

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

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Penmor Lithographers
Lewiston, Maine
2007

CHAPTER 92
H.P. 270 - L.D. 340

**An Act To Require the
Replacement of Trees Cut in
Shoreland Areas**

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

Sec. 1. 30-A MRSA §4452, sub-§3, ¶C-1, as enacted by PL 1989, c. 727, §1, is repealed.

Sec. 2. 30-A MRSA §4452, sub-§3, ¶C-2 is enacted to read:

C-2. Notwithstanding paragraph C, for violations of the laws and ordinances set forth in subsection 5, paragraph Q, the provisions of this paragraph apply. The court must order the violator to correct or mitigate the violation unless the correction or mitigation would result in a threat or hazard to public health or safety, substantial environmental damage or a substantial injustice.

(1) Except for timber harvesting, correction or mitigation of a violation that involves the cutting of a tree or trees must include, but is not limited to, replacement of each tree cut with a tree of substantially similar size and species to the extent available and feasible.

(2) Except for timber harvesting, correction or mitigation of a violation that involves the cutting of understory vegetation must include, but is not limited to, replacement of the understory vegetation with understory vegetation of substantially similar size and species to the extent available and feasible.

(3) For violations requiring correction or mitigation pursuant to subparagraph (1) or (2), the violator shall submit to the municipality a reforestation plan developed with and signed by a forester licensed pursuant to Title 32, chapter 76 or other qualified professional. The reforestation plan must include consideration of specified site conditions and address habitat and other riparian restoration, visual screening, understory vegetation and erosion and sedimentation control.

For purposes of this paragraph, "timber harvesting" has the same meaning as in Title 38, section 438-B, subsection 1, paragraph C.

For purposes of this paragraph, "understory vegetation" means all saplings that measure less than 2 inches in diameter at 4.5 feet above ground level and all shrubs.

See title page for effective date.

CHAPTER 93
H.P. 345 - L.D. 429

**An Act To Improve Access to
HIV Testing in Health Care
Settings**

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

Sec. 1. 5 MRSA §19203-A, as amended by PL 1999, c. 429, §3, is further amended to read:

§19203-A. Voluntary informed consent required

1. Individual tested. Except as provided in this section and section 19203, subsections 4 and 5, ~~no person may perform an HIV test without first obtaining the written informed consent of the person to be tested~~ an HIV test must be voluntary and undertaken only with a patient's knowledge and understanding that an HIV test is planned. A patient must be informed orally or in writing that an HIV test will be performed unless the patient declines. Oral or written information required to be given to a patient under this subsection must include an explanation of what an HIV infection involves and the meaning of positive and negative test results. A patient must be provided the opportunity to ask questions, either orally or in writing. Informed consent is not required for repeated HIV testing by health care providers to monitor the course of established infection. Anonymous test sites under section 19203-B are exempt from the requirement that the informed consent be in writing.

2. Insurers. Persons required to take an HIV test by an insurer, nonprofit hospital or medical service organization or nonprofit health care plan must provide their written informed consent on forms approved by the Superintendent of Insurance. ~~Pretest and post-test~~ If the test is positive, post-test counseling must be provided by the person or organization requesting the test. The Superintendent of Insurance may promulgate adopt rules to define language requirements of the form.

3. Access to medical care. ~~No~~ A health care provider may not deny any person medical treatment or care solely for refusal to give consent for an HIV test. ~~No~~ A health care provider may not request a person's written consent to an HIV test as a precondition to the provision of health care. All written consent to testing ~~shall~~ must be in accordance with section 19201, subsection 5-A. ~~Nothing in this~~ This section ~~may~~ does not prohibit a health care provider from recommending an HIV test for diagnostic or treatment purposes. ~~No~~ A physician or other health care provider ~~may be~~ is not civilly liable for failing to have an HIV test performed for diagnostic or treatment purposes if the test was recommended and refused in writing by the patient.

4. Occupational exposure. Consent need not be obtained when a bona fide occupational exposure creates a significant risk of infection ~~provided that if~~ a court order has been obtained under section 19203-C. The fact that an HIV test was given as a result of an occupational exposure and the results of that test may not appear in any records of the person whose blood or body fluid is the source of the exposure. ~~Pretest and post-test~~ If the test is positive, post-test counseling must be offered. The subject of the test may choose not to be informed about the result of the test.

4-A. Occupational exposure in health care setting. When a bona fide occupational exposure occurs in a health care setting, authorization to test the source patient for HIV must be obtained from that patient if the patient is present or can be contacted at the time of exposure and is capable of providing consent. At the time of exposure, if the source patient is not present and can not be contacted or is incapacitated, then any reasonably available member of the following classes of individuals, in descending order of priority, may authorize an HIV test on a blood or tissue sample from the source patient:

- A. The patient's legal guardian;
- B. An individual known to have power of attorney for health care for the patient;
- C. An adult relative, by blood, marriage or adoption;
- D. An adult with whom the patient has a meaningful social and emotional relationship; and
- E. A physician who is familiar with occupational exposures to HIV.

The individual authorizing the HIV test must be informed of the nature, reliability and significance of the HIV test and the confidential nature of the test.

If the person contacted for authorization refuses to authorize the test, the test may not be conducted unless consent is obtained from the source patient or from the court pursuant to section 19203-C.

This subsection does not authorize a person described in paragraphs A to D to receive the test result. Test results must be given to the exposed person, to a personal physician if designated by the exposed person and to either the physician who authorizes the test or the health care provider who manages the occupational exposure.

The patient may choose not to be informed about the result of the HIV test. Without express patient authorization, the results of the HIV test and the fact that an HIV test was done as a result of an occupational exposure in a health care setting may not appear in the patient's health care records. The exposed individual's occupational health care record may include documentation of the occupational exposure and, if the

record does not reveal the source patient's identity, the results of the source patient's HIV test.

5. Exposure from sexual crime. Consent need not be obtained when a court order has been issued under section 19203-F. The fact that an HIV test was given as a result of the exposure and the results of that test may not appear in a convicted offender's medical record. Counseling on risk reduction must be offered, but the convicted offender may choose not to be informed about the result of the test unless the court has ordered that the convicted offender be informed of the result.

Sec. 2. 5 MRSA §19203-F, sub-§4, as enacted by PL 1995, c. 319, §4, is amended to read:

4. Reporting and counseling. The health care facility in which a convicted offender is tested pursuant to this section shall disclose the results of the test to the victim-witness advocate, who shall disclose the result to the petitioner. ~~The test result may not be disclosed to the petitioner until the petitioner has received counseling, pursuant to section 19204-A, regarding the nature, reliability and significance of the convicted offender's HIV test and has been offered referrals for health care and support services for the victim.~~ The health care facility shall, upon order of the court, disclose the results of the test to the convicted offender.

Sec. 3. 5 MRSA §19204-A, as amended by PL 2001, c. 647, §§1 to 3, is further amended to read:

§19204-A. Counseling new HIV cases

Except as otherwise provided by this chapter, persons who ~~are the subjects of test positive for HIV tests infection~~ must be offered ~~pretest and~~ post-test counseling. Persons who are authorized by section 19203-C or 19203-F to receive test results after exposure must be offered counseling regarding the nature, reliability and significance of the HIV test and the confidential nature of the test. Persons offered counseling under this section may decline the offer by signing a waiver stating that counseling has been offered and is being declined.

1. Pretest counseling. ~~"Pretest counseling" must include:~~

~~A. Face to face counseling that includes, at a minimum, a discussion of:~~

- ~~(1) The nature and reliability of the test being proposed;~~
- ~~(2) The person to whom the results of the test may be disclosed;~~
- ~~(3) The purpose for which the test results may be used;~~
- ~~(4) Any reasonably foreseeable risks and benefits resulting from the test; and~~

~~(5) Information on good HIV preventive practices and HIV risk reduction plans; and~~

~~B. An entry in the medical record of the person being counseled summarizing the contents of the discussion concerning at least the topics listed in paragraph A, subparagraphs (1) to (5). A written informed consent form may be used to satisfy the requirement in this paragraph if it contains all the required information. A written consent form does not satisfy the requirement for personal counseling in paragraph A.~~

~~The provider of an HIV test may offer group pretest counseling, but individual counseling must be provided if the subject of the test requests it.~~

2. Post-test counseling. "Post-test counseling" must include:

A. Personal counseling that includes, at a minimum, a discussion of:

(1) The test results and the reliability and significance of the test results. The person providing post-test counseling shall communicate the result confidentially and through personal contact;

(3) Information on good preventive practices and risk reduction plans; and

(4) Referrals for medical care and information and referrals for support services, including social, emotional support and legal services, as needed;

B. An entry in the medical record of the person being counseled summarizing the contents of the discussion; and

C. The offer of face-to-face counseling. If the subject of the test declines, the provider of the test may provide an alternative means of providing the information required by paragraph A.

5. Written information to person being counseled. ~~To comply with the requirements of this section regarding pretest counseling, in addition to meeting the requirements of subsection 1, the provider of an HIV test shall give to the person being counseled a written document containing information on the subjects described in subsection 1, paragraph A. To comply with the requirements of this section regarding post-test counseling, in addition to meeting the requirements of subsection 2, the provider of an HIV test shall give to the person being counseled a written document containing information on the subjects described in subsection 2, paragraph A. A written consent form or other document may be used to meet one or both of the requirements for information pursuant to this subsection if the form or document contains all the information required for the type of counseling being offered.~~

Sec. 4. 5 MRSA §19204-B, sub-§2, ¶A, as enacted by PL 1987, c. 811, §9, is amended to read:

A. If the employee declines to be tested pursuant to section 19203-A;

Sec. 5. 22 MRSA §834, as enacted by PL 1997, c. 368, §1, is repealed.

See title page for effective date.

CHAPTER 94

S.P. 137 - L.D. 436

An Act To Postpone the Expiration of the Required Nonhospital Expenditures Component in the Capital Investment Fund

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

Sec. 1. 2 MRSA §102, sub-§3, as amended by PL 2005, c. 227, §1, is further amended to read:

3. Nonhospital capital expenditures. For the first 6 7 years of the plan, the nonhospital component of the capital investment fund must be at least 12.5% of the total.

This subsection is repealed July 1, ~~2008~~ 2009.

See title page for effective date.

CHAPTER 95

S.P. 144 - L.D. 443

An Act To Require the Department of Environmental Protection To Meet the Federal Requirements on Regional Haze Visibility Impairment

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

Sec. 1. 38 MRSA §582, sub-§5-C is enacted to read:

5-C. Best available retrofit technology or BART. "Best available retrofit technology" or "BART" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each visibility-impairing air pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality