

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2010 to June 29, 2011**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 28, 2011**

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

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**Augusta, Maine**  
**2011**

cigarette, cigar, pipe or other object giving off tobacco smoke.

2. Smoking policy disclosure. A landlord who or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for residential premises that are used by a tenant or will be used by a potential tenant as a primary residence shall provide to the tenant or potential tenant a smoking policy disclosure that notifies tenants or potential tenants of the landlord's policy regarding smoking on the premises in accordance with subsection 3.

3. Notification. A landlord who or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for residential premises shall provide written notice to a tenant or potential tenant regarding the allowance or prohibition of smoking on the premises.

A. The notice must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas of the premises. If the landlord allows smoking in limited areas on the premises, the notice must identify the areas on the premises where smoking is allowed.

B. A landlord or other person who acts on behalf of a landlord may notify a tenant or potential tenant of a smoking policy by:

- (1) Disclosing the smoking policy in a written lease agreement; or
- (2) Providing a separate written notice to a tenant or potential tenant entering into a tenancy at will agreement.

C. Before a tenant or potential tenant enters into a contract or pays a deposit to rent or lease a property, the landlord or other person who acts on behalf of a landlord shall obtain a written acknowledgment of the notification of the smoking policy from the tenant or potential tenant.

4. Construction. This subsection restricts private causes of action based on violations of this section or smoking policies provided to tenants or potential tenants pursuant to this section.

A. A tenant or potential tenant may not maintain a private cause of action against a landlord or other person who acts on behalf of a landlord on the sole basis that the landlord or other person who acts on behalf of a landlord failed to provide the smoking policy disclosure required by this section.

B. A tenant or potential tenant may not use a violation of a smoking policy by another tenant as the

basis for a private cause of action against a landlord or other person who acts on behalf of a landlord.

See title page for effective date.

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**CHAPTER 200**

**S.P. 463 - L.D. 1482**

**An Act To Provide That  
Private Transfer Fee  
Obligations on Real Property  
Are Void and Unenforceable**

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

**Sec. 1. 33 MRSA §163** is enacted to read:

**§163. Private transfer fee obligations void and unenforceable**

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

A. "Private transfer fee" means a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept such a transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price or other consideration given for the transfer. "Private transfer fee" does not include:

(1) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development or sale of the property, if such consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the property;

(2) Any commission payable to a licensed real estate broker or real estate brokerage agency for the transfer of real property pursuant to an agreement between the broker or agency and the grantor or the grantee;

(3) Any interest, charges, fees or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property;

(4) Any rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor

under a lease or license, including, but not limited to, any fee payable to the lessor for consenting to an assignment, subletting, encumbrance or transfer of the lease or license;

(5) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing or not exercising the option or right upon the transfer of the property to another person;

(6) Any tax, fee, charge, assessment, fine, dues or other amount payable to or imposed by a governmental authority;

(7) Any fee, charge, assessment, fine or other amount payable to a homeowners association, condominium owners association, cooperative, mobile home owners association or property owners association pursuant to a declaration or covenant or law applicable to such an association for the maintenance, improvements, services or expenses related to real property that is owned, used or enjoyed in common by the members;

(8) Any fee, charge, assessment, dues, fine, contribution or other amount pertaining solely to the purchase or transfer of a club membership relating to real property owned by a club member, including, but not limited to, any amount determined by reference to the value, purchase price or other consideration given for the transfer of the real property;

(9) Any obligations created pursuant to affordable housing covenants under chapter 6 or working waterfront covenants under chapter 6-A; or

(10) Any fee payable, upon a transfer of real property, to a nonprofit corporation, organization or trust organized under the laws of this State, if the sole purpose of the corporation, organization or trust is to support cultural, educational, charitable, recreational, conservation, preservation or similar activities benefiting the real property being transferred and the fee is used exclusively to fund such activities.

B. "Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against the title to real property or under any other contractual agreement or promise, whether or not recorded, that requires or purports to require the payment of a private transfer fee upon a subsequent transfer of an interest in the real property.

C. "Transfer" means the sale, gift, grant, conveyance, lease, license, assignment, inheritance or other act resulting in a transfer of an ownership interest in real property located in this State.

**2. Void and unenforceable.** A private transfer fee obligation recorded or entered into in connection with real property located in this State on or after the effective date of this section does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, mortgagee or holder of any interest in real property as an equitable servitude or otherwise. A private transfer fee obligation that is recorded or entered into in connection with real property located in this State on or after the effective date of this section is void and unenforceable. This subsection may not be construed to mean that a private transfer fee obligation recorded or entered into in connection with real property located in this State before the effective date of this section is presumed valid and enforceable.

**3. Liability for violation.** A person who records, or enters into, an agreement imposing a private transfer fee obligation in that person's favor after the effective date of this section is liable for all damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property, including, but not limited to, the amount of any private transfer fee paid by a party to the transfer and all attorney's fees, expenses and costs incurred by a party to the transfer or mortgagee of the real property to recover any private transfer fee paid or in connection with an action to quiet title. When an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability must be assessed to the principal rather than the agent.

**4. Effect of transfer of certain interests in real property.** A transfer, on or after the effective date of this section, of an interest in real property subject to a private transfer fee obligation recorded or entered into prior to the effective date of this section does not constitute the recording or entering into of a new private transfer fee obligation on or after the effective date of this section.

**5. Disclosure.** The following provisions govern the disclosure of private transfer fee obligations.

A. A contract for the sale of real property subject to a private transfer fee obligation must include a provision disclosing the existence of that obligation and a description of that obligation. A contract for the sale of real property that does not conform to the requirements of this paragraph is not enforceable by the seller, and the buyer is not liable to the seller for damages under such a contract and is entitled to the return of any deposits made under that contract.

B. When a private transfer fee obligation is not disclosed as required by paragraph A and a buyer subsequently discovers the existence of the private transfer fee obligation after title to the real property has passed to the buyer, the buyer has the right to recover against the seller all damages resulting from the failure to disclose the private transfer fee obligation, including, but not limited to, the amount of any private transfer fee paid by the buyer and the difference between the market value of the real property subject to the private transfer fee obligation and the market value of the real property if the real property were not subject to the private transfer fee obligation. The buyer is also entitled to recover all attorney's fees, expenses and costs incurred in seeking the remedies under this subsection.

C. Any provision in a contract for the sale of real property that purports to waive the rights of a buyer under this subsection is void.

See title page for effective date.

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**CHAPTER 201**

**H.P. 1013 - L.D. 1374**

**An Act To Protect Seniors and Incapacitated or Dependent Adults from Abuse**

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

**Sec. 1. 19-A MRSA §4005, sub-§1,** as amended by PL 2007, c. 340, §4, is further amended to read:

**1. Filing.** An adult who has been abused by a family or household member or a dating partner may seek relief by filing a complaint alleging that abuse.

When a minor child in the care or custody of a family or household member or a dating partner has been abused by a family or household member or a dating partner, a person responsible for the child, as defined in Title 22, section 4002, subsection 9, or a representative of the department may seek relief by filing a petition alleging that abuse.

An adult who has been a victim of conduct defined as stalking in Title 17-A, section 210-A or described as sexual assault in Title 17-A, chapter 11, whether or not the conduct was perpetrated by a family or household member or dating partner, may seek relief by filing a complaint alleging that conduct without regard to whether criminal prosecution has occurred. When a minor has been a victim of such conduct, the minor's parent, other person responsible for the child or a representative of the department may seek relief by filing a petition alleging that conduct.

When an adult who is 60 years of age or older or a dependent adult, as defined in Title 22, section 3472, subsection 6, or an incapacitated adult, as defined in Title 22, section 3472, subsection 10, has been the victim of abuse as defined in section 4002, subsection 1 or Title 22, section 3472, subsection 1 by an extended family member or an unpaid care provider, the adult victim, the adult victim's legal guardian or a representative of the department may seek relief by filing a complaint alleging the abusive conduct. For the purposes of this subsection, "extended family member" includes, but is not limited to: a person who is related to the victim by blood, marriage or adoption, whether or not the person resides or has ever resided with the victim. "Unpaid care provider" includes, but is not limited to, a caretaker who voluntarily provides full, intermittent or occasional personal care to the adult victim in the victim's home similar to the way a family member would provide personal care.

See title page for effective date.

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**CHAPTER 202**

**H.P. 406 - L.D. 523**

**An Act To Modify the Regulation of Fireworks**

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

**Whereas,** there is a movement to bring historical artillery pieces to Maine to promote a unique cottage industry for Maine craftspeople that will meet the global demand for antique cannons; and

**Whereas,** this cottage industry employs workers in shipbuilding trades and creates jobs that help strengthen Maine's economy; and

**Whereas,** Maine has a proud and vibrant maritime history that includes the use of signal cannons at sunset, in celebration of our country and during times of nautical celebration; and

**Whereas,** ceremonial uses of signal, antique and replica cannons for public entertainment, yachting events and historical reenactment promotes tourism; and

**Whereas,** to promote tourism, this legislation must go into effect before tourism season; 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,