

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.

Augusta, Maine
2011

any statutory changes concerning the collection and recycling of mercury-added thermostats. Subsequent reports must include an evaluation of the effectiveness of the thermostat collection and recycling programs established under this section, information on actual collection rates and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats. Beginning in 2012, the department may submit this information as part of the product stewardship program report under section 1772.

Sec. 33. 38 MRSA §1771, sub-§6, as enacted by PL 2009, c. 516, §1, is amended to read:

6. Product stewardship program. "Product stewardship program" means a program financed ~~without a visible fee at purchase and~~ either managed or provided by producers ~~and individually or collectively~~ that includes, but is not limited to, the collection, transportation, reuse and recycling or disposal, or both, of unwanted products. "Product stewardship program" includes a program financed through an assessment paid by the producers to a stewardship organization.

Sec. 34. 38 MRSA §1771, sub-§8-A is enacted to read:

8-A. Stewardship organization. "Stewardship organization" means a corporation, nonprofit organization or other legal entity created by a producer or group of producers to implement a product stewardship program.

Sec. 35. 38 MRSA §2165, sub-§6, as amended by PL 2009, c. 86, §2, is repealed.

Sec. 36. 38 MRSA §2165, sub-§8, as corrected by RR 1991, c. 2, §150, is amended to read:

8. Penalty. A violation of subsection 2 is a civil violation for which a forfeiture of not more than \$100 per battery disposed of improperly may be adjudged. A violation of subsection 4 is a civil violation for which a forfeiture of not more than \$100 may be adjudged. ~~A violation of subsection 6 is a civil violation for which a forfeiture of not more than \$100 per battery sold, distributed or offered for sale may be adjudged.~~ Each day that a violation continues or exists constitutes a separate offense.

Sec. 37. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 38, section 343-D, as amended by Public Law 2009, chapter 579, Pt. B, sections 6 and 7 and affected by section 13, takes effect July 1, 2012.

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

Effective June 3, 2011, unless otherwise indicated.

**CHAPTER 207
S.P. 228 - L.D. 736**

An Act To Prohibit Texting while Driving

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

Sec. 1. 29-A MRSA §2119 is enacted to read:

§2119. Text messaging while operating motor vehicle; prohibition

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

A. "Cellular telephone" means a device used to access wireless telephone service.

B. "Portable electronic device" means any portable electronic device that is not part of the operating equipment of a motor vehicle, including but not limited to an electronic game, device for sending or receiving e-mail, text messaging device, cellular telephone and computer.

C. "Text messaging" means reading or manually composing electronic communications, including text messages, instant messages and e-mails, using a portable electronic device. "Text messaging" does not include using a global positioning or navigation system.

2. Prohibition. A person may not operate a motor vehicle while engaging in text messaging.

3. Penalty. A person who violates this section commits a traffic infraction for which a fine of not less than \$100 may be adjudged.

See title page for effective date.

**CHAPTER 208
H.P. 94 - L.D. 112**

An Act To Discourage Illegal Dumping in the State

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

Sec. 1. 12 MRSA §10157, sub-§7, ¶D, as enacted by PL 2003, c. 655, Pt. B, §36 and affected by §422, is amended to read:

D. Review and make recommendations regarding programs administered by other agencies. The commissioner shall coordinate all reviews; ~~and~~

Sec. 2. 12 MRSA §10157, sub-§7, ¶E, as enacted by PL 2003, c. 655, Pt. B, §36 and affected by §422, is amended to read:

E. Conduct an organizational review of the advisory board every 5 years. This review must be designed to provide the information necessary to ascertain whether the advisory board has the membership required by subsection 1 and the advisory board is fulfilling its duties. If the review indicates that the advisory board does not have the correct representational membership, a subcommittee of the members of the advisory board must be convened to recommend to the commissioner appropriate changes. At any time, the advisory board may recommend to the commissioner ways to improve the advisory board's membership or function, and the commissioner shall act upon those recommendations; and

Sec. 3. 12 MRSA §10157, sub-§7, ¶F is enacted to read:

F. Establish a protocol to contact and work with the courts to identify public service opportunities for a person who has violated a litter law under Title 17, section 2264-A.

Sec. 4. 17 MRSA §2264-A, as amended by PL 2003, c. 452, Pt. I, §§34 to 37 and affected by Pt. X, §2, is further amended to read:

§2264-A. Penalties

Unless otherwise indicated, a person who disposes of litter in violation of this chapter commits a civil violation for which the following ~~forfeitures~~ fines apply.

1. Disposal of 15 pounds or less or 27 cubic feet or less of litter. A person who disposes of 15 pounds or less or 27 cubic feet or less of litter commits a civil violation for which a fine of not less than \$100 and not more than \$500 may be adjudged.

1-A. Disposal of 15 pounds or less or 27 cubic feet or less of litter; subsequent offenses. A person who violates subsection 1 after having previously violated subsection 1 commits a civil violation for which a fine of not less than ~~\$200~~ \$500 and not more than ~~\$500~~ \$1,000 may be adjudged.

2. Disposal of more than 15 pounds or more than 27 cubic feet of litter. A person who disposes of more than 15 pounds or more than 27 cubic feet of litter commits a civil violation for which ~~a fine of not less than \$200 and not more than \$500 may be adjudged.~~ the court:

A. Shall impose a fine of not less than \$500;

B. Shall require the person to pay a party sustaining damages arising out of a violation of this subsection treble the actual damages or \$200, whichever amount is greater, plus the injured party's court costs and attorney's fees if action results in a civil proceeding;

C. Shall require the person to perform not less than 100 hours of public service relating to the removal of litter or to the restoration of an area polluted by litter disposed of in violation of this section. The court shall consult with the Commissioner of Inland Fisheries and Wildlife to determine if there is an opportunity for public service that may improve landowner and sportsman relations;

D. When practical, shall require the person to remove the litter dumped in violation of this subsection;

E. May suspend the person's motor vehicle operator's license for a period of not less than 30 days or more than one year, except as provided in paragraph F. Notwithstanding paragraph F, the court shall suspend all licenses and permits issued under Title 12, Part 13, subpart 4 and recreational vehicle registrations and certificates issued to that person under Title 12, Part 13, subpart 6 for a period of not less than 30 days or more than one year; and

F. May suspend any license, permit, registration or certification issued by a state agency or municipality to the person. A professional license, permit, registration or certification required for that person to operate or establish a business or necessary for the person's primary source of employment may not be suspended unless the items dumped were related to the person's profession or occupation.

2-A. Disposal of more than 15 pounds or more than 27 cubic feet of litter; subsequent offenses. A person who violates subsection 2 after having previously violated subsection 2 commits a civil violation for which the penalty provisions under subsection 2 apply except for subsection 2, paragraph A, and a fine of not less than \$500 and not more than \$1,000 may \$2,000 must be adjudged.

3. Disposal of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose. A person who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose is subject to the penalties under Title 38, section 349.

Sec. 5. 17 MRSA §2264-B, first ¶, as amended by PL 2003, c. 452, Pt. I, §38 and affected by Pt. X, §2, is further amended to read:

In addition to the fines imposed in section 2264-A, subsections 1 and 1-A, the court may order a person adjudicated to have violated section 2264-A, subsection 1 or subsection 1-A to:

Sec. 6. 17 MRSA §2264-B, sub-§5, as amended by PL 2009, c. 424, §1, is further amended to read:

5. License suspension. Surrender the person's motor vehicle operator's license, a license or permit issued to that person under Title 12, Part 13, subpart 4 or a recreational vehicle registration or certificate issued to that person under Title 12, Part 13, subpart 6 for a period not exceeding 30 days. The court may suspend an operator's license for any violation of section 2264-A, subsection 1 or subsection 1-A that involves the use of a motor vehicle.

See title page for effective date.

CHAPTER 209

S.P. 191 - L.D. 611

An Act Relating to Sales Tax on Certain Rental Vehicles

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

Sec. 1. 36 MRSA §1752, sub-§11, ¶B, as repealed and replaced by PL 2009, c. 434, §22, is amended to read:

B. "Retail sale" does not include:

- (1) Any casual sale;
- (2) Any sale by a personal representative in the settlement of an estate unless the sale is made through a retailer or the sale is made in the continuation or operation of a business;
- (3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented on a short-term basis for a period of less than one year. For the purposes of this subparagraph, "automobile" includes a pickup truck or van with a gross vehicle weight of less than 26,000 pounds;
- (4) The sale, to a person engaged in the business of renting video media and video equipment, of video media or video equipment for rental;
- (5) The sale, to a person engaged in the business of renting or leasing automobiles, of automobiles for rental or lease for one year or more;
- (6) The sale, to a person engaged in the business of providing cable or satellite television services, of associated equipment for rental or lease to subscribers in conjunction with a sale of extended cable or extended satellite television services;
- (7) The sale, to a person engaged in the business of renting furniture or audio media and

audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105;

(8) The sale of loaner vehicles to a new vehicle dealer licensed as such pursuant to Title 29-A, section 953;

(9) The sale of automobile repair parts used in the performance of repair services on an automobile pursuant to an extended service contract sold on or after September 20, 2007 that entitles the purchaser to specific benefits in the service of the automobile for a specific duration;

(10) The sale, to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of tangible personal property for resale in the form of tangible personal property, except resale as a casual sale;

(11) The sale, to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of a taxable service for resale, except resale as a casual sale;

(12) The sale, to a retailer that is not required to register under section 1754-B, of tangible personal property for resale outside the State in the form of tangible personal property, except resale as a casual sale;

(13) The sale, to a retailer that is not required to register under section 1754-B, of a taxable service for resale outside the State, except resale as a casual sale; or

(14) The sale of repair parts used in the performance of repair services on telecommunications equipment as defined in section 2551, subsection 19 pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the telecommunications equipment for a specific duration.

Sec. 2. 36 MRSA §1752, sub-§17-B, as amended by PL 2007, c. 410, §2 and affected by §6, is further amended to read:

17-B. Taxable service. "Taxable service" means the rental of living quarters in a hotel, rooming house, or tourist or trailer camp; the transmission and distribution of electricity; the rental or lease of an automobile; the rental or lease of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds from a person primarily engaged in the business of renting automobiles; the sale of an extended service contract on an automobile that entitles the purchaser to specific benefits in the service of the automobile for a specific duration; and the sale of prepaid calling service.