LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

SECOND REGULAR SESSION
January 2, 2008 to March 31, 2008

FIRST SPECIAL SESSION
April 1, 2008 to April 18, 2008

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 2008

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 18, 2008

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2008

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Allocates funds for a part-time Assistant Attorney General position and general operating expenses required to carry out the purposes of this Act.

FEDERAL EXPENDITURES FUND	2007-08	2008-09
POSITIONS - LEGISLATIVE COUNT	0.000	0.500
Personal Services	$0	$39,458
All Other	$0	$1,718
FEDERAL EXPENDITURES FUND TOTAL	$0	$41,176

See title page for effective date.

CHAPTER 604

H.P. 1437 - L.D. 2053

An Act To Ensure That Children's Toys and Products Are Free of Lead

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

Sec. 1. 22 MRSA §1316-A is enacted to read:

§1316-A. Restrictions on lead-containing children's products

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Child" means a person under 12 years of age.

B. "Child care article" means a product designed or intended by the manufacturer to facilitate the sleep, relaxation or feeding of children or to help children with sucking or teething.

C. "Children's jewelry" means jewelry that is made for, marketed for use by or marketed to a child and that is:

(1) Represented by its packaging, display, distribution or advertising as appropriate for use by children;

(2) Sold in conjunction with, attached to or packaged together with other products that are packaged, displayed or advertised as appropriate for use by children;

(3) Sized for children and not intended for use by adults;

(4) Sold in a vending machine; or

(5) Sold in a retail store, catalog or website, or in a defined area of that store, catalog or website, in which a person exclusively offers for sale products that are packaged, displayed or advertised as appropriate for use by children.

D. "Children's lunch box" means a fabricated container marketed or intended for use to carry food or drink for consumption by a child.

E. "Children's product" means a product that is marketed for use by a child or the use of which by a child is foreseeable, including but not limited to a toy, child care article, children's lunch box or children's jewelry.

F. "Lead-containing children's product" means a children's product that:

(1) Contains lead in the aggregate, excluding lead in a paint or surface coating, at more than .009% of the total weight or is made with a product component containing lead at more than .009% of the total weight of the product component, except that if the product or product component lead level is preempted by federal law then the federal standard for lead level governs; or

(2) Is coated with a paint or surface coating with a lead content that exceeds the Consumer Product Safety Commission safety rule as established in 16 Code of Federal Regulations, Part 1303, as amended.

G. "Toy" means a product designed and made for the amusement of a child or for the child's use in play.

2. Restriction. Beginning July 1, 2009, a person may not manufacture, or knowingly sell, distribute or offer for sale or distribution, a lead-containing children's product except as provided in subsection 3.

3. Exception. The restrictions imposed in subsection 2 do not apply to consumer electronic products in which the lead-containing component is inaccessible to children, including but not limited to electronic toys, personal computers, audio and video equipment, calculators, wireless telephones, game consoles, handheld electronic and electrical devices that incorporate a video screen used to access interactive software, and their related devices and products that comply with the provisions of directive 2002/95/EC of the European Union as adopted by the European Parliament and the Council of the European Union.

4. Enforcement. This section may be enforced in a civil action brought by the Attorney General under the Maine Unfair Trade Practices Act, except that the following provisions apply as penalties for violations of this section.

A. For the first violation by a manufacturer a warning must be given instead of an enforcement by the Attorney General if the employer has the equivalent of 25 or fewer full-time, year-round employees.

B. For all other violations the following provisions apply as penalties for violations of this section.

(1) For the first violation of this section, the penalty is not more than $100 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed $5,000.

(2) For a 2nd violation of this section, the penalty is not more than $500 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed $25,000.

(3) For a 3rd or subsequent violation of this section, the penalty is not more than $1,000 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed $50,000.

(4) A penalty under this section may be waived by the court if it is determined that the person in good faith and with due diligence attempted to comply with the requirements of this section and promptly corrected after discovery any noncompliance with this section.

5. Lead Poisoning Prevention Fund. Penalties collected under this section must be paid to the Lead Poisoning Prevention Fund established pursuant to section 1322-E.

Sec. 2. Report. The Department of Health and Human Services, Maine Center for Disease Control and Prevention shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 15, 2010 regarding lead in children's toys and products. The report must include developments on the federal level and in other states with regard to protecting children from lead poisoning from children's toys and products, thresholds for lead in children's toys and products and a summary of literature on lead poisoning from children's toys and products. The joint standing committee may submit a bill to the Second Regular Session of the 124th Legislature based on the report.

Sec. 3. Effective date. This Act takes effect July 1, 2009.

Effective July 1, 2009.

CHAPTER 605

H.P. 1428 - L.D. 2044

An Act To Prohibit Health Care Facilities from Charging for Treatment To Correct Mistakes or Preventable Adverse Events

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

Sec. 1. 22 MRSA §1721 is enacted to read:

§1721. Prohibition on payment for health care facility mistakes or preventable adverse events

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Health care facility" means a hospital or ambulatory surgical center licensed under chapter 405.

B. "Mistake or preventable adverse event" means any of the following events that is within the health care facility's control to avoid:

(1) Surgery performed on the wrong body part;

(2) Surgery performed on the wrong patient;

(3) The wrong surgical procedure performed on a patient;

(4) Unintended retention of a foreign object in a patient after surgery or another procedure;

(5) Intraoperative or immediately postoperative preventable death of a patient classified as a normal healthy patient under guidelines published by a national association of anesthesiologists;

(6) Patient death or serious disability caused by the use of contaminated drugs, devices or biologics provided by a hospital or ambulatory surgical center;

(7) Patient death or serious disability caused by the use or function of a device in patient care in which the device is used for functions other than as intended;