

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-THIRD LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 6, 2006 to June 21, 2007**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 20, 2007**

**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**  
**2007**

closed in response to a notice of levy issued by the Department of Labor pursuant to Title 26, section 1233; or

**Sec. 3. 9-B MRSA §162, sub-§5** is enacted to read:

**5. Disclosure to the Department of Health and Human Services upon suspicion of financial exploitation.** The financial records are disclosed to the Department of Health and Human Services pursuant to Title 22, section 3479 because a financial institution authorized to do business in this State or its affiliate or a credit union authorized to do business in this State or its affiliate has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation.

**Sec. 4. 9-B MRSA §164, sub-§3** is enacted to read:

**3. Immunity.** A financial institution authorized to do business in the State or its affiliate or a credit union authorized to do business in the State or its affiliate that in good faith discloses financial records to the Department of Health and Human Services pursuant to section 162, subsection 5 is immune from civil or criminal liability that might otherwise arise from the disclosure. In a proceeding regarding immunity from liability, there is a rebuttable presumption of good faith.

See title page for effective date.

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## CHAPTER 109

### H.P. 74 - L.D. 76

#### An Act To Temporarily Reduce the Fee To Operate High-stakes Beano

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

**Sec. 1. 17 MRSA §314-A, sub-§4**, as repealed and replaced by PL 1991, c. 426, §4, is amended to read:

**4. Term of license; fees.** A license issued under this section is valid for a period of one year. The annual license fee for a high-stakes beano license is \$50,000, payable except that the annual license fee due in 2008 and 2009 is \$25,000. License fees may be paid in advance in quarterly installments. All license fees must be paid to the Treasurer of State to be credited to the General Fund.

**Sec. 2. Report.** By February 1, 2009, the Chief of the State Police shall submit a report to the joint standing committee of the Legislature having jurisdiction over matters pertaining to beano and games of chance on the enforcement and administra-

tive functions conducted with regard to the conduct of high-stakes beano during calendar year 2008.

See title page for effective date.

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## CHAPTER 110

### H.P. 119 - L.D. 127

#### An Act To Amend the Laws Pertaining to Beano

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

**Sec. 1. 17 MRSA §324-A, sub-§2, ¶C**, as enacted by PL 2003, c. 452, Pt. I, §10 and affected by Pt. X, §2, is amended to read:

C. Lucky seven or similar sealed tickets may be sold when that game of chance is licensed by the Chief of the State Police and when a valid license certificate is properly displayed. Notwithstanding the other provisions of this section and section 312, lucky seven games may be conducted during the period beginning 2 hours before and ending 2 hours after a "beano" game.

Notwithstanding any other rule, lucky seven or other similar sealed tickets may be sold that have a sale value of \$1 or less, and a person who sells or distributes "beano" cards or materials used to play "beano" prior to the conduct of "beano" as a volunteer, as provided in this section, is permitted to play in the "beano" game.

See title page for effective date.

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## CHAPTER 111

### H.P. 132 - L.D. 150

#### An Act To Amend and Improve the Education Laws Concerning Portable Space and Rule-making Authority

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

**Sec. 1. 20-A MRSA §5001-A, sub-§3, ¶A**, as amended by PL 2003, c. 181, §1, is further amended to read:

A. Equivalent instruction alternatives are as follows.

(1) A person is excused from attending a public day school if the person obtains equivalent instruction in:

(a) A private school approved for attendance purposes pursuant to section 2901;

- (b) A private school recognized by the department as providing equivalent instruction;
  - (c-1) A home instruction program that complies with the requirements of subparagraph (4); or
  - (d) Any other manner arranged for by the school board and approved by the commissioner.
- (2) A student is credited with attendance at a private school only if a certificate showing the name, residence and attendance of the person at the school, signed by the person or persons in charge of the school, has been filed with the school officials of the administrative unit in which the student resides.
- (4) The following provisions govern a home instruction program.
- (a) The student's parent or guardian shall provide a written notice of intent to provide home instruction simultaneously to the school officials of the administrative unit in which the student resides and to the commissioner within 10 calendar days of the beginning of home instruction. The notice must contain the following information:
    - (i) The name, signature and address of the student's parent or guardian;
    - (ii) The name and age of the student;
    - (iii) The date the home instruction program will begin;
    - (iv) A statement of assurance that indicates the home instruction program will provide at least 175 days annually of instruction and will provide instruction in the following subject areas: English and language arts, math, science, social studies, physical education, health education, library skills, fine arts and, in at least one grade from grade 6 to 12, Maine studies. At one grade level from grade 7 to 12, the student will demonstrate proficiency in the use of computers; and
    - (v) A statement of assurance that indicates that the home instruction program will include an annual assessment of the student's academic progress that includes at least one of the forms of assessment described in division (b).
  - (b) On or before September 1st of each subsequent year of home instruction, the student's parent or guardian shall file a letter with the school officials of the administrative unit in which the student resides and the commissioner stating the intention to continue providing home instruction and enclose a copy of one of the following forms of annual assessment of the student's academic progress:
    - (i) A standardized achievement test administered through the administrative unit in which the student resides or through other arrangements approved by the commissioner. If the test is administered through the administrative unit in which the student resides, that administration must be agreed to by the school officials of the administrative unit prior to submission of the written notice of intent to provide home instruction;
    - (ii) A test developed by the school officials of the administrative unit in which the student resides appropriate to the student's home instruction program, which must be agreed to by the school officials of the administrative unit prior to submission of the written notice of intent to provide home instruction;
    - (iii) A review and acceptance of the student's progress by an identified individual who holds a current Maine teacher's certificate;
    - (iv) A review and acceptance of the student's progress based on, but not limited to, a presentation of an educational portfolio of the student to a local area homeschooling support group whose membership for this purpose includes a currently certified Maine teacher or administrator; or
    - (v) A review and acceptance of the student's progress by a local advisory board selected by the superintendent of the administrative unit in which the student resides that includes one administrative unit employee and 2 home instruction tutors. For the purpose of this subdivision, a "home instruction tutor" means the parent, guardian or other person who acts or will act as a primary teacher of the student in the

home instruction program. This provision must be agreed to by the school officials of the administrative unit in which the student resides prior to submission of the written notice of intent to provide home instruction.

(c) Dissemination of any information filed under this subparagraph is governed by the provisions of section 6001; the federal Family Educational Rights and Privacy Act of 1974, 20 United States Code, Section 1232g (2002); and the federal Education for All Handicapped Children Act of 1975, 20 United States Code, Sections 1401 to 1487 (2002), except that "directory information," as defined by the federal Family Educational Rights and Privacy Act of 1974, is confidential and is not subject to public disclosure unless the parent or guardian specifically permits disclosure in writing or a judge orders otherwise. Copies of the information filed under this subparagraph must be maintained by the student's parent or guardian until the home instruction program concludes. The records must be made available to the commissioner upon request.

(d) If the home instruction program is discontinued, students of compulsory school age must be enrolled in a public school or an equivalent instruction alternative as provided for in this paragraph. The receiving school shall determine the placement of the student. At the secondary level, the principal of the receiving school shall determine the value of the prior educational experience toward meeting the standards of the system of learning results as established in section 6209.

~~(e) The commissioner shall amend or adopt rules to accomplish the purposes of this subparagraph. Rules adopted pursuant to this division are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.~~

**Sec. 2. 20-A MRSA §7404, sub-§1,** as amended by PL 1999, c. 775, §5, is further amended to read:

**1. Funding.** Students from this State may attend the school free of tuition and room and board expense. Funding for these students is provided by legislative appropriation based on the services necessary, including room and board, to satisfy the individualized education programs of the students, ~~as defined by depart-~~

~~ment rule. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.~~ Funding must support maintenance of the center school and that portion of the island used by the center school, security, outreach services, adult education, access to the education network of Maine and operations of the center school, including the residential program, parent-infant program, preschool program and communication garden program. Funding must also support maintenance and operations of any satellite school.

**Sec. 3. 20-A MRSA §15672, sub-§2-A, ¶B,** as enacted by PL 2005, c. 2, Pt. D, §36 and affected by §§72 and 74 and c. 12, Pt. WW, §18, is amended to read:

B. Lease costs for school buildings when the leases, including leases under which the school administrative unit may apply the lease payments to the purchase of portable, temporary classroom space ~~beginning January 1, 1988,~~ have been approved by the commissioner for the year prior to the allocation year. ~~Beginning July 1, 1998 lease~~ Lease costs include costs for leasing:

(1) Administrative space. ~~A school administrative unit may lease administrative space with state support until July 1, 2003.~~ A school administrative unit engaged in a state-approved lease-purchase agreement for administrative space is eligible for state support until July 1, 2008;

(2) Temporary and interim ~~nonadministrative instructional~~ space. Temporary space is instructional space consisting of one or more mobile or modular buildings that are portable, that are constructed on- or off-site and that can be disassembled and moved economically to a new location. Interim instructional space is fixed instructional space that a school administrative unit rents for a defined period of time and then vacates at the end of the lease.

(a) A school administrative unit with state-approved need for ~~nonadministrative instructional~~ space may lease temporary or interim space, with state support, for a maximum of 5 years. A school administrative unit may appeal to the state board commissioner if this limitation presents an undue burden. When making a determination on a school administrative unit's request for relief based on undue burden, the ~~state board commissioner~~ may consider, but is not limited to considering, the following:

- (i) Fiscal capacity;
- (ii) Enrollment demographics; and

(iii) Unforeseen circumstances not within the control of the appealing school administrative unit.

An extension granted by the commissioner beyond the 5-year maximum for state support is limited to a period of one year. Any additional request for extensions must be submitted and reviewed on an annual basis. The state board's commissioner's decision is final.

(b) A school administrative unit ~~engaged with state-approved need for instructional space may engage in a lease-purchase agreement for temporary or interim nonadministrative instructional space is eligible for~~ with state support for a maximum of ~~40~~ 5 years; and

(3) Permanent small ~~nonadministrative instructional~~ space that replaces ~~or is converted from~~ existing approved leased ~~portable temporary or interim instructional~~ space. The existing approved leased portable space will be eligible for state support until July 1, 2003. Permanent small instructional space consists of new buildings or additions to existing buildings that are secured to a permanent foundation. Once an existing leased portable temporary or interim instructional space has been converted into replaced by a permanent nonadministrative small instructional space through an approved lease purchase financing agreement, that space is eligible for state support for a maximum of 10 years.

The department shall adopt rules necessary to implement this paragraph. Rules adopted by the department to implement this paragraph are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A; and

**Sec. 4. 20-A MRSA §15672, sub-§2-A, ¶C,** as enacted by PL 2005, c. 2, Pt. D, §36 and affected by §§72 and 74 and c. 12, Pt. WW, §18, is amended to read:

C. The portion of the tuition costs applicable to the insured value factor for the base year computed under section 5806; and .

**Sec. 5. 20-A MRSA §15672, sub-§2-A, ¶D,** as enacted by PL 2005, c. 2, Pt. D, §36 and affected by §§72 and 74 and c. 12, Pt. WW, §18, is repealed.

See title page for effective date.

## CHAPTER 112 H.P. 401 - L.D. 523

### An Act To Provide for Enforcement of Land Use Limitations Relating to Cemeteries

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

**Sec. 1. 13 MRSA §1035** is amended to read:

#### **§1035. Penalties**

~~Whoever~~ Except as otherwise provided in this chapter, a person who fails to comply with or violates any of the provisions of this chapter in respect to the establishment, maintenance or operation of a cemetery, community mausoleum, crematory or columbarium; or to the disposal of dead human bodies shall, unless another penalty is provided under this chapter, be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment for not more than 6 months, or by both commits a Class E crime except that, notwithstanding Title 17-A, section 1301, the fine may not be less than \$100 or more than \$500.

**Sec. 2. 13 MRSA §1371-A, sub-§1,** as enacted by PL 1991, c. 412, §2, is amended to read:

**1. Known burial sites.** Construction or excavation ~~in the area of~~ near a known burial site or within the boundaries of an established ~~graveyard cemetery~~ must comply with any applicable land use ordinance concerning burial sites or ~~graveyards~~ established ~~cemeteries~~, whether or not the burial site or ~~graveyard~~ established cemetery is properly recorded in the deed to the property. In the absence of local ordinances, construction or excavation may not be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established ~~graveyard cemetery~~, whichever is the greater, whether or not the burial site or ~~graveyard~~ established cemetery is properly recorded in the deed to the property, except when the construction or excavation is performed pursuant to a lawful order or permit allowing the relocation of bodies or when necessary for the construction of a public improvement, as approved by the governing body of a city or town or, in the case of a state highway, by the Commissioner of Transportation. A municipality may enforce this subsection or any local ordinance concerning burial sites or established cemeteries pursuant to Title 30-A, section 4452, including the assessment of civil penalties.

In the event of any violation of this subsection, the Attorney General may seek to enjoin a further violation, in addition to any other remedy.

**Sec. 3. 13 MRSA §1371-A, sub-§3,** as enacted by PL 1991, c. 412, §2, is amended to read: