

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

SECOND REGULAR SESSION
January 6, 2010 to April 12, 2010

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 12, 2010

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

Augusta, Maine
2010

2. Tax increment financing payments. With respect to a tax increment financing district located in the unorganized territory and approved by the Commissioner of Economic and Community Development pursuant to Title 30-A, chapter 206 ~~prior to July 1, 2008~~, the Treasurer of State must deposit into the development program fund established by a county for the tax increment financing district pursuant to Title 30-A, section 5227, subsection 3 the tax increment revenues on the captured assessed value, as that term is defined in Title 30-A, section 5222. The payment must be made on or before October 15th following the date of assessment or within 30 days after the taxes constituting the tax increment are paid, whichever is later. The amount of the assessment is appropriated for the purposes of this subsection.

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

Effective April 8, 2010.

**CHAPTER 620
H.P. 473 - L.D. 659**

**An Act To Reduce the Sales
Tax on Certain Watercraft**

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

Sec. 1. 36 MRSA §1760, sub-§25, as amended by PL 2009, c. 361, §18, is repealed and the following enacted in its place:

25. Watercraft purchased by nonresidents.
Sales to or use by a person that is not a resident of this State of watercraft or materials used in watercraft as specified in this subsection.

A. The following are exempt when the sale is made in this State to a person that is not a resident of this State and the watercraft is sailed or transported outside the State within 30 days of delivery by the seller:

- (1) A watercraft;**
- (2) Sales, under contract for the construction of a watercraft, of materials to be incorporated in that watercraft; and**
- (3) Sales of materials to be incorporated in the watercraft for the repair, alteration, refitting, reconstruction, overhaul or restoration of that watercraft.**

B. Notwithstanding subsection 45, paragraph A-1, the sale of a watercraft is exempt if the watercraft is purchased and used by the present owner outside the State if the watercraft is regis-

tered outside the State by an owner who is an individual and the watercraft is present in the State not more than 30 days for a purpose other than temporary storage during the 12 months following its purchase.

C. If, for a purpose other than temporary storage, a watercraft is present in the State for more than 30 days during the 12-month period following its date of purchase, the exemption is 60% of the sale price of the watercraft or materials for the construction, repair, alteration, refitting, reconstruction, overhaul or restoration of the watercraft, as specified in paragraph A.

Sec. 2. Effective date. This Act takes effect August 1, 2010.

Effective August 1, 2010.

**CHAPTER 621
H.P. 1019 - L.D. 1464**

**An Act To Amend Licensing,
Certification and Registration
Requirements for Health Care
Providers and Other Facilities**

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

Sec. 1. 22 MRSA §1723 is enacted to read:

§1723. Criminal background checks

Beginning October 1, 2010, a facility or health care provider subject to the licensing or certification processes of chapter 405, 412 or 419 shall obtain, prior to hiring an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The facility or health care provider shall pay for the criminal background check required by this section.

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 22 MRSA §2131, sub-§1, as enacted by PL 1989, c. 579, §4, is amended to read:

1. Registration; renewal. ~~Effective January 1, 1990, every~~ **A** temporary nurse agency shall register with the department ~~and renew the registration as required by rule thereafter.~~ For purposes of this chapter, unless the context otherwise indicates, "temporary nurse agency" means a business entity or subdivision thereof that provides nurses to another organization on a temporary basis within this State.

Sec. 3. 22 MRSA §2131, sub-§4, as amended by PL 2001, c. 494, §2, is repealed and the following enacted in its place:

4. Penalty. The following penalties apply to violations of this chapter.

A. A person who operates a temporary nurse agency without registering or who fails to verify the inclusion of a certified nursing assistant on the Maine Registry of Certified Nursing Assistants established under section 1812-G before hiring that certified nursing assistant pursuant to subsection 1-A commits a civil violation for which a fine of not less than \$500 per day but not more than \$10,000 per day may be adjudged. Each day constitutes a separate violation.

B. A person who operates a temporary nurse agency in violation of the employment prohibitions in section 2138 commits a civil violation for which a fine of not less than \$500 per day but not more than \$10,000 per day may be adjudged. Each day constitutes a separate violation.

Sec. 4. 22 MRSA §2131, sub-§5 is enacted to read:

5. Rules. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 22 MRSA c. 417-A is enacted to read:

CHAPTER 417-A

BACKGROUND CHECKS FOR TEMPORARY NURSE AGENCIES

§2136. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Hire, employ or place. "Hire, employ or place" means to recruit, select, train, declare competent, schedule, direct, define the scope of the position of or supervise an individual who provides temporary care pursuant to chapter 417.

2. Temporary nurse agency. "Temporary nurse agency" means a business entity or subdivision thereof that provides nurses to another organization on a temporary basis within this State.

§2137. Criminal background checks

Beginning October 1, 2010, a temporary nurse agency shall obtain, prior to hiring, employing or placing an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The temporary

nurse agency shall pay for the criminal background check required by this section.

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§2138. Prohibited employment

A temporary nurse agency may not hire, employ or place an individual who:

1. Subject of notation. Has worked as a certified nursing assistant and has been the subject of a notation by the state survey agency for a substantiated complaint of abuse, neglect or misappropriation of property in a health care setting that was entered on the Maine Registry of Certified Nursing Assistants established under section 1812-G;

2. Convicted of crime involving abuse, neglect or misappropriation. Has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property; or

3. Other prior conviction. Has a prior criminal conviction within 10 years prior to application of:

A. A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred; or

B. A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

§2139. Complaints

1. Complaint investigation. The department is authorized to investigate complaints against a temporary nurse agency to ensure compliance with this chapter.

2. Injunctive relief. Notwithstanding any other remedies provided by law, the Attorney General may seek an injunction to require compliance with the provisions of this chapter.

3. Enforcement. The Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of this chapter.

4. Jurisdiction. The District Court has jurisdiction pursuant to Title 4, section 152 for violations of this chapter.

5. Burden of proof. The burden is on the department to prove, by a preponderance of the evidence, that the alleged violation of this chapter occurred.

6. Right of entry. This subsection governs the department's right of entry with respect to temporary nurse agencies.

A. An application for registration of a temporary nurse agency constitutes permission for entry and inspection to verify compliance with applicable laws and rules.

B. The department has the right to enter and inspect the premises of a temporary nurse agency registered by the department at a reasonable time and, upon demand, has the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with applicable laws and rules.

C. To inspect a temporary nurse agency that the department knows or believes is being operated without being registered, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection.

7. Administrative inspection warrant. The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unregistered temporary nurse agency with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with this chapter. The right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating a temporary nurse agency without being registered.

8. Noninterference. An owner or operator of an unregistered temporary nurse agency may not interfere with, impede or obstruct an investigation by the department, including, but not limited to, interviewing persons receiving services or persons with knowledge of the agency.

9. Violation of injunction. A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under this chapter shall pay to the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day of violation constitutes a separate offense. In any action brought by the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under this chapter, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

In an action under this chapter, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation

or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Attorney General and the costs of suit, including attorney's fees.

10. Suspension or revocation of registration. A temporary nurse agency found to be in violation of this chapter may have its registration to operate as a temporary nurse agency suspended or revoked. The department may file a complaint with the District Court requesting suspension or revocation of a registration to operate a temporary nurse agency.

11. Rules. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. 22 MRSA §7704 is enacted to read:

§7704. Criminal background checks

Beginning October 1, 2010, a facility or health care provider subject to the licensing or certification processes of chapter 1663, a nursery school subject to chapter 1675 or a hospice provider subject to chapter 1681 shall obtain, prior to hiring an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The entity seeking to employ the individual shall pay for the criminal background check required by this section.

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 22 MRSA §7946, sub-§4, as enacted by PL 1987, c. 774, §4, is amended to read:

4. Income from penalties. Any income from penalties shall must be placed in a special revenue account and be used if needed and available when a receiver is appointed pursuant to section 7933, or for other costs associated with the protection of health or property of residents of long term care facilities which are fined or sanctioned pursuant to this chapter by the department for purposes related to improving the quality of care for residents of long-term care facilities.

Sec. 8. 34-B MRSA §1224 is enacted to read:

§1224. Criminal background checks

Beginning October 1, 2010, a facility or health care provider subject to the licensing provisions of section 1203-A shall obtain, prior to hiring an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State

Bureau of Identification. The facility or health care provider shall pay for the criminal background check required by this section.

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 9. Appropriations and allocations. The following appropriations and allocations are made.

PUBLIC SAFETY, DEPARTMENT OF State Police 0291

Initiative: Provides funding for 400 hours of overtime within the State Bureau of Identification.

GENERAL FUND	2009-10	2010-11
Personal Services	\$0	\$6,887
GENERAL FUND TOTAL	\$0	\$6,887
HIGHWAY FUND	2009-10	2010-11
Personal Services	\$0	\$6,617
HIGHWAY FUND TOTAL	\$0	\$6,617

See title page for effective date.

**CHAPTER 622
H.P. 569 - L.D. 833**

An Act To Distribute Funds Received from the Racino in Bangor to the Department of Health and Human Services, Office of Substance Abuse

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

Sec. 1. 5 MRSA §20006-B is enacted to read:
§20006-B. Gambling Addiction Prevention and Treatment Fund

1. Fund established. The Gambling Addiction Prevention and Treatment Fund, referred to in this section as "the fund," is established for the purpose of supporting gambling addiction analysis, prevention and treatment to be administered by the office. The fund is a dedicated, nonlapsing fund into which payments are received in accordance with Title 8, section 1036, subsection 2.

2. Report. The director shall report annually by March 1st to the joint standing committee of the Legislature having jurisdiction over gambling matters. The report must include a description of a continuum of care model used to identify the need for gambling addiction services, prevention efforts, intervention and treatment provided using money from the fund. The report must describe any collaborative efforts between the office, the Gambling Control Board established under Title 8, section 1002 and slot machine operators licensed in accordance with Title 8, chapter 31 to support the purpose of the fund described in subsection 1. The director may submit recommendations for legislation to the joint standing committee of the Legislature having jurisdiction over gambling matters, which is authorized to submit that legislation to the Legislature.

Sec. 2. 8 MRSA §1036, sub-§2, ¶A, as amended by PL 2005, c. 663, §12, is further amended to read:

A. Three percent of the net slot machine income must be deposited to the General Fund for administrative expenses of the board, ~~including gambling addiction counseling services,~~ in accordance with rules adopted by the board, except that of the amount calculated pursuant to this paragraph, the following amounts must be transferred annually to the Gambling Addiction Prevention and Treatment Fund established by Title 5, section 20006-B:

- (1) For the fiscal year beginning July 1, 2011, \$50,000;
- (2) For the fiscal year beginning July 1, 2012, \$50,000; and
- (3) For the fiscal year beginning July 1, 2013 and for each fiscal year thereafter, \$100,000;

Sec. 3. Baseline appropriations in 2012-2013 for gambling addiction services. The one-time General Fund deappropriations of \$50,000 annually in fiscal years 2009-10 and 2010-11 from the Department of Public Safety, Gambling Control Board program to reduce funding for gambling addiction services included as one-time adjustments in Public Law 2009, chapter 213, Part A, section 59 are intended as a result of the changes included in this Act to be considered ongoing reductions to be replaced by the revenue transferred in this Act to the Department of Health and Human Services, Office of Substance Abuse for gambling addiction services.

See title page for effective date.