Court may order either that the kit be stored for additional time or that the kit be transported to the Maine State Police Crime Laboratory for processing, or such other disposition that the court determines just. In the interests of justice or upon motion by the State, the District Court may conduct hearings required under this paragraph confidentially and in camera and may impound pleadings and other records related to them.

**Sec. 2. 24 MRSA §2986, sub-§§5 and 6** are enacted to read:

**5. Implied consent.** If an alleged victim of gross sexual assault is unconscious and a reasonable person would conclude that exigent circumstances justify conducting a forensic examination, a licensed hospital or licensed health care practitioner may perform an examination in accordance with the provisions of this section.

A forensic examination kit completed in accordance with this subsection must be treated in accordance with Title 25, section 3821 and must preserve the alleged victim's anonymity. In addition, the law enforcement agency shall immediately report to the district attorney for the district in which the hospital or health care practitioner is located that such a forensic examination has been performed and a forensic examination kit has been completed under this subsection.

**6. Liability.** A licensed hospital or licensed health care practitioner in the exercise of due care is not liable for an act done or omitted in performing a sexual assault forensic examination under this section.

**Sec. 3. 25 MRSA §3821**, as enacted by PL 1999, c. 719, §4 and affected by §11, is amended by adding at the end a new paragraph to read:

In the case of a forensic examination performed under Title 24, section 2986, subsection 5, the law enforcement agency must immediately notify the district attorney for the district in which the hospital or health care practitioner is located that such a forensic examination has been performed and a forensic examination kit has been completed under Title 24, section 2986, subsection 5.

See title page for effective date.

## CHAPTER 539

H.P. 1323 - L.D. 1883

## An Act To Clarify the Liquor Laws

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

**Sec. 1. 28-A MRSA §2, sub-§1**, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

**1. Agency liquor store.** "Agency liquor store" means a person who is licensed by the ~~commission~~ bureau to sell spirits to be consumed off the premises.

**Sec. 2. 28-A MRSA §2, sub-§15, ¶H,** as amended by PL 1987, c. 342, §5, is further amended to read:

H. "Hotel" means any reputable place operated by responsible persons of good reputation, where the public obtains sleeping accommodations for a consideration and where meals may be served, whether or not under one roof.

(1) A hotel is considered to be serving meals when it provides on the premises one or more public dining rooms, open and serving food during the morning, afternoon and evening, and a separate kitchen in which food is regularly prepared for the public.

(2) Nothing in this paragraph may be held to prevent the ~~commission~~ bureau from issuing part-time licenses to bona fide part-time hotels.

(3) "Hotel guest" means a person whose name and address is registered on the registry maintained by the hotel and who is the bona fide occupant of a room of the hotel. A person registering solely for the purpose of obtaining liquor is not considered a hotel guest.

**Sec. 3. 28-A MRSA §2, sub-§16-A,** as amended by PL 1993, c. 462, §2, is further amended to read:

**16-A. Low-alcohol spirits product.** "Low-alcohol spirits product" means a product containing spirits that has an alcohol content of ~~less than~~ 6% or less by volume.

**Sec. 4. 28-A MRSA §355,** as amended by PL 1997, c. 373, §41, is further amended to read:

**§355. Closed in cases of riots; hurricanes; flood**

The Governor or the ~~alcohol~~ bureau may, in cases of riots, hurricanes and floods, order any or all state liquor stores or agency liquor stores to close.

**Sec. 5. 28-A MRSA §453-C, sub-§1,** as enacted by PL 2001, c. 711, §6, is amended to read:

**1. Agent licensed to resell spirits purchased from the alcohol bureau.** An agent licensed to resell spirits and fortified wine purchased from the State to a retail licensee licensed for on-premises consumption must be licensed as a reselling agent. An agent is prohibited from reselling liquor to a retail licensee licensed for on-premises consumption except for spirits and fortified wine purchased from the ~~commission~~ alcohol bureau or a state liquor store. A reselling

agent may not resell fortified wine purchased from wholesalers licensed to sell beer and wine in the State.

**Sec. 6. 28-A MRSA §606,** as amended by PL 2003, c. 20, Pt. SS, §§5 and 6 and affected by §8, is further amended to read:

**§606. Liquor bought from alcohol bureau; sale to government agencies**

**1. Purchase of liquor.** Subject to the restrictions provided in subsection 1-A, a person licensed to sell spirits must purchase liquor from the alcohol bureau or a state or agency liquor store. This subsection does not apply to public service corporations operating interstate.

**1-A. On-premises licensees; purchase from agency store.** A person licensed to sell spirits for consumption on the premises shall purchase spirits from an agency liquor store only in accordance with this subsection.

A. The sale price of spirits sold to a licensee under this subsection must equal the price for which a licensee would purchase liquor at a state store. Beginning November 30, 2003, the sale price of spirits sold to an establishment licensed for on-premises consumption must equal the price established by the ~~alcohol bureau~~ commission.

B. Upon completion of a transaction, the agency liquor store and the ~~on-premise~~ on-premises licensee shall each retain a copy of the licensee order form.

**1-C. Price of state liquor sales to licensees.** The ~~commission~~ alcohol bureau may offer discounts below the list price to licensees.

**2. On-premises retailers must report purchases.** All persons licensed to sell liquor to be consumed on the premises shall report all liquor purchases to the ~~commission~~ bureau on forms provided by the ~~commission~~ bureau.

**3. Prospective licensees may order liquor in advance.** Upon approval of the bureau, persons who have been issued a license, effective at a future date, may order liquor in advance of the effective date of the license and may advertise the effective date.

**4. Discount for agency liquor stores.** The alcohol bureau shall sell spirits and fortified wines to agency liquor stores for a price of at least 8% less than the list price established for the state liquor stores. Beginning November 30, 2003, the alcohol bureau shall set the price of spirits and fortified wine at a minimum discount of 9% of the list price.

**5. Sale to government instrumentalities.** The alcohol bureau may authorize the sale of spirits to government instrumentalities within the State approved by the bureau. The alcohol bureau shall set the price.

**6. Sale to airlines and ferry services for consumption outside the State.** The alcohol bureau may authorize the sale of spirits not for consumption within the State to airlines and ferry services or their agents as authorized by the bureau. The alcohol bureau shall set the price.

**7. Premium must be collected.** Nothing in this section permits the sale of spirits without collecting the entire premium assessed under chapter 65.

**8. Limits on price.** An agency liquor store shall sell all spirits and fortified wine purchased from the ~~commission~~ alcohol bureau at the retail price established by the commission.

**Sec. 7. 28-A MRSA §1051, sub-§1,** as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

**1. Licenses for sale of liquor to be consumed on the premises where sold.** Subject to subsection 2, the ~~commission bureau~~ alcohol bureau may issue licenses for the sale of spirits, wine and malt liquor to be consumed on the premises where sold to qualified applicants upon payment of fees provided.

**Sec. 8. 28-A MRSA §1052, sub-§4,** as amended by PL 1987, c. 342, §77, is further amended to read:

**4. Application.** The licensee must apply for an ~~off-premise off-premises~~ catering license by filing a written application with the ~~commission bureau~~ alcohol bureau at least 24 hours before the event or gathering. The application must include the following:

- A. Title and purpose of the event;
- B. Date, time and duration;
- C. Location;
- D. Approximate number of persons to be accommodated;
- E. Name and address of sponsoring person, organization or association;
- F. If food is to be served, the name and address of food caterer, if other than the licensee; and
- G. Approval by the municipal officers, or a municipal official designated by the municipal officers, of the municipality in which the proposed additional licensed premises are located, which,

notwithstanding section 653, may be granted without public notice.

**Sec. 9. 28-A MRSA §1651, sub-§2,** as amended by PL 1995, c. 181, §§1 and 2, is further amended to read:

**2. Special pricing situations.** The ~~commission~~ alcohol bureau may set prices at different levels than those established by the commission in the following special situations.

C. Notwithstanding the other provisions of this section, with approval of the Commissioner of Administrative and Financial Services, the ~~commission~~ alcohol bureau may reduce the price of discontinued items of liquor. The reduced price may not be less than the actual cost of the discontinued liquor items.

E. Notwithstanding the other provisions of this section, the ~~commission~~ alcohol bureau may establish special prices on certain listed liquor items to be made available to the consumer at all state and agency stores. ~~These special prices must not be lower than the price established for the same listed item at the 2-discount state liquor stores authorized under section 403.~~

F. Spirits sold under section 606 may be sold at prices established under section 606.

G. Notwithstanding the other provisions of this section, the ~~commission~~ alcohol bureau may reduce, at the expense of the broker or supplier, the price of those test-market items that fail to meet set minimum gross profit standards after a 3-month period.

**Sec. 10. 28-A MRSA §1651, sub-§4,** as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

**4. Net revenue deposited to General Fund.** ~~The commission shall deposit all~~ All net revenue revenues derived from the tax under this section must be credited to the ~~credit of the~~ General Fund.

**Sec. 11. 28-A MRSA §2503, sub-§3,** as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

**3. Licensee.** Notwithstanding section 2, subsection 14, "licensee" means any person to whom a license of any kind is issued by the ~~commission bureau~~ alcohol bureau and any person who is required to be licensed to serve liquor.

**Sec. 12. 28-A MRSA §2519, sub-§2,** as amended by PL 1999, c. 519, §§2 and 3, is further amended to read:

**2. Advisory committee; appointment.** The commissioner shall appoint the Server Education

Advisory Committee consisting of 7 8 members, to include:

- A. A representative of the faculty at the Maine Criminal Justice Academy;
- B. A liquor enforcement officer;
- C. A representative of the Department of the Attorney General;
- D. A representative of the Office of Substance Abuse;
- E. A representative of the education community;
- F. A representative of a statewide liquor licensee organization; ~~and~~
- G. A representative of a statewide trial lawyers organization; ~~and~~
- H. A representative of the alcohol bureau.

See title page for effective date.

**CHAPTER 540**

**H.P. 1404 - L.D. 2002**

**An Act To Give Superior Court Clerks and Deputy Clerks the Authority To Issue Process for the Arrest of Persons Charged with Crimes**

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

**Whereas,** the Supreme Judicial Court made changes effective January 1, 2006 in the Maine Rules of Criminal Procedure and in trial court procedures regarding the initiation in the Superior Court of trials of felony and related misdemeanor crimes; and

**Whereas,** as a consequence of these changes to the court rules and procedures, it is necessary that this legislation be enacted as an emergency in order that it take effect immediately; 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. 4 MRSA §107-A** is enacted to read:

**§107-A. Authority of clerks to issue process for arrest of persons**

The Chief Justice of the Superior Court may authorize any clerk or deputy clerk of the Superior Court to issue process for the arrest of persons charged with crimes if the Chief Justice of the Superior Court is satisfied that the clerk or deputy clerk has the necessary training and learning to perform that function. When authorized by the Chief Justice of the Superior Court to issue process and acting in that capacity, the clerk or deputy clerk is considered a justice of the peace with the same authority as a District Court clerk or deputy clerk described in section 161. A clerk or deputy clerk who is authorized to issue process serves in that capacity at the pleasure of the Chief Justice of the Superior Court.

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

Effective April 5, 2006.

**CHAPTER 541**

**H.P. 1429 - L.D. 2031**

**An Act To Authorize Certain County Jail Employees To Perform Certain Ministerial and Notary Functions for Inmates**

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

**Whereas,** authorizing certain county jail employees to perform ministerial functions related to preparing personal recognizance or an unsecured appearance bond and providing notary services has been the practice of several jails and has been of benefit to both the jails and their inmates; and

**Whereas,** the provision of these ministerial functions and notary services has unintentionally been in violation of the Maine Revised Statutes, Title 30-A, section 353; and

**Whereas,** enacting a permissible process for these ministerial functions and notary services will continue to benefit the jails and the inmates; 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 preserva-