

# 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.**

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**Augusta, Maine**  
**2009**

~~2537 (separate accounts) also applies as to group life insurance and group annuity contracts;~~

1. Section 2537 also applies as to group life insurance and group annuity contracts; and

2. Sections 2541 to 2551 apply to group annuities other than those exempted by section 2542.

## PART J

**Sec. J-1. Second election period.** A person who was eligible for continuation of coverage under a group health insurance policy pursuant to the Maine Revised Statutes, Title 24-A, section 2809-A, subsection 11 is eligible for a 2nd election period if:

1. The covered employee was temporarily laid off on or after September 1, 2008, but no more than 30 days after the effective date of this Act;

2. The person did not elect to continue coverage or elected to continue coverage but was no longer enrolled as of the date of the notice required by section 2 of this Part; and

3. Election of coverage under this section qualifies the person for premium assistance under the American Recovery and Reinvestment Act of 2009.

The 2nd election period begins on the effective date of this Act and ends 60 days after the notice required by section 2 of this Part is mailed to the employee. Coverage elected under this provision begins on the date of application and terminates 9 months later unless terminated sooner because the person fails to make timely payment of a required premium amount or because the person becomes eligible for coverage under another group policy or under Medicare.

**Sec. J-2. Notice requirement.** Insurers and health maintenance organizations that provide group health insurance policies subject to the requirements of the Maine Revised Statutes, Title 24-A, section 2809-A, subsection 11 must provide notice, as required by the American Recovery and Reinvestment Act of 2009, Section 3001(a)(7)(A)(ii), by first-class mail in a form specified by the Superintendent of Insurance to eligible employees whose coverage terminated or terminates between September 1, 2008 and December 31, 2009.

**Sec. J-3. Preexisting conditions.** Coverage issued pursuant to the 2nd election period specified in section 1 of this Part may not exclude coverage for preexisting conditions regardless of whether the break in coverage exceeds the limit specified in the Maine Revised Statutes, Title 24-A, section 2849-B, subsection 2, paragraph B.

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

Effective June 3, 2009.

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## CHAPTER 245

### S.P. 432 - L.D. 1184

#### An Act To Improve the Process for Recovering Personal Property and for Filing Actions Involving Consumer Credit

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

**Sec. 1. 4 MRSA §155, sub-§2** is amended to read:

**2. Forcible entry and detainer; trustee process; attachment.** An action for forcible entry and detainer ~~or replevin shall~~ must be brought in the division in which the property involved is located. ~~Any~~ Except as otherwise provided in subsection 3-A, an action to recover personal property pursuant to Title 14, section 7071, or for replevin, may be brought either in the division where a plaintiff or defendant resides, where the underlying transaction involving the personal property was made or where any of the personal property is located, or to which the court orders the personal property to be brought or kept pursuant to Title 14, section 7071, subsection 5. An action commenced by trustee process ~~shall~~ must be brought in accordance with Title 14, chapter 501. ~~Any~~ An action involving attachment ~~shall~~ may be brought in the division where the plaintiff resides or where the defendant resides or where the property involved is located.

**Sec. 2. 4 MRSA §155, sub-§3-A** is enacted to read:

**3-A. Consumer transactions.** Notwithstanding any other provision of law, an action brought against a consumer arising from a consumer credit transaction or a rental-purchase agreement must be filed in accordance with Title 9-A, section 5-113, except that an action brought pursuant to Title 32, section 11013, subsection 3, paragraph N must be brought where provided for in that paragraph.

**Sec. 3. 14 MRSA §509** is enacted to read:

#### **§509. Consumer transactions**

Notwithstanding any other provision of this chapter, an action brought against a consumer arising from a consumer credit transaction or a rental-purchase agreement must be brought in accordance with Title 9-A, section 5-113, except that an action brought pursuant to Title 32, section 11013, subsection 3, para-

graph N must be brought where provided for in that paragraph.

**Sec. 4. 14 MRSA §510** is enacted to read:

**§510. Replevin**

Except as otherwise provided in section 509, an action for replevin must be brought either in the division or county where a plaintiff or defendant resides, where the underlying transaction involving the personal property was made or where any of the personal property is located.

**Sec. 5. 14 MRSA §6012**, as amended by PL 2001, c. 133, §§1 and 2, is repealed.

**Sec. 6. 14 MRSA c. 726** is enacted to read:

**CHAPTER 726**

**ALTERNATIVE ACTION FOR THE RECOVERY OF PERSONAL PROPERTY**

**§7071. Actions to recover personal property**

**1. Action to resolve dispute.** If 2 or more persons claim a right in, title to or possession of personal property, a claimant may bring a civil action in District Court to resolve a dispute among the claimants. The plaintiff may bring the action by way of summary proceeding under subsection 2 or plenary proceeding under subsection 9.

**2. Summary proceeding.** If an action in subsection 1 is brought as a summary proceeding, the summons must state the day when the action is returnable, which may not be less than 7 days from the date of service of the summons, and must notify the defendant that in case of the defendant's failure to appear and state a defense on the return day, judgment by default will be rendered against the defendant. The defendant may appear and defend against the action without filing a responsive pleading. The action may not be joined with any other action or claim and a defendant may not file a counterclaim. The action may not be removed to Superior Court. At the hearing on the action, the plaintiff must support its claim of an interest in or other right to possession of the personal property at issue by a preponderance of the evidence.

**3. Discovery.** In a summary proceeding, the court may for cause shown allow discovery, which may be on an expedited schedule.

**4. Venue.** An action under this section may be brought in accordance with Title 4, section 155. Relocation of the personal property may not be a basis for a change of venue.

**5. Court authority.** The court has equitable power to make an appropriate order in relation to the personal property and the parties to the action and to compel obedience to its judgment and orders. A court order under this subsection may include an order regarding the location to which the personal property

must be brought or kept or a turnover order under section 3131, subsection 1.

**6. Judgment; issuance of writ of possession.** When the defendant defaults or the plaintiff is otherwise entitled to judgment, the court shall render judgment concerning the possession of the personal property in favor of the plaintiff. The judgment must order the turnover of the personal property to the plaintiff on such terms as the court directs. The court may also grant preliminary, interim or other equitable relief upon a sufficient showing that the preliminary, interim or other equitable relief is justified.

Seven calendar days after the judgment is entered, the court shall upon request of the plaintiff issue a writ of possession requiring the sheriff or constable to put the plaintiff into possession of the plaintiff's personal property. This subsection does not preclude the court from granting preliminary, interim or other equitable relief.

**7. Service and return of writ of possession; contempt.** A writ of possession is returnable within 3 years from the date of issuance. The writ may be served by a sheriff or a constable. When a writ of possession has been served on the defendant by a constable or sheriff, the defendant must put the sheriff or constable into possession of the property within 2 days of the date on which the writ is served upon that defendant or the plaintiff may file a motion to have the defendant held in contempt. A proceeding upon a motion for contempt under this subsection is subject to the Maine Rules of Civil Procedure, Rule 66(d) and for the purposes of this proceeding the entry of the judgment against the defendant creates a rebuttable presumption that the defendant has the ability to put the sheriff or constable into possession of the property. This presumption shifts the burden of production of evidence to the defendant, but the burden of persuasion remains upon the plaintiff in any contempt proceeding.

**8. Appeal.** An appeal of a judgment or order under this section is governed by Title 4, section 57 and the Maine Rules of Appellate Procedure, except that any issue triable by right by a jury may be appealed to a trial de novo in Superior Court. A request to District Court for a stay pending appeal is governed by the Maine Rules of Civil Procedure, Rule 62(d).

**9. Plenary proceeding.** If an action under this section is brought as a plenary proceeding, the Maine Rules of Civil Procedure apply, except that the action may not be joined with any other action or claim and a defendant may not file a counterclaim and the action may not be removed to Superior Court.

**10. Equitable Remedy.** The remedy provided in this section is a remedy in equity and is in addition to and not in lieu of another remedy.

Sec. 7. 14 MRSA §7302 is repealed and the following enacted in its place:

**§7302. Venue**

Except as provided in section 509 and in Title 4, section 155, subsection 3-A, an action for replevin may be brought in either District Court or Superior Court in the county or division where a plaintiff or defendant resides or where any of the personal property sought to be replevied is located.

Sec. 8. 32 MRSA §11013, sub-§3, ¶N, as enacted by PL 1985, c. 702, §2, is repealed and the following enacted in its place:

N. Threatening to bring legal action in the debt collector's own name or instituting a suit on behalf of others or furnishing legal advice, except that a debt collector who is also an attorney may bring an action under this paragraph in the name of the creditor in any division or county permitted by 15 United States Code, Section 1692i and may furnish legal advice to the creditor with respect to a debt.

See title page for effective date.

**CHAPTER 246**

**H.P. 528 - L.D. 777**

**An Act To Provide for an  
Expiration Date for Certain  
Harassment Notices**

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

Sec. 1. 17-A MRSA §506-A, sub-§1, ¶A, as enacted by PL 2001, c. 383, §66 and affected by §156, is amended to read:

A. The person engages in any course of conduct with the intent to harass, torment or threaten another person ~~after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace or by a court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, section 4006 or 4007 or, if the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to engage in such conduct by the Commissioner of Corrections, the chief administrative officer of the facility, the correctional administrator for the region or their designees.~~ Violation of this paragraph is a Class E crime; or:

(1) After having been notified, in writing or otherwise, not to engage in such conduct by:

(a) Any sheriff, deputy sheriff, constable, police officer or justice of the peace. The notification not to engage in such conduct expires one year from the date of issuance; or

(b) A court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, section 4006 or 4007; or

(2) If the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to engage in such conduct by the Commissioner of Corrections, the chief administrative officer of the facility, the correctional administrator for the region or their designees.

Violation of this paragraph is a Class E crime; or

See title page for effective date.

**CHAPTER 247**

**H.P. 673 - L.D. 971**

**An Act To Amend the Laws  
Governing Liquor Liability  
and Licensing**

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

Sec. 1. 28-A MRSA §2509, sub-§1, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

1. **Limitation on damages for losses other than expenses for medical care and treatment.** In actions for damages permitted by this Act, the claim for and award of damages for all losses, except expenses for medical care and treatment, including devices or aids, against both a server and the server's employees and agents, may not exceed ~~\$250,000~~ \$350,000 for any and all claims arising out of a single accident or occurrence.

See title page for effective date.

**CHAPTER 248**

**H.P. 944 - L.D. 1343**

**An Act To Promote Consumer  
Fairness in Tax Refund  
Anticipation Loans**

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

Sec. 1. 9-A MRSA §8-106, sub-§6, as enacted by PL 1991, c. 330, §2, is amended to read: