

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 2008 to June 13, 2009

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 12, 2009

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

Augusta, Maine
2009

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

Sec. 1. 22 MRSA §3175-D is enacted to read:

§3175-D. Nursing facility depreciation

1. Depreciation. For sales of nursing facilities, as defined in section 1812-A, that occur on or after October 1, 2009, the department shall either:

A. At the time of the sale, recapture depreciation paid by the department under the MaineCare program, from the proceeds of the sale; or

B. At the election of the buyer and seller, waive the recapture of depreciation at the time of the sale and allow the asset to transfer at the historical cost of the seller less depreciation allowed under the MaineCare program to the buyer for reimbursement purposes.

See title page for effective date.

CHAPTER 98

H.P. 481 - L.D. 698

**An Act To Allow School
Budget Validation Referenda
To Be Held on a Saturday**

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

Whereas, current law prohibits a municipality from conducting a school budget validation referendum on a Saturday; and

Whereas, many municipalities schedule and hold referendum questions on a Saturday as a matter of custom or historical tradition; and

Whereas, the residents of a municipality and their elected leaders are most qualified to determine which day of the week may be best suited for holding any referendum; and

Whereas, in some cases the provisions of a municipal charter may effectively require a municipal referendum to be conducted on a Saturday; and

Whereas, the 2009 school budget validation referenda around the State will be conducted prior to the adjournment of this Legislature; 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. 20-A MRSA §1486, sub-§2, as amended by PL 2007, c. 668, §19, is further amended to read:

2. Validation referendum procedures. The budget validation referendum must be held on or before the 14th calendar day following the scheduled date of the regional school unit budget meeting. The referendum may not be held on a ~~Saturday~~, Sunday or legal holiday. The vote at referendum is for the purpose of approving or rejecting the total regional school unit budget approved at the regional school unit budget meeting. The regional school unit board shall provide printed information to be displayed at polling places to assist voters in voting. That information is limited to the total amounts proposed by the regional school unit board for each cost center summary budget category article, the amount approved at the regional school unit budget meeting, a summary of the total authorized expenditures and, if applicable because of action on an article under section 15690, subsection 3, paragraph A, a statement that the amount approved at the regional school unit budget meeting includes locally raised funds that exceed the maximum state and local spending target pursuant to section 15671-A, subsection 5.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective May 8, 2009.

CHAPTER 99

H.P. 356 - L.D. 511

**An Act To Support Pretrial
Diversion Programs for Issuers
of Worthless Checks**

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

Sec. 1. 32 MRSA §11003, sub-§7, ¶D, as enacted by PL 1985, c. 702, §2, is amended to read:

D. Concerns a debt obtained by that person as a secured party in a commercial credit transaction involving the creditor; ~~and~~

Sec. 2. 32 MRSA §11003, sub-§8, as enacted by PL 1985, c. 702, §2, is amended to read:

8. Collection activities related to the operation of a business. Any person whose collection activities are confined to and directly related to the operation of a business other than that of a debt collector, such as, but not limited to, financial institutions regulated under Title 9-B-; ~~and~~

Sec. 3. 32 MRSA §11003, sub-§9 is enacted to read:

9. Certain pretrial diversion programs for issuers of worthless checks. A private entity operating a worthless check enforcement program that meets the conditions set forth in section 11013-A, subsection 3.

Sec. 4. 32 MRSA §11013-A is enacted to read:

§11013-A. Exception for certain pretrial diversion programs for issuers of worthless checks operated by private entities

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

A. "Check" has the same meaning as in Title 14, section 6071, subsection 4.

B. "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county, municipality or comparable jurisdiction, including the Attorney General acting as chief elected or appointed prosecuting attorney in a district, county, municipality or comparable jurisdiction, who is responsible for the prosecution of state crimes and violations of jurisdiction-specific local ordinances.

C. "Worthless check violation" means a violation of Title 17-A, section 708, subsection 1, paragraph A.

2. Pretrial diversion program for issuers of worthless checks. If a state or district attorney wants to be excluded from consideration as a debt collector as provided in section 11003, subsection 9, that state or district attorney shall establish, within the jurisdiction of that state or district attorney and with respect to alleged worthless check violations that do not involve a check described in subsection 4, a pretrial diversion program for issuers of worthless checks who agree to participate voluntarily in that program to avoid criminal prosecution.

3. Conditions for exception. A private entity operating a pretrial diversion program for issuers of worthless checks that meets the following requirements is excluded from being considered a debt collector.

A. The private entity must operate the pretrial diversion program for issuers of worthless checks described in subsection 2 subject to an administrative support services contract with the state or district attorney and under the direction, supervision and control of that state or district attorney.

B. In the course of performing duties delegated to it by a state or district attorney under an administrative support services contract, the private entity referred to in paragraph A:

(1) Shall comply with the criminal laws of the State;

(2) Shall conform with the terms of the administrative support services contract and directives of the state or district attorney;

(3) May not exercise independent prosecutorial discretion;

(4) Shall contact any issuer of an alleged worthless check for the purposes of participating in a pretrial diversion program for issuers of worthless checks as described in subsection 2:

(a) Only as a result of a determination by the state or district attorney that probable cause of a worthless check violation under state criminal law exists, and that contact with the issuer of an alleged worthless check for purposes of participation in the program is appropriate; and

(b) Only if the issuer of an alleged worthless check has failed to pay the worthless check after demand for payment is made for the check amount pursuant to state law;

(5) Shall include as part of an initial written communication with an issuer of an alleged worthless check a clear and conspicuous statement that:

(a) The issuer of an alleged worthless check may dispute the validity of any alleged worthless check violation;

(b) When the issuer of an alleged worthless check knows, or has reasonable cause to believe, that the alleged worthless check violation is the result of theft or forgery of the check, identity theft or other fraud that is not the result of the conduct of the issuer of an alleged worthless check, the issuer of the alleged worthless check may file a crime report with the appropriate law enforcement agency; and

(c) If the issuer of an alleged worthless check notifies the private entity or the state or district attorney in writing, not later than 30 days after being contacted for the first time pursuant to subparagraph (4), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the state or district attorney or an employee of that state or district attorney must make a determination that there is probable cause to believe that a crime has been committed; and

(6) May charge fees only in connection with services under the administrative support services contract under paragraph A that have been authorized by the contract with the state or district attorney.

4. Certain checks excluded. A check described in this subsection is not considered a worthless check eligible for the pretrial diversion program for issuers of worthless checks described in subsection 2 if the check involves or is subsequently found to involve:

A. A postdated check presented in connection with a payday loan or other similar transaction when the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn or delivered;

B. A stop payment order when the issuer acted in good faith and with reasonable cause in stopping payment on the check;

C. A check dishonored because of an adjustment to the issuer's account by the financial institution holding that account without providing notice to the person at the time the check was made, drawn or delivered;

D. A check for partial payment of a debt where the payee had previously accepted partial payment for that debt;

E. A check issued by a person who was not competent or was not of legal age to enter into a legal contractual obligation at the time the check was made, drawn or delivered;

F. A check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the state or district attorney at the time the check was made, drawn or delivered; or

G. A check that is the result of theft or forgery of the check, identity theft or other fraud that is not the result of the conduct of the alleged worthless check offender.

5. Registration. Notwithstanding the exemptions in subsections 3 and 4, a private entity that operates a pretrial diversion program for issuers of worthless checks pursuant to this section shall register with the administrator on forms acceptable to the administrator and in a manner consistent with section 11031, subsection 2. Before granting a registration pursuant to this subsection, the administrator shall:

A. Review the administrative support services contract under subsection 3, paragraph A between the private entity and the state or district attorney;

B. Review all form communications to issuers of alleged worthless checks that will be used as part of the pretrial diversion program for issuers of worthless checks; and

C. Review the quality controls to be implemented by the state or district attorney and the private entity to ensure continued compliance with this section and to maintain the exemption granted in section 11003, subsection 9.

6. Enforcement. To ensure compliance with this section, the administrator may receive and act on complaints in accordance with Title 9-A, section 6-104, conduct compliance examinations pursuant to Title 9-A, section 6-106 and exercise regulatory and remedial authority pursuant to Title 9-A, Article 6.

Sec. 5. Appropriations and allocations.

The following appropriations and allocations are made.

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF

Administrative Services - Professional and Financial Regulation 0094

Initiative: Allocates funds for the one-time costs to establish a new registration category in the agency's licensing system.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	\$2,500	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,500	\$0

See title page for effective date.

CHAPTER 100

H.P. 311 - L.D. 423

An Act To Provide a Safe Sleeping Environment for Children with Disabilities To Enable Them To Remain in Their Homes

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

Sec. 1. 34-B MRSA §5605, sub-§14-D is enacted to read:

14-D. Reimbursement provided. Notwithstanding any other provision of law, the department shall provide reimbursement within available resources for durable medical equipment that provides a safe sleeping environment for individuals under 16 years of age if:

A. The durable medical equipment is necessary to correct or ameliorate a behavioral health condition;