

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

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NON-EMERGENCY LAWS IS
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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2007

contracted under this subsection unless the commission determines that the capacity resource is recognized as a capacity resource for purposes of any regional or federal capacity requirements.

Sec. 3. 35-A MRSA §3210-C, sub-§4, ¶A, as enacted by PL 2005, c. 677, Pt. C, §1, is amended to read:

A. The commission shall select capacity resources that are competitive and the lowest price when compared to other available offers for capacity resources of the same or similar contract duration or terms. ~~The commission shall consider the cost of the capacity and the cost of related energy. The commission shall, by rules adopted pursuant to subsection 10, establish a methodology for calculating and considering the cost of related energy for capacity only offers.~~

Sec. 4. 35-A MRSA §3210-C, sub-§7, as enacted by PL 2005, c. 677, Pt. C, §1, is amended to read:

7. Disposition of resources. A large investor-owned transmission and distribution utility shall sell capacity resources and energy purchased pursuant to subsection 3 or take other action relative to such capacity resources and energy as directed by the commission.

See title page for effective date.

CHAPTER 294

H.P. 334 - L.D. 418

An Act To Require the Collection of DNA from Persons Who Committed Felonies Prior to 1996 Who Then Reoffend by Committing Offenses for Which They Would Not Otherwise Have To Submit to a DNA Test

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

Sec. 1. 25 MRSA §1574-A is enacted to read:
§1574-A. Collection from person convicted prior to January 1, 1996 who reoffends

1. Collection. A person who is convicted of a Class D or E crime for which the person is not otherwise required to submit to having a DNA sample taken shall submit to having a DNA sample taken if that person has a conviction for an offense committed prior to January 1, 1996 that if committed on January 1, 1996 or after would require that the person submit to having a DNA sample taken.

2. Penalty. A person who fails to submit to having a DNA sample taken as required in subsection 1 after receiving notice from the State Bureau of Identification to do so commits a Class E crime. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

See title page for effective date.

CHAPTER 295

H.P. 1284 - L.D. 1844

An Act Concerning Maine's Highway Safety Laws

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

Sec. 1. 23 MRSA §4208, first ¶, as amended by PL 1989, c. 616, §1, is further amended to read:

The Department of Public Safety is authorized to conduct defensive driving courses for the purpose of promoting highway safety and to charge a registration fee of ~~\$20~~ \$35 to participants in the defensive driving courses conducted under the auspices of the department. The fee ~~shall~~ must be used to cover the cost of conducting the courses. Any balances remaining at the end of the fiscal year ~~shall~~ may not lapse but ~~shall~~ must be carried forward to be used for the purposes stated in this section.

Sec. 2. 29-A MRSA §2081, sub-§3, ¶B, as amended by PL 2003, c. 380, §3 and affected by §5, is further amended to read:

B. The operator shall ensure that a child who is less than 18 years of age and at least 8 years of age or who is less than 18 years of age and more than 4 feet, ~~7~~ 9 inches in height is properly secured in a seat belt.

See title page for effective date.

CHAPTER 296

H.P. 1167 - L.D. 1658

An Act To Protect Pregnant Women and Children from Toxic Chemicals Released into the Home

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

Sec. 1. 38 MRSA §1609, as reallocated by RR 2003, c. 2, §119, is amended to read:

§1609. Restrictions on sale and distribution of brominated flame retardants

For purposes of this section, "brominated flame retardant" means any chemical containing the element bromine that is added to a plastic, foam or textile to inhibit flame formation.

1. "Penta" mixture and "octa" mixtures of polybrominated diphenyl ethers. Effective January 1, 2006, a person may not sell or offer to sell, or distribute for promotional purposes, a product containing more than 1% 0.1% of the "penta" or "octa" mixtures of polybrominated diphenyl ethers.

2. Review; report. ~~The department, with the Department of Human Services, Bureau of Health, shall review relevant risk assessments in connection with brominated flame retardants and relevant findings and rulings by the United States Environmental Protection Agency and the European Union. The department shall annually, no later than January 5th, submit a report regarding the regulation of brominated flame retardants to the joint standing committee of the Legislature having jurisdiction over natural resources matters. For purposes of this subsection, "brominated flame retardant" means any chemical containing the element bromine that may be added to a plastic, foam or textile to inhibit flame formation.~~

3. Application. ~~This section does not apply to the sale of used products.~~

4. "Deca" mixture of polybrominated diphenyl ethers in home furniture. Effective January 1, 2008, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State any of the following products that have plastic fibers containing the "deca" mixture of polybrominated diphenyl ethers:

- A. A mattress or mattress pad; or
- B. Upholstered furniture intended for indoor use in a home or other residential occupancy.

5. "Deca" mixture of polybrominated diphenyl ethers in electronics. Effective January 1, 2010, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a television or computer that has a plastic housing containing the "deca" mixture of polybrominated diphenyl ethers.

6. Exemptions. The restrictions in subsections 4 and 5 do not apply to the following products containing the "deca" mixture of polybrominated diphenyl ethers:

- A. Transportation vehicles or products or parts for use in transportation vehicles or transportation equipment;
- B. Products or equipment used in industrial or manufacturing processes; or

C. Electronic wiring and cable used for power transmission.

7. Manufacturer responsibility. Effective January 1, 2008, a manufacturer of a product containing polybrominated diphenyl ethers restricted under subsection 1, 4 or 5 must notify persons that sell the manufacturer's product of the requirements of this section.

8. Retailer assistance. The department must develop a program to assist retailers in identifying products that might contain polybrominated diphenyl ethers in their inventory.

9. Interstate clearinghouse. The department may participate in the establishment and implementation of a regional, multistate clearinghouse to assist in carrying out the requirements of this chapter and to help coordinate education and outreach activities, review risk assessments and alternatives to the use of chemicals listed in this section, and carry out any other activities related to the administration of this chapter.

10. Review; report. The department, with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, shall review relevant hazard and risk assessments in connection with brominated flame retardants as well as assessments of alternatives to the use of brominated flame retardants and relevant findings and rulings by the United States Environmental Protection Agency and the European Union. Every 2 years beginning in 2009, the department shall submit a report regarding the regulation of brominated flame retardants to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than January 5th. The report must include recommendations on actions that would further protect the public health and the environment from brominated flame retardants.

11. Application. This section does not apply to the sale of used products.

12. Enforcement. If there are grounds to suspect that a product is being offered for sale in violation of this section, the commissioner may request the manufacturer of the product to provide a certificate of compliance. Within 10 days of receipt of a request, the manufacturer shall:

- A. Provide the commissioner with a certificate attesting that the product complies with the requirements of this section; or
- B. Notify persons who sell the manufacturer's products in this State that the sale of the product is prohibited and provide the commissioner with a list of the names and addresses of those notified.

When it appears that a product has been sold, offered for sale or distributed in this State in violation of this section, the commissioner may take enforcement ac-

tion in accordance with section 347-A against the product manufacturer. For the purpose of this section, "manufacturer" means any person who manufactured the final product or whose brand name is affixed to the product. In the case of a product that was imported into the United States, "manufacturer" includes the importer or domestic distributor of the product if the person who manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

13. Department rule-making authority; flame retardants. If the commissioner determines, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, that a flame retardant is harmful to the public health and the environment and an alternative to the flame retardant that is safer to the public health and the environment is nationally available and the State Fire Marshal determines that a safer alternative meets applicable fire safety standards, the commissioner may adopt rules to prohibit the manufacture, sale or distribution in the State of:

A. A mattress, a mattress pad or upholstered furniture intended for indoor use in a home or other residential occupancy that has plastic fibers containing that flame retardant; or

B. A television or computer that has a plastic housing containing that flame retardant.

The commissioner's rulemaking under this subsection must be made in accordance with Title 5, chapter 375, subchapter 2-A. The department shall report any rulemaking undertaken pursuant to this subsection to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation relating to the department's report. For purposes of this subsection, "flame retardant" means any chemical that is added to a plastic, foam or textile to inhibit flame formation. Rules adopted pursuant to this subsection are routine technical rules.

See title page for effective date.

CHAPTER 297

S.P. 283 - L.D. 895

**An Act Concerning Blasting
near Residential Areas**

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

Sec. 1. 38 MRSA §353-A, sub-§10 is enacted to read:

10. Fees for rock crusher general permit. Rock crushers regulated under a general permit from the department are subject to an annual fee not to exceed the minimum license fee established under subsection 4.

Sec. 2. 38 MRSA §484, sub-§9 is enacted to read:

9. Blasting. Blasting will be conducted in accordance with the standards in section 490-Z, subsection 14 unless otherwise approved by the department.

Sec. 3. 38 MRSA §490-B, first ¶, as enacted by PL 1995, c. 700, §22, is amended to read:

Sections 490-A to 490-K apply to any excavation for borrow, clay, topsoil or silt, whether alone or in combination, if the total excavated area on a parcel is 5 or more acres, including reclaimed and unreclaimed areas, and section if the total excavated area on a parcel is 5 or more acres or the total excavated area on adjacent parcels under a common owner or operator is 5 or more acres. Section 490-M applies to a total excavated area of less than 5 acres. This article applies if the excavation is located in whole or in part within an organized area of this State.

Sec. 4. 38 MRSA §490-C, first ¶, as amended by PL 2005, c. 158, §3, is further amended to read:

Except as provided in section 484-A, a person intending to create or operate an excavation under this article must file a notice of intent to comply before the total area of excavation on the parcel equals 5 or more acres excavated since January 1, 1970. Both reclaimed and unreclaimed areas are added together in determining whether this 5-acre threshold is met. A notice filed under this section must be complete, submitted on forms approved by the department and mailed to the municipality, the department, the Maine Historic Preservation Commission and each abutting property owner. The notice that is mailed to the municipality and each abutting property owner must be mailed sent by certified mail at least 7 days prior to filing the notice of intent to comply with the regulator. The notice that is mailed to the regulator must be sent by certified mail, return receipt requested. Upon receiving the postal receipt, the owner or operator may commence operation. The municipality where the proposed excavation is located may submit comments to the department if the proposed excavation may pose an unreasonable adverse impact under the standards in section 490-D. Within 30 days of receipt of the notice of intent to comply, the department must respond to the comments made by the municipality. Abutting property owners, the Maine Historic Preservation Commission or other interested persons may submit comments directly to the department.