

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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Lewiston, Maine
2006

tion, rehabilitation, ownership or operation of housing.

(b) "Residential rental housing" means one or more buildings, together with any facilities functionally related and subordinate to the building or buildings, containing one or more similarly constructed residential units offered for rental to the general public for use on other than a transient basis, each of which contains separate and complete facilities for living, sleeping, eating, cooking and sanitation.

(c) "Unrelated trade or business" means any trade or business whose conduct is not substantially related to the exercise or performance by a non-profit organization of the purposes constituting the basis for exemption under Section 501(c)(3) of the Code.

Sec. 17. 38 MRSA §488, sub-§23, as enacted by PL 2005, c. 217, §1, is amended to read:

23. Agricultural fair property. Development on property that is used for one or more agricultural fairs licensed by the Commissioner of Agriculture, Food and Rural Resources under Title 7, chapter 3 4 is exempt from review under this article if:

A. The property is not used for motorized vehicle racing for more than 14 days beyond those days authorized for the operation of the agricultural fair;

B. Motorized vehicle racing on the property is licensed by the Department of Public Safety;

C. Use of the property beyond those days authorized for the operation of the agricultural fair meets a noise standard pursuant to section 484, subsection 3. The department shall enforce the noise standard under this paragraph; and

D. The property has been identified as the location of an agricultural fair in an agricultural fair license issued by the Department of Agriculture, Food and Rural Resources prior to September 15, 2006.

See title page for effective date.

CHAPTER 564

S.P. 271 - L.D. 816

An Act To Replace the Common Enemy Rule with Regard to Changing the Flow of Surface Water

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

Sec. 1. 17 MRSA §2808 is enacted to read:

§2808. Alteration of surface water flow

Unreasonable use of land that results in altered flow of surface water that unreasonably injures another's land or that unreasonably interferes with the reasonable use of another's land is a nuisance.

An action under this section must be commenced within 3 years after the cause of action accrues.

Sec. 2. Application. This Act applies to causes of action accruing on or after the effective date of this Act.

Sec. 3. Effective date. This Act takes effect January 1, 2007.

Effective January 1, 2007.

CHAPTER 565

S.P. 677 - L.D. 1760

An Act To Amend the Maine Health Data Organization and Maine Health Data Processing Center Laws

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

Sec. 1. 10 MRSA §684, sub-§5, as enacted by PL 2001, c. 456, §1, is amended to read:

5. Cooperation with agencies and organizations. Cooperate with and avail itself of the services of government agencies and the University of Maine System and cooperate, assist and otherwise encourage organizations, local or regional, private or public, in the various communities of the State in the collection and processing of health care data; ~~and~~

Sec. 2. 10 MRSA §684, sub-§6, as corrected by RR 2001, c. 2, Pt. B, §22 and affected by §58, is amended to read:

6. Bylaws. Adopt bylaws that are consistent with this chapter for the governance of the affairs of the center, have the general powers accorded corpora-

tions under Title 13-C, section 302 and do all other things necessary or convenient to carry out the lawful purposes of the center; and

Sec. 3. 10 MRSA §684, sub-§7 is enacted to read:

7. Process data on behalf of entities outside State. Enter, to offset its operating costs, into contracts under subsection 4 with governmental or private entities outside the State to collect and process health care data for those entities. Data collected and processed by the center under contract are subject to the terms of the contract and the provisions of this chapter. Notwithstanding section 682, data collected under this subsection remain the sole and exclusive property of the entity contracting with the center.

Sec. 4. 10 MRSA §689, sub-§1, as enacted by PL 2001, c. 456, §1, is amended to read:

1. Net earnings of center. The annual net earnings of the center must be distributed to the Maine Health Data Organization and the Maine Health Information Center in proportion to the average annual funding provided by each entity for the operational costs of the center. The net earnings of the center may not inure to the benefit of any officer, director or employee, except that the center is authorized and empowered to pay reasonable compensation for services rendered and otherwise hold, manage and dispose of its property in furtherance of the purposes of the center.

Sec. 5. 22 MRSA §8704, sub-§7, as amended by PL 2005, c. 253, §5, is further amended to read:

7. Annual report. The board shall prepare and submit an annual report on the operation of the organization and the Maine Health Data Processing Center as authorized in Title 10, section 681, including any activity contracted for by the organization or contracted services provided by the center, with resulting net earnings, to the Governor and the joint standing committee of the Legislature having jurisdiction over health and human services matters no later than February 1st of each year. The report must include an annual accounting of all revenue received and expenditures incurred in the previous year and all revenue and expenditures planned for the next year. The report must include a list of persons or entities that requested data from the organization in the preceding year with a brief summary of the stated purpose of the request.

Sec. 6. 22 MRSA §8705-A, sub-§3, ¶B, as enacted by PL 2003, c. 659, §2, is amended to read:

B. A person or entity that receives data or information under the terms and conditions of sec-

tion 8707 and intentionally or knowingly uses, sells or transfers the data in violation of the board's rules for commercial advantage, pecuniary gain, personal gain or malicious harm commits a civil violation for which a fine not to exceed ~~\$250,000~~ \$500,000 may be adjudged.

Sec. 7. 22 MRSA §8706, sub-§2, ¶C, as amended by PL 2001, c. 457, §13, is further amended to read:

C. The operations of the organization must be supported from 3 sources as provided in this paragraph:

(1) Fees collected pursuant to paragraphs A and B;

(2) Annual assessments of not less than \$100 assessed against the following entities licensed under Titles 24 and 24-A: non-profit hospital and medical service organizations, health insurance carriers and health maintenance organizations on the basis of the total annual health care premium; and 3rd-party administrators and carriers that provide only administrative services for a plan sponsor on the basis of claims processed or paid for each plan sponsor. The assessments are to be determined on an annual basis by the board. Health care policies issued for specified disease, accident, injury, hospital indemnity, disability, long-term care or other limited benefit health insurance policies are not subject to assessment under this subparagraph. For purposes of this subparagraph, policies issued for dental services are not considered to be limited benefit health insurance policies. The total dollar amount of assessments under this subparagraph must equal the assessments under subparagraph (3); and

(3) Annual assessments of not less than \$100 assessed by the organization against providers. The assessments are to be determined on an annual basis by the board. The total dollar amount of assessments under this subparagraph must equal the assessments under subparagraph (2).

The aggregate level of annual assessments under subparagraphs (2) and (3) must be an amount sufficient to meet the organization's expenditures authorized in the state budget established under Title 5, chapter 149. The annual assessment may not exceed \$1,346,904 in fiscal year 2002-03. In subsequent fiscal years, the annual assessment may increase above \$1,346,904 by an amount not to exceed 5% per fiscal year. The board may

waive assessments otherwise due under subparagraphs (2) and (3) when a waiver is determined to be in the interests of the organization and the parties to be assessed.

See title page for effective date.

CHAPTER 566

S.P. 660 - L.D. 1743

An Act To Allow the Department of Health and Human Services To Locate Parents Who Are Delinquent in Child Support Payments through Information Related to Cellular Telephones

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

Whereas, the Department of Health and Human Services is finding it more difficult to locate parents delinquent in child support; and

Whereas, the sooner the Department of Health and Human Services has the authority to obtain information from wireless service providers, the sooner the department will be able to locate delinquent parents; 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. 19-A MRSA §2158 is enacted to read:

§2158. Access to wireless service provider's records of individuals who owe child support

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Account holder" means an individual who has executed an agreement with a wireless service provider for cellular telephone service.

B. "Match" means an automated comparison by name, date of birth and social security number of a list of obligors provided to a wireless service provider by the department with a list of account holders of the wireless service provider for the

purpose of providing the department with a list of addresses of account holders delinquent in support allowing the department to locate and enforce support obligations.

C. "Obligor" means a person who owes a child support obligation.

D. "Wireless service provider" means an entity that provides cellular telephone service.

2. Match. Upon request from the department to a wireless service provider conducting business in this State, the wireless service provider shall perform a match using the list of obligors' names provided by the department. The department may not request a wireless service provider to perform a match under this section more often than once every calendar quarter.

3. Compilation of match list. After completing a match under subsection 2, a wireless service provider shall compile for the department a list of those account holders whose names match names on the list of obligors provided by the department. The list must contain the following information, if available to the wireless service provider through its matching procedure, for each account holder identified:

A. The account holder's full name;

B. The account holder's date of birth;

C. The account holder's social security number;

D. The account holder's address; and

E. The account holder's employer.

4. Notice to department. A wireless service provider that has compiled a match list under subsection 3 shall send the list to the department at the address designated by the department.

5. Reasonable fee. To cover the costs of carrying out the requirements of this section, a wireless service provider may assess a reasonable fee to the department not to exceed the actual costs incurred by the wireless service provider.

6. Confidentiality. A list of obligors provided by the department to a wireless service provider under subsection 2 is confidential. The information may be used only for the purpose of carrying out the requirements of this section. Knowing or intentional use of the information, without authorization from the department, is a civil violation for which a fine not to exceed \$1,000 may be adjudged.

7. Immunity from liability; hold harmless. A wireless service provider is immune from any liability