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ERRORS BILL SUPPLEMENT § SUPP- 2

LAW AMENDED: 5 MRSA §13105, sub-§2, ¶C

General Subject: Office of Innovation, technology centers

Type of correction (conflict, reference, other): cross-reference

Category (technical, substantive): T

Is amendment to Errors Bill needed?
(If so, draft/mark up and explain below)

Prepared by: mjr

Date: 3/28/12

File name: G:\COMMITTEES\JUD\ERRORS BILL 2012\SUPP-2 5 13105 2 C form.doc (3/28/2012 5:58:00 PM)

EXPLANATION

See SUPP-3 and SUPP-3-A.

5 MRSA §13105 authorizes the Commissioner of DECD to establish the Office of Innovation to encourage and coordinate the State's research and development activities to foster collaboration among the State's higher education and nonprofit research institutions and the business community. One of the Office's functions is to promote, evaluate and support research and development relevant to the State including (subsection 2, ¶C) the development of new commercial products and the fabrication of such products in the State through the Maine Technology Institute under section 15302 and the technology centers under section 15321.

SUPP-3 proposed to repeal §15321 to correct a conflict. That remedy for the conflict is incorrect - the technology centers should survive; SUPP-3-A) enacts a new §15322 for the technology centers.

SUPP-2 should not strike out the cross-reference to the technology centers, but should correct the cross-reference to the new §15322.

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Sec. 2. 5 MRSA §13105, sub-§2, ¶C, as amended by PL 2005, c. 19, §2, is further amended to read:

C. The development of new commercial products and the fabrication of such products in the State through the Maine Technology Institute under section 15302 and the technology centers under section ~~15321~~ 15322; and

SUMMARY

SUPP-2 corrects a cross-reference.

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§13104

Title 5:

§13106

ADMINISTRATIVE PROCEDURES AND SERVICES

Part 18-A: ECONOMIC AND COMMUNITY DEVELOPMENT

Chapter 383: ECONOMIC AND COMMUNITY DEVELOPMENT

Subchapter 5-B: OFFICE OF INNOVATION

Article 1: OFFICE OF INNOVATION

§13105. Office of Innovation

1. Office established. The commissioner shall establish the Office of Innovation, referred to in this subchapter as "the office." The office shall encourage and coordinate the State's research and development activities to foster collaboration among the State's higher education and nonprofit research institutions and the business community. The commissioner shall appoint the State Science Advisor, who shall serve as the Director of the Office of Innovation.

[2005, c. 425, §6 (AMD) .]

2. Office functions. The office shall promote, evaluate and support research and development relevant to the State including:

A. Technology transfer activities to increase the competitiveness of businesses and public institutions of higher education in the State; [2003, c. 673, Pt. M, §8 (NEW).]

B. Effective and efficient application of technologies in the public and private sectors; [2003, c. 673, Pt. M, §8 (NEW).]

C. The development of new commercial products and the fabrication of such products in the State through the Maine Technology Institute under section 15302 and the technology centers under section 15321; and [2005, c. 19, §2 (AMD).]

D. Research opportunities that create sustained, interinstitutional, multidisciplinary efforts. [2003, c. 673, Pt. M, §8 (NEW).]

The office shall coordinate cooperative efforts among government agencies, the private sector and universities and colleges for the purposes outlined in this subchapter.

[2005, c. 19, §2 (AMD) .]

SECTION HISTORY

2003, c. 673, §M8 (NEW). 2005, c. 19, §2 (AMD). 2005, c. 425, §6 (AMD).

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ERRORS BILL SUPPLEMENT § SUPP-3 *and 3-A*

LAW AMENDED: 5 MRSA §15321

General Subject: Technology centers; Technology Center Coordinating Board

Type of correction (conflict, reference, other): conflict

Category (technical, substantive): technical

Is amendment to Errors Bill needed? Yes
(If so, draft/mark up and explain below)

Prepared by: ATB

Date: 3/24/12

File name: G:\COMMITTEES\JUD\ERRORS BILL 2012\SUPP 3 5 15321.doc(3/24/2012 12:22:00 PM)

EXPLANATION

PL 2009, c. 369 and PL 2009, c. 90 both amended 5 MRSA §15321 in different ways. The Applied Technology Development Center System was established in 5 MRSA §12004-G, sub-§33-E and 5 MRSA §15321 in PL 1999, c. 731, pt UUU. The subchapter and section were renamed "technology centers" in 2005, c. 19, as well as renaming the Applied Technology Development Center System Coordinating Board the Technology Center Coordinating Board.

PL 2009, c. 369 is An Act to Repeal Inactive Boards and Commissions. Included in the bill for repeal was the Technology Center Coordinating Board. The Board was on the repeal list because it had been inactive for the two preceding years. The State and Local Government Committee did not receive any testimony on the Board and so it repealed the Board in PL 2009, c. 369. (It should have also repealed 5 MRSA §12004-G, sub-§33-E but it was accidentally removed in the Committee Amendment, however this section was repealed in PL 2009, c. 90). The repeal bill can be a blunt instrument - the bill repealed the entire section (§15321, aka 5 MRSA c. 407, sub-c. 2) on technology centers, in the absence of any direction for amending.

PL 2009, c. 90, An Act to Improve Assistance for Technology-based Entrepreneurs, was a DECD department bill in the Business, Research and Economic Development Committee. This bill also repealed the Applied Technology Center Coordinating Board by repealing the section in Title 5,

within the list of all boards and commissions (5 MRSA §12004-G, sub-§33-E) and amended 5 MRSA §15321, including all the paragraphs related to the Technology Center Coordinating Board. However, it did not repeal the section on technology centers but amended it extensively.

LD 1868 should include the version from PL 2009, c. 90 enacted by the BRED committee on behalf of the DECD rather than the version enacted by the SLG Committee, who did not receive any testimony on LD 1254, An Act to Repeal Inactive Boards and Commissions.

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USE THIS VERSION

Sec. SUPP-3. 5 MRSA §15321, as amended by PL 2009, c. 90, §2 and repealed by c. 369, Pt. A, §19 is repealed.

Sec. SUPP-3-A. 5 MRSA c. 407, subc. 3 is enacted to read:

SUBCHAPTER 3
TECHNOLOGY CENTERS

§15322. Technology centers

1. Establishment; purpose. The technology centers, referred to in this section as the "centers," are established. The purpose of the centers is to support early-stage development of technology-based businesses. The self-managed, state-coordinated centers, strategically placed throughout the State, are an integral component of the State's efforts to foster new technology-based businesses. The goals of the centers include the following:

- A. The retention of successful start-up businesses in the State;
- B. The improvement of opportunities for workers through the creation of technologically advanced jobs; and
- C. The encouragement of private-sector initiatives.

2. Administration. The following provisions govern the administration of the centers.

- A. Each technology center is governed by its own board of directors. Each board of directors shall determine services to be provided pursuant to subsection 3, paragraph E.
- B. The Department of Economic and Community Development shall determine assistance criteria and desired program outcomes and establish an application process so that technology centers possessing personnel with applicable skills can be chosen to best deliver services to technology-based entrepreneurs within a respective area.

3. Technology centers. The following provisions govern technology centers.

- A. A technology center may be incorporated as a nonprofit organization, be part of a nonprofit organization, be incorporated as a for-profit organization or be part of a for-profit organization. The following provisions govern a for-profit technology center.

(1) Services made available to a technology center by the center director must be made available to all clients of a for-profit center.

(2) A for-profit center in a targeted technology may apply for available funding. A for-profit center selected for funding shall accept the funding as a loan that may be paid back in the form of cash, equity or royalties as agreed upon by the for-profit center and the Department of Economic and Community Development.

B. The records and proceedings of the technology centers are public for the purposes of Title 1, chapter 13 except that the following records are designated as confidential for the purposes of Title 1, section 402, subsection 3, paragraph A:

(1) A record obtained or developed by a technology center prior to receipt of a written application or proposal in a form acceptable to the technology center for assistance from the technology center. After receipt by the technology center of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this paragraph;

(2) A peer review or analysis or other document related to the evaluation of a grant application or proposal;

(3) A record that the person, including the technology center, to whom the record belongs or pertains has requested be designated confidential and that the technology center has determined contains proprietary information, trade secrets or commercial or financial information, the release of which could be competitively harmful to the submitter of the information, could impair the technology center's ability in the future to obtain similar necessary information solely through the voluntary provision of such information and could affect other technology center interests, such as program effectiveness and compliance. For purposes of this subparagraph, the following terms have the following meanings.

(a) "Commercial or financial information" means information related to businesses, commerce, trade, employment, profits or finances, including personal finances.

(b) "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process;

(4) A financial statement, credit report or tax return of an individual or other record obtained or developed by the technology center, the disclosure of which would constitute an invasion of personal privacy as determined by the technology center;

(5) A record, including a financial statement or tax return obtained or developed by the technology center in connection with a monitoring or servicing activity of the technology center, pertaining to financial assistance provided or to be provided by or with the assistance of the technology center;

(6) A record obtained or developed by the technology center that contains an assessment by a person who is not employed by the technology center of the creditworthiness or financial condition of a person or project;

(7) A financial statement or business and marketing plan in connection with a project receiving or to receive financial or other assistance from the technology center, if the person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

(8) Those employee personnel records made confidential pursuant to section 957, subsection 5 and section 17057.

C. The technology centers shall provide support for early-stage technology-based businesses in the State through at least one of the following mechanisms:

(1) One-on-one sessions;

(2) Peer networks;

(3) Classroom training on subjects unique to technology commercialization and the management of high-growth enterprises;

(4) Mentor programs that link senior technology executives with entrepreneurs; and

(5) Networking opportunities.

4. Funding. The following provisions govern funding for technology centers.

A. Funding for the technology centers must be commensurate with the level of assistance provided.

B. All funding must be provided on a competitive basis.

5. Relationship with academic institution. A technology center shall establish a relationship with at least one academic institution in this State. The Department of Economic and Community Development shall establish guidelines for such a relationship and determine whether a technology center has met the requirements of this subsection.

6. Rule-making authority. The Department of Economic and Community Development may adopt rules to carry out the purposes of this section. Rules adopted pursuant to this section are routine technical rules as defined in chapter 375, subchapter 2-A.

SUMMARY

SUPP-3 and SUPP-3-A correct a conflict created when Public Law 2009, c. 90 amended Title 5, section 15321 and Public Law 2009, chapter 369 repealed Title 5, chapter 407, subchapter 2, which contained Title 5, section 15321 by repealing Title 5, section 15321 and enacting a new subchapter 3 that contains, as section 15322, the version of section 15321 that resulted from Public Law 2009, chapter 90. ☺

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§15321

Title 5:

§17001

ADMINISTRATIVE PROCEDURES AND SERVICES

Part 19: RESEARCH AND DEVELOPMENT Chapter 407: RESEARCH AND DEVELOPMENT Subchapter 2: TECHNOLOGY CENTERS

§15321. Technology centers

(CONFLICT)

(WHOLE SECTION CONFLICT: Text as repealed by PL 2009, c. 369, Pt. A, §19)

SECTION HISTORY

1999, c. 731, §UUU3 (NEW). 2001, c. 471, §§A8,9 (AMD). 2001, c. 562, §3 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2005, c. 19, §4 (AMD). 2007, c. 597, §7 (AMD). 2009, c. 90, §2 (AMD). 2009, c. 369, Pt. A, §19 (RP).

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Title 5:

§15321

ADMINISTRATIVE PROCEDURES AND SERVICES

Part 19: RESEARCH AND DEVELOPMENT Chapter 407: RESEARCH AND DEVELOPMENT Subchapter 2: TECHNOLOGY CENTERS

§15321. Technology centers

(CONFLICT)

(WHOLE SECTION CONFLICT: Text as amended by PL 2009, c. 90, §2)

1. Establishment; purpose. The technology centers, referred to in this section as the "centers," are established. The purpose of the centers is to support early-stage development of technology-based businesses. The self-managed, state-coordinated centers, strategically placed throughout the State, are an integral component of the State's efforts to foster new technology-based businesses. The goals of the centers include the following:

A. The retention of successful start-up businesses in the State; [1999, c. 731, Pt. UUU, §3 (NEW).]

B. The improvement of opportunities for workers through the creation of technologically advanced jobs; and [2009, c. 90, §2 (AMD).]

C. The encouragement of private-sector initiatives. [2009, c. 90, §2 (AMD).]

D. [2009, c. 90, §2 (RP).]

E. [2009, c. 90, §2 (RP).]

[2009, c. 90, §2 (AMD) .]

2. Administration. The following provisions govern the administration of the centers.

A. [2005, c. 19, §4 (RP).]

B.

[2009, c. 90, §2 (RP).]

C. Each technology center is governed by its own board of directors. Each board of directors shall determine services to be provided pursuant to subsection 3, paragraph E. [2009, c. 90, §2 (AMD).]

D. [2009, c. 90, §2 (RP).]

E. The Department of Economic and Community Development

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shall determine assistance criteria and desired program outcomes and establish an application process so that technology centers possessing personnel with applicable skills can be chosen to best deliver services to technology-based entrepreneurs within a respective area. [2009, c. 90, §2 (NEW).]

[2009, c. 90, §2 (AMD) .]

3. Technology centers. The following provisions govern technology centers.

A. A technology center may be incorporated as a nonprofit organization, be part of a nonprofit organization, be incorporated as a for-profit organization or be part of a for-profit organization. The following provisions govern a for-profit technology center.

(1) Services made available to a technology center by the center director must be made available to all clients of a for-profit center.

(2) A for-profit center in a targeted technology may apply for available funding. A for-profit center selected for funding shall accept the funding as a loan that may be paid back in the form of cash, equity or royalties as agreed upon by the for-profit center and the Department of Economic and Community Development. [2009, c. 90, §2 (AMD) .]

B. [2005, c. 19, §4 (RP) .]

C. [2009, c. 90, §2 (RP) .]

D. The records and proceedings of the technology centers are public for the purposes of Title 1, chapter 13 except that the following records are designated as confidential for the purposes of Title 1, section 402, subsection 3, paragraph A:

(1) A record obtained or developed by a technology center prior to receipt of a written application or proposal in a form acceptable to the technology center for assistance from the technology center. After receipt by the technology center of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this paragraph;

(2) A peer review or analysis or other document related to the evaluation of a grant application or proposal;

(3) A record that the person, including the technology center, to whom the record belongs or pertains has requested be designated confidential and that the technology center has determined contains proprietary information, trade secrets or commercial or financial information, the release of which could be competitively harmful to the submitter of the information, could impair

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the technology center's ability in the future to obtain similar necessary information solely through the voluntary provision of such information and could affect other technology center interests, such as program effectiveness and compliance. For purposes of this subparagraph, the following terms have the following meanings.

(a) "Commercial or financial information" means information related to businesses, commerce, trade, employment, profits or finances, including personal finances.

(b) "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process;

(4) A financial statement, credit report or tax return of an individual or other record obtained or developed by the technology center, the disclosure of which would constitute an invasion of personal privacy as determined by the technology center;

(5) A record, including a financial statement or tax return obtained or developed by the technology center in connection with a monitoring or servicing activity of the technology center, pertaining to financial assistance provided or to be provided by or with the assistance of the technology center;

(6) A record obtained or developed by the technology center that contains an assessment by a person who is not employed by the technology center of the creditworthiness or financial condition of a person or project;

(7) A financial statement or business and marketing plan in connection with a project receiving or to receive financial or other assistance from the technology center, if the person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

(8) Those employee personnel records made confidential pursuant to section 957, subsection 5 and section 17057. [2007, c. 597, §7 (AMD).]

E. The technology centers shall provide support for early-stage technology-based businesses in the State through at least one of the following mechanisms:

- (1) One-on-one sessions;
- (2) Peer networks;

(3) Classroom training on subjects unique to technology commercialization and the management of high-growth enterprises;

(4) Mentor programs that link senior technology executives with entrepreneurs; and

(5) Networking opportunities. [2009, c. 90, §2 (NEW).]

[2009, c. 90, §2 (AMD) .]

4. Funding. The following provisions govern funding for technology centers.

A. [2009, c. 90, §2 (RP).]

B. [2005, c. 19, §4 (RP).]

C. Funding for the technology centers must be commensurate with the level of assistance provided. [2009, c. 90, §2 (NEW).]

D. All funding must be provided on a competitive basis. [2009, c. 90, §2 (NEW).]

[2009, c. 90, §2 (AMD) .]

5. Relationship with academic institution. A technology center shall establish a relationship with at least one academic institution in this State. The Department of Economic and Community Development shall establish guidelines for such a relationship and determine whether a technology center has met the requirements of this subsection.

[2009, c. 90, §2 (AMD) .]

6. Rule-making authority. The Department of Economic and Community Development may adopt rules to carry out the purposes of this section. Rules adopted pursuant to this section are routine technical rules as defined in chapter 375, subchapter 2-A.

[2005, c. 19, §4 (AMD) .]

SECTION HISTORY

1999, c. 731, §UUU3 (NEW). 2001, c. 471, §§A8,9 (AMD). 2001, c. 562, §3 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2005, c. 19, §4 (AMD). 2007, c. 597, §7 (AMD). 2009, c. 90, §2 (AMD). 2009, c. 369, Pt. A, §19 (RP).

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(13)

Initiative: Allocates American Recovery and Reinvestment Act of 2009 funds for 2 years to increase the funding for the solar and wind energy rebate program.

FEDERAL EXPENDITURES	2009-10	2010-11
FUND ARRA		
All Other	\$500,000	\$500,000
FEDERAL EXPENDITURES	\$500,000	\$500,000
FUND ARRA TOTAL		
PUBLIC UTILITIES		
COMMISSION		
DEPARTMENT TOTALS	2009-10	2010-11
OTHER SPECIAL	\$0	\$250,000
REVENUE FUNDS		
FEDERAL	\$500,000	\$500,000
EXPENDITURES FUND		
ARRA		
DEPARTMENT TOTAL -	\$500,000	\$750,000
ALL FUNDS		

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

Effective May 8, 2009.

CHAPTER 89

S.P. 181 - L.D. 478

An Act To Ensure That the Membership of the State Board of Corrections Includes a Representative with Expertise in Issues Regarding Mental Illness

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

Sec. 1. 34-A MRSA §1802, sub-§1, as enacted by PL 2007, c. 653, Pt. A, §30, is amended to read:

1. **Appointments.** The board consists of 9 members who are appointed by the Governor. Each appointment is subject to review by the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and to confirmation by the Senate, except those members appointed pursuant to paragraph C. The following provisions govern member qualifications:

A. One member must be a sitting sheriff selected from a list of 3 nominations submitted to the Governor by a statewide organization representing sheriffs;

B. One member must be a sitting county commissioner selected from a list of 3 nominations submitted to the Governor by a statewide organization representing county commissioners;

C. Two members must be representatives of the executive branch and at least one of the 2 must be from the department;

D. One member must be a municipal official selected from a list of 3 nominations submitted to the Governor by a statewide organization representing elected and appointed municipal officers and officials; and

E. ~~The remaining 4~~ Four members must be broadly representative of the public and the geographical regions of the State. One of the 4 members appointed under this paragraph must be selected from a list of 3 nominations submitted to the Governor by a statewide organization representing county commissioners. A member appointed under this paragraph may not be an elected state or county official or municipal officer and may not derive income in substantial portion from work as an employee of a state, county or municipal government or in the field of corrections.

Of the 9 members, one must be a person with expertise in issues relating to mental illness.

See title page for effective date.

CHAPTER 90

S.P. 342 - L.D. 892

An Act To Improve Assistance for Technology-based Entrepreneurs

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

Sec. 1. 5 MRSA §12004-G, sub-§33-E, as amended by PL 2005, c. 19, §1, is repealed.

Sec. 2. 5 MRSA §15321, as amended by PL 2007, c. 597, §7, is further amended to read:

§15321. Technology centers

1. **Establishment; purpose.** The technology centers, referred to in this section as the "centers," are established. The purpose of the centers is to support early-stage development of technology-based businesses while minimizing or eliminating debilitating overhead expenses. The self-managed, state-

repeals the Board

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Enact this version of §15321

coordinated centers, strategically placed throughout the State, are an integral component of the State's efforts to foster new technology-based businesses. The goals of the centers include the following:

- A. The retention of successful start-up businesses in the State;
- B. The improvement of opportunities for workers through the creation of technologically advanced jobs; and
- C. The encouragement of private-sector initiatives;
- ~~D. The renovation and utilization of vacant commercial real estate; and~~
- ~~E. The generation of new sources of revenue for local and state tax bases.~~

2. **Administration.** The following provisions govern the administration of the centers.

~~B. The Department of Economic and Community Development shall establish a Technology Center Coordinating Board that consists of interested parties in the State to coordinate center activities. The Technology Center Coordinating Board consists of at least the following members:~~

- ~~(1) The Commissioner of Economic and Community Development or the commissioner's designee;~~
- ~~(3) A representative from each technology center, chosen by that center;~~
- ~~(4) A representative from the University of Maine System, chosen by the Chancellor of the University of Maine System;~~
- ~~(5) A representative of the Maine Community College System, chosen by the President of the Maine Community College System;~~
- ~~(6) A representative of a nonprofit organization that is funded by the State and promotes the State to business entities, chosen by that organization;~~
- ~~(7) An attorney, chosen by the Commissioner of Economic and Community Development;~~
- ~~(8) A financial expert, chosen by the Commissioner of Economic and Community Development; and~~
- ~~(9) A representative of the institute.~~

C. Each technology center is governed by its own board of directors. Each board of directors shall establish standards for the selection of tenants determine services to be provided pursuant to subsection 3, paragraph E.

~~D. The Department of Economic and Community Development shall determine where the technology centers are to be located.~~

E. The Department of Economic and Community Development shall determine assistance criteria and desired program outcomes and establish an application process so that technology centers possessing personnel with applicable skills can be chosen to best deliver services to technology-based entrepreneurs within a respective area.

3. **Technology centers.** The following provisions govern technology centers.

A. A technology center may be incorporated as a nonprofit organization, be part of a nonprofit organization, be incorporated as a for-profit organization or be part of a for-profit organization. The following provisions govern a for-profit technology center.

(1) Services made available to a technology center by the center director must be made available to all tenants clients of a for-profit center.

(2) A for-profit center in a targeted technology may apply for available funding. A for-profit center selected for funding shall accept the funding as a loan that may be paid back in the form of cash, equity or royalties as agreed upon by the for-profit center and the Department of Economic and Community Development.

~~C. Each technology center shall provide shared, low-cost space to selected tenants and be designed to be self-sufficient with regard to operational costs and structural maintenance. Existing real estate must be considered where suitable. Specific business support tailored to each tenant must be provided by existing organizations such as the small business development centers and regional economic development districts. Each technology center must have simultaneous broadcast or interactive television capability or access to these capabilities nearby to facilitate common training for the system.~~

D. The records and proceedings of the technology centers are public for the purposes of Title 1, chapter 13 except that the following records are designated as confidential for the purposes of Title 1, section 402, subsection 3, paragraph A:

(1) A record obtained or developed by a technology center prior to receipt of a written application or proposal in a form acceptable to the technology center for assistance from the technology center. After receipt by the technology center of the application or proposal, a record pertaining to the application or pro-

posal may not be considered confidential unless it is confidential under another provision of this paragraph;

(2) A peer review or analysis or other document related to the evaluation of a grant application or proposal;

(3) A record that the person, including the technology center, to whom the record belongs or pertains has requested be designated confidential and that the technology center has determined contains proprietary information, trade secrets or commercial or financial information, the release of which could be competitively harmful to the submitter of the information, could impair the technology center's ability in the future to obtain similar necessary information solely through the voluntary provision of such information and could affect other technology center interests, such as program effectiveness and compliance. For purposes of this subparagraph, the following terms have the following meanings.

(a) "Commercial or financial information" means information related to businesses, commerce, trade, employment, profits or finances, including personal finances.

(b) "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process;

(4) A financial statement, credit report or tax return of an individual or other record obtained or developed by the technology center, the disclosure of which would constitute an invasion of personal privacy as determined by the technology center;

(5) A record, including a financial statement or tax return obtained or developed by the technology center in connection with a monitoring or servicing activity of the technology center, pertaining to financial assistance provided or to be provided by or with the assistance of the technology center;

(6) A record obtained or developed by the technology center that contains an assessment by a person who is not employed by the technology center of the creditworthiness or financial condition of a person or project;

(7) A financial statement or business and marketing plan in connection with a project receiving or to receive financial or other assistance from the technology center, if the person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

(8) Those employee personnel records made confidential pursuant to section 957, subsection 5 and section 17057.

E. The technology centers shall provide support for early-stage technology-based businesses in the State through at least one of the following mechanisms:

(1) One-on-one sessions;

(2) Peer networks;

(3) Classroom training on subjects unique to technology commercialization and the management of high-growth enterprises;

(4) Mentor programs that link senior technology executives with entrepreneurs; and

(5) Networking opportunities.

4. Funding. The following provisions govern funding for technology centers.

A. An applicant may not receive more than \$750,000 in an initial funding for a technology center.

C. Funding for the technology centers must be commensurate with the level of assistance provided.

D. All funding must be provided on a competitive basis.

5. Relationship with academic institution. A technology center shall establish a relationship with at least one academic institution in this State. The ~~Technology Center Coordinating Board~~ Department of Economic and Community Development shall establish guidelines for such a relationship and determine whether a technology center has met the requirements of this subsection.

6. Rule-making authority. The Department of Economic and Community Development may adopt rules to carry out the purposes of this section. Rules adopted pursuant to this section are routine technical rules as defined in chapter 375, subchapter 2-A.

See title page for effective date.

FIRST REGULAR SESSION - 2009

Didn't repeal 5 §12006-G sub-§33-E - It was in the bill and accidentally removed in Committee amendment A (drafted as removing Secs. 20, 22 and 23 but ended up as 20 to 23)

of the decedent at any time within 6 years after the cause of action accrues. If the proceedings are commenced more than 3 years after the decedent's death, any recovery is limited to applicable insurance.

See title page for effective date.

CHAPTER 369

H.P. 873 - L.D. 1254

An Act To Repeal Inactive Boards and Commissions

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

PART A

Sec. A-1. 5 MRSA c. 165, as amended, is repealed.

Sec. A-2. 5 MRSA c. 316, as amended, is repealed.

Sec. A-3. 5 MRSA §12004-A, sub-§6, as repealed and replaced by PL 1991, c. 397, §1, is repealed.

Sec. A-4. 5 MRSA §12004-G, sub-§4, as enacted by PL 1987, c. 786, §5, is repealed.

Sec. A-5. 5 MRSA §12004-G, sub-§14-E, as enacted by PL 2005, c. 12, Pt. PP, §2, is repealed.

Sec. A-6. 5 MRSA §12004-I, sub-§18-E, as enacted by PL 2003, c. 710, §1, is repealed.

Sec. A-7. 5 MRSA §12004-I, sub-§24, as amended by PL 2003, c. 414, Pt. B, §9 and affected by c. 614, §9, is repealed.

Sec. A-8. 5 MRSA §12004-I, sub-§47-F, as enacted by PL 2003, c. 465, §2, is repealed.

Sec. A-9. 5 MRSA §12004-I, sub-§57-D, as enacted by PL 1999, c. 85, §1, is repealed.

Sec. A-10. 5 MRSA §12004-J, sub-§10, as enacted by PL 1991, c. 417, §2, is repealed.

Sec. A-11. 5 MRSA §12006, sub-§2, as amended by PL 2007, c. 395, §23, is further amended to read:

2. Legislative repeal of inactive boards. The Secretary of State shall submit suggested legislation to the joint standing committee of the Legislature having jurisdiction over state government matters on or before January 15th 30th in the first regular session of each biennium to repeal those boards that have not reported on their activities to the Secretary of State under this section or section 12005-A during either of the prior 2 calendar years or have been inactive during the preceding 24 months. The joint standing committee of the

Legislature having jurisdiction over state government matters may submit legislation to the first regular session of each biennium to repeal those boards.

Sec. A-12. 5 MRSA §12006, sub-§3, ¶C, as enacted by PL 2003, c. 643, §6, is amended to read:

C. State Poet Laureate Advisory Selection Committee, as established in section 12004-I, subsection 5-A; and

Sec. A-13. 5 MRSA §12006, sub-§3, ¶D, as enacted by PL 2003, c. 643, §6, is amended to read:

D. Board of Emergency Municipal Finance, as established in Title 30-A, section 6101;

Sec. A-14. 5 MRSA §12006, sub-§3, ¶E is enacted to read:

E. State Compensation Commission, as established in Title 3, section 2-B;

Sec. A-15. 5 MRSA §12006, sub-§3, ¶F is enacted to read:

F. Maine-Canadian Legislative Advisory Commission, as established in Title 3, section 227;

Sec. A-16. 5 MRSA §12006, sub-§3, ¶G is enacted to read:

G. New England and Eastern Canada Legislative Commission, as established in Title 3, section 231;

Sec. A-17. 5 MRSA §12006, sub-§3, ¶H is enacted to read:

H. State House and Capitol Park Commission, as established in Title 3, section 901-A; and

Sec. A-18. 5 MRSA §12006, sub-§3, ¶I is enacted to read:

I. Maine Agricultural Bargaining Board, as established in Title 13, section 1956.

Sec. A-19. 5 MRSA c. 407, sub-c. 2, as amended, is repealed.

Sec. A-20. 7 MRSA §1, as amended by PL 1995, c. 693, §3, is further amended to read:

§1. Department of Agriculture, Food and Rural Resources

The Department of Agriculture, Food and Rural Resources, is established and is maintained for the improvement of agriculture and the advancement of the interests of husbandry. The Department of Agriculture, Food and Rural Resources is referred to in this Title as the "department" and consists of the Commissioner of Agriculture, Food and Rural Resources, in this Title called the "commissioner," and the following: The Aroostook Water and Soil Management Board, the Board of Pesticide Control, the Maine Milk Commission, the Maine Potato Board, the Seed Potato

ERRORS BILL §: SUPP-1

LAW AMENDED: 2 MRSA c. 5

General Subject: State Health Planning

Type of correction (conflict, reference, other): Contextual statute repealed

Category (technical, substantive): T?

Is amendment to Errors Bill needed?
(If so, draft/mark up and explain below)

Prepared by: cjs/mjr

Date: 3/28/2012 4:33 PM

File name: G:\COMMITTEES\JUD\ERRORS BILL 2012\2 105.doc(3/28/2012 4:33:00 PM)

EXPLANATION

Title 2, section 105 gives the Governor the authority to adopt rules to implement chapter 5.

Three sections of chapter 5 - 101, 103 and 104 -- were repealed by Public Law 2011, chapter 90. Section 102 was repealed by Public Law 2011, chapter 213. With the repeal of the other sections, the remaining section 105 grants authority to adopt rules to implement state health planning law that no longer exists. This section of the Errors Bill repeals chapter 5 and removes this remaining section.

Rules had been adopted (Capital Investment Fund) using the authority 2 MRSA §105. The Attorney General's Office reports that as far as they know, the rules are no longer in existence so there is no concern about undoing the authority.

(1)

Supp


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


2 **Sec. 1. 2 MRSA c. 5**, as amended, is repealed.


3 SUMMARY


Section 1 repeals the Maine Revised Statutes, Title 2, chapter 5. Public Law 2011, chapter 90 repealed Title 2, sections 101, 103 and 104 and Public Law 2011, chapter 213 repealed Title 2, section 102, all of which are in Title 2, chapter 5. The only section left in chapter 5 is section 105, which gives the Governor the authority to adopt rules to implement the chapter.

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Title 2, Chapter 5: STATE HEALTH PLANNING

[2 §101. Duties of Governor \(REPEALED\)](#)

[2 §102. Capital investment fund \(REPEALED\)](#)

[2 §103. State Health Plan \(REPEALED\)](#)

[2 §104. Advisory Council on Health Systems Development \(REPEALED\)](#)

[2 §105. Rulemaking](#)

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§104

Title 2: EXECUTIVE

Chapter 5: STATE HEALTH PLANNING

§105. Rulemaking

The Governor shall adopt rules for the implementation of this chapter. Rules adopted pursuant to this chapter are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 469, Pt. B, §1 (NEW).]

SECTION HISTORY
2003, c. 469, §B1 (NEW).

Data for this page extracted on 02/09/2011 09:22:15.

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MAY 17 '11 90

STATE OF MAINE

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 979 - L.D. 1333

**An Act To Modify Rating Practices for Individual and Small Group Health
Plans and To Encourage Value-based Purchasing of Health Care Services**

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

PART A

Sec. A-1. 24-A MRSA §2736-C, sub-§2, ¶C, as amended by PL 2001, c. 410, Pt. A, §1 and affected by §10, is further amended to read:

C. A carrier may vary the premium rate due to ~~smoking status and family membership. The superintendent may adopt rules setting forth appropriate methodologies regarding rate discounts based on smoking status. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

Sec. A-2. 24-A MRSA §2736-C, sub-§2, ¶C-1 is enacted to read:

C-1. A carrier may vary the premium rate due to geographic area in accordance with the limitation set out in this paragraph. For all policies, contracts or certificates that are executed, delivered, issued for delivery, continued or renewed in this State on or after July 1, 2012, the rating factor used by a carrier for geographic area may not exceed 1.5.

Sec. A-3. 24-A MRSA §2736-C, sub-§2, ¶D, as amended by PL 2007, c. 629, Pt. A, §4, is further amended to read:

D. A carrier may vary the premium rate due to age and ~~geographic area~~ smoking status in accordance with the limitations set out in this paragraph.

(1) For all policies, contracts or certificates that are executed, delivered, issued for delivery, continued or renewed in this State between December 1, 1993 and July 14, 1994, the premium rate may not deviate above or below the community rate filed by the carrier by more than 50%.

(2) For all policies, contracts or certificates that are executed, delivered, issued for delivery, continued or renewed in this State between July 15, 1994 and July



pursuant to section 4319 and to the federal Affordable Care Act and federal regulations adopted pursuant to the federal Affordable Care Act.

Sec. D-5. 24-A MRSA §4319 is enacted to read:

§4319. Rebates

1. Rebates required. Carriers must provide rebates in the large group, small group and individual markets to the extent required by the federal Affordable Care Act and federal regulations adopted pursuant thereto if the medical loss ratio under subsection 2 is less than the minimum medical loss ratio under subsection 3.

2. Medical loss ratio. For purposes of this section, the medical loss ratio is the ratio of the numerator to the denominator as described in paragraphs A and B, respectively, plus any credibility adjustment. The period for which the medical loss ratio is determined and the meaning of all terms used in this subsection must be in accordance with the federal Affordable Care Act and federal regulations adopted pursuant thereto. For the purposes of this subsection:

A. The numerator is the amount expended on reimbursement for clinical services provided to enrollees and activities that improve health care quality; and

B. The denominator is the total amount of premium revenue excluding federal and state taxes and licensing and regulatory fees paid and after accounting for payments or receipts for risk adjustment, risk corridors and reinsurance pursuant to federal law.

3. Minimum medical loss ratio. The minimum medical loss ratio is:

A. In the large group market, 85%;

B. In the small group market, 80%; and

C. In the individual market, 80% or such lower minimum medical loss ratio as the Secretary of the United States Department of Health and Human Services determines based on a finding, pursuant to the federal Affordable Care Act and federal regulations adopted pursuant thereto, that an 80% minimum medical loss ratio might destabilize the individual market in this State.

PART E

Sec. E-1. 2 MRSA §101, as amended by PL 2005, c. 369, §1 and amended by c. 397, Pt. C, §1 and affected by §2, is repealed.

Sec. E-2. 2 MRSA §103, as amended by PL 2009, c. 355, §§1 to 3, is repealed.

Sec. E-3. 2 MRSA §104, as amended by PL 2009, c. 609, §§1 to 3, is repealed.

PART F

Sec. F-1. 24-A MRSA §2736-C, sub-§8, as amended by PL 1999, c. 256, Pt. D, §2, is repealed.

6

APPROVED

CHAPTER

STATE OF MAINE

JUN 03 '11

213

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

S.P. 173 - L.D. 581

An Act To Repeal the Laws Governing the Capital Investment Fund

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

Sec. 1. 2 MRSA §102, as amended by PL 2009, c. 194, §1, is repealed.

Sec. 2. 22 MRSA §328, sub-§3-A, as amended by PL 2011, c. 90, Pt. J, §2, is repealed.

Sec. 3. 22 MRSA §335, sub-§1, ¶E, as amended by PL 2007, c. 440, §14, is further amended to read:

E. ~~Can be funded within the capital investment fund or, in~~ In the case of a nursing facility, is consistent with the nursing facility MaineCare funding pool and other provisions of sections 333-A and 334-A.



ERRORS BILL §: SUPP-4

LAW AMENDED: 7 MRSA 1017

General Subject: Agriculture and Animals/Potato Licensing

Type of correction (conflict, reference, other): Self-referring reference

Category (technical, substantive): T

Is amendment to Errors Bill needed?
(If so, draft/mark up and explain below)

Prepared by: cjs

Date: 3/27/2012 12:12 PM

File name: G:\COMMITTEES\JUD\ERRORS BILL 2012\7 1017.doc(3/29/2012 9:31:00 AM))

EXPLANATION

Title 7, section 1017 contains an ambiguous reference to a bonding requirement for potato dealers, processors, brokers, agents or retailers licensed under Article 3 of Title 7.

7 MRSA §1015 currently directs the Commissioner of Agriculture to require the potential licensee to file a bond as a prerequisite to the issuance of a license. It must be conditioned on the full and prompt payment for all potatoes or rotation crops received or purchased from producers or other licensees.

7 MRSA §1017 governs violations by licensees. When subsection 4 (notification of insufficient or no payment) was first enacted, it included ¶A, referred to as "Action by the commissioner. See PL 1975, c. 713. The last sentence directs the commissioner to require the processor to post a bond when it is found that the processor violated a contract. Sub-¶(4) of ¶A provides that a licensee found guilty of insufficient payment or nonpayment of debts owed to a potato producer may appeal the decision, and if he or she does so, must post a bond to cover the total debt claimed. This appeal bond may be waived by the commissioner if the bond required in ¶A is valid and covers the whole claim. Wait - this is part of ¶A! So it should have said "this paragraph" or describe the bond required earlier in the paragraph.

PL 2005, c. 333 (LD 1572, An Act to Amend the Potato Industry Licensing Laws) is amended §1015 and §1017. §1017, sub-§4, ¶A was amended to clarify that the commissioner may use the proceeds of the bond under §1015 to cover the amounts owed producers. If the bond proceeds are not sufficient, the authorization for the bond that already existed is referred to as “an additional” bond sufficient to cover the “remaining” debt. Subparagraph (4) was not amending, retaining the improper reference to the “bond required in paragraph A.

This section of the Errors Bill strikes the reference to ¶A and replaces it with a reference to the bond required by the commissioner under section 1015 or this paragraph. It is not clear to me that this is correct, but it does make sense to allow the commissioner to waive the appeal bond if the existing bonds (under §2015 and an additional bond under §1017, sub-§4, ¶A will cover the underlying debt.

Supp 4

✓
MZL
3.7.12

1 **Sec. 4. 7 MRSA §1017, sub-§4, ¶A**, as amended by PL 2007, c. 499, §1, is
2 further amended to read:

3 A. The Commissioner of Agriculture, Food and Rural Resources or the
4 commissioner's agent, upon notification by producers of insufficient or no payment,
5 shall immediately investigate the complaint and shall, in a manner consistent with the
6 provisions of the Maine Administrative Procedure Act as to adjudicatory
7 proceedings, hold a hearing, unless such hearing is waived by the processor, dealer,
8 broker, agent or retailer against whom the charge has been made. The processor,
9 dealer, broker, agent or retailer accused of nonpayment shall provide the
10 commissioner with a copy of the contract, if any, and all other materials and
11 information to enable the commissioner to carry out the provisions of this section.
12 Upon finding after investigation that the processor, dealer, broker, agent or retailer
13 has violated the contract, express or implied, the commissioner may recover the
14 proceeds of the bond required by section 1015 and apply those proceeds against the
15 amounts owed producers. In the event the bond proceeds are inadequate to cover the
16 debts owed producers, the commissioner shall require the processor, dealer, broker,
17 agent or retailer to post an additional bond sufficient to cover the remaining debt
18 owed to the producer or producers.

19 (1) The commissioner, after determination upon a hearing of insufficient
20 payment or nonpayment of debts owed to a producer, may require the licensee to
21 formulate a schedule of payments to the producer that is satisfactory to the
22 commissioner. The schedule of payments may not exceed a 30-day period.

23 (2) The licensee, who after a hearing is determined to be in default of payment to
24 a producer, shall submit a payment schedule to the commissioner within one
25 week from the commissioner's request for a payment schedule. In the event that
26 the schedule of payment is not satisfactory to the commissioner, the
27 commissioner shall establish the schedule of payment not to exceed a 30-day
28 period.

29 (3) The commissioner shall file a complaint with the District Court seeking to
30 suspend the license of any licensee who fails to conform to the payment schedule
31 established in this section until the producer is paid the total claim to which the
32 producer is entitled.

33 (4) Upon the filing of a complaint by the commissioner in the District Court, the
34 licensee shall post a bond sufficient to cover the total claim owed the producer on
35 the date on which the complaint is filed. The bond required for an appeal
36 procedure may be waived by the District Court in the event that the bond required
37 in paragraph A by the commissioner under section 1015 or this paragraph is valid
38 and sufficient to cover the total claim owed the producer.

39 (5) Nothing in this section may be construed to prohibit a producer from seeking
40 redress for insufficient payment or nonpayment from licensees in any court or in
41 accordance with any federal procedure established to obtain redress.

3

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SUMMARY

2

Section 4 corrects an internal reference.

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§1014**Title 7:****§1016****AGRICULTURE AND ANIMALS****Part 2: MARKETING, GRADING AND LABELING****Chapter 103: PRODUCTS CONTROLLED****Subchapter 10: POTATOES****Article 3: LICENSING****§1015. Application and renewal for license**

The applicant shall file an application for a license or renewal of a license on forms as prescribed and furnished by the commissioner, which must contain the full name of the person applying for the license and, if the applicant is a corporation, partnership, association, exchange or legal representative, officer, director, partner or member of a corporation, partnership, association or exchange, all such names and positions. If the applicant is a foreign corporation, it shall certify that it is authorized to transact business in the State under former Title 13-A, chapter 12 or Title 13-C, chapter 15, and further state the principal business address of the applicant in the State or elsewhere, the address of all places of business in the State, and the name or names of the person or persons authorized to receive and accept service of lawful process upon the applicant within the State. All questions required to be answered in the application for licenses must be sworn to, and intentionally untruthful answers constitute the crime of perjury. [2005, c. 333, §1 (AMD).]

Upon receipt of an initial application, the commissioner immediately shall cause notice of the application to be provided in a manner consistent with the provisions of the Maine Administrative Procedure Act as to adjudicatory proceedings and shall, in any case, cause a copy of the notice to be served upon the Maine Potato Board. Any interested person has 30 days in which to file comments as to the applicant's qualifications, to request a hearing or to file a verified complaint with the commissioner as provided by this Article. [2005, c. 333, §1 (AMD).]

This applicant shall satisfy the commissioner of that applicant's character, financial responsibility and good faith in seeking to engage in the business. The commissioner shall, after notice and opportunity for a hearing has been provided in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, issue a license to an applicant if the commissioner is satisfied as to the applicant's qualifications, such license entitling the applicant to act in the capacity described in the license for a period of one year from the date of issuance. A license may not be granted to any applicant if such person or officer, director, partner, or member



thereof, has been convicted in any state or federal court of any felony within 5 years of the date of the application. [2005, c. 333, §1 (AMD).]

bond →

In order to insure the licensee's financial responsibility and to protect potato and rotation crop producers, the commissioner shall require the licensee to file a bond as a prerequisite to the issuance of a license. The bond must be in a form and amount satisfactory to the commissioner, but not less than \$50,000 nor more than \$300,000 in the case of dealers and brokers engaged in buying or selling either potatoes or rotation crops, but not both, not less than \$50,000 nor more than \$400,000 in the case of dealers and brokers engaged in buying and selling both potatoes and rotation crops, or not less than \$100,000 nor more than \$500,000 in the case of processors, payable to the commissioner in the commissioner's official capacity and conditioned on the full and prompt payment for all potatoes or rotation crops received or purchased from producers or other licensees during the effective period of the license. In the case of processors, the amount of bond required must be based on the licensee's anticipated monthly volume of purchases, but may be adjusted to reflect other federal escrow accounts or bond requirements met by the licensee that satisfy the purposes of this section. [2005, c. 333, §1 (AMD).]

Each license must plainly state the name and business address or addresses of the licensee and must be posted in a conspicuous place in each office where the business is transacted. The fee for each license is \$100 annually. Such license may be renewed for successive periods of one year each upon payment of the renewal fee and the submission of an application demonstrating that the applicant continues to meet the requirements for licensing, including filing proof of financial responsibility. A license or license renewal issued expires on the 30th day of June following the date of issuance. The department is not required to provide notice and opportunity for a hearing as provided in the Maine Administrative Procedure Act when granting a license renewal. If the licensee desires to carry on business in more than one place within the State, the licensee shall procure additional copies of the license, certified by the commissioner, for each place where the business is to be conducted. The fee for each such additional certification is \$100. In the event a person required to be licensed under this section fails to renew that person's license or submit the annual proof of financial responsibility, the department shall promptly provide notice to members of the potato producing industry through the Maine Potato Board and an agricultural bargaining council. [2005, c. 333, §1 (AMD).]

All fees collected under this Article must be paid to the Treasurer of State and credited to the Department of Agriculture, Food and Rural Resources for the administration of this Article and other expenses incident to the administration of the department, and

(6)

must be expended by the commissioner for the purposes for which the department is created. If any of such fees are not expended during the year in which they are collected, the unexpended balance does not lapse, but must be carried as a continuing account and available for the purposes specified until expended. [2005, c. 333, §1 (AMD).]

SECTION HISTORY

1971, c. 366, (NEW). 1971, c. 600, §6 (AMD). 1971, c. 622, §21 (AMD). 1975, c. 713, §1 (AMD). 1977, c. 694, §§101,102 (AMD). 1979, c. 127, §45 (AMD). 1979, c. 672, §A24 (AMD). 1983, c. 465, §1 (AMD). 1991, c. 837, §A19 (AMD). 1997, c. 388, §4 (AMD). 1997, c. 606, §9 (AMD). 2003, c. 344, §D1 (AMD). 2005, c. 333, §1 (AMD).

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§1016

Title 7:

§1018

AGRICULTURE AND ANIMALS

Part 2: MARKETING, GRADING AND LABELING

Chapter 103: PRODUCTS CONTROLLED

Subchapter 10: POTATOES

Article 3: LICENSING

§1017. Violations

1. Acts enumerated. The commissioner or the commissioner's duly authorized agent may refuse to grant or renew a license, after notice and opportunity for a hearing is provided in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, upon a finding that any of the following acts have existed within 2 years of the date of the filing of an application for license:

A. That fraudulent charges or returns have been made by the applicant or licensee for the handling, sale or storage of potatoes or rotation crops, or for the rendering of any service in connection with the handling, sale or storage of potatoes or rotation crops; [1997, c. 606, §10 (AMD).]

B. That the applicant or licensee has failed or refused to render a true account of sales, or to make a settlement thereon, within the time and in the manner required by this Article, or has failed or refused to pay for potatoes or rotation crops purchased by the applicant or licensee within 30 calendar days after acceptance of the potatoes or rotation crops; [1997, c. 606, §10 (AMD).]

C. That the applicant or licensee has knowingly made any false material statement as to the condition, quality or quantity of potatoes or rotation crops received, handled, sold, purchased or stored by the applicant or licensee; [1997, c. 606, §10 (AMD).]

D. That the applicant or licensee directly or indirectly has purchased for that applicant's or licensee's own account, potatoes or rotation crops received by the applicant or licensee upon consignment without prior authorization from consignor together with price fixed by consignor or without promptly notifying the consignor of such purchase. This does not prevent any dealer, processor, broker, agent or retailer, in order to close the day's business, from taking into account in the record of sales miscellaneous lots or parcels of potatoes or rotation crops remaining unsold, if such dealer, processor, broker, agent or retailer on the business day next following properly enters any such transaction in that applicant's or licensee's accounts; [1997, c. 606, §10 (AMD).]



E. That the applicant or licensee has made any substantial misrepresentation as to the conditions of the market for potatoes or rotation crops; [1997, c. 606, §10 (AMD).]

F. That the applicant or licensee has made fictitious sales or has defrauded or attempted to defraud a producer; [1997, c. 606, §10 (AMD).]

G. That a dealer, processor, broker, agent or retailer to whom any consignment is made has reconsigned such consignment to another dealer, processor, broker, agent or retailer and has received, collected or charged by such means more than one commission for making the sale therefor for the consignor without written consent of such consignor; [1975, c. 555, §5 (AMD).]

H. That the licensee knowingly made any false material statements in the procurement of such license; [1971, c. 366, (NEW).]

I. That the applicant or licensee has not accounted promptly and properly to the producer with regard to any claim settled or collected by the applicant or licensee for such producer; [1997, c. 606, §10 (AMD).]

J. That the applicant or licensee has failed or refused, upon demand, to permit the commissioner or the commissioner's agents to make the investigations, examinations or audits as provided in this Article or that the applicant or licensee has removed or sequestered any books, records or papers necessary to any such investigations, examinations or audits, or has otherwise obstructed the same; [1997, c. 606, §10 (AMD).]

K. That the licensee has failed or refused to keep and maintain the records as required by this Article; [1971, c. 366, (NEW).]

L. That the applicant or licensee has committed any act or conduct with regard to the handling, sale or storage of potatoes or rotation crops whether of the same or different character than specified in this subsection, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings; [2005, c. 333, §2 (AMD).]

M. That the applicant or licensee has failed to deliver to the seller the confirmation required by section 1022 within the time specified; or [2005, c. 333, §2 (AMD).]

N. That the applicant or licensee has failed to maintain a bond to ensure financial responsibility to producers or other licensees as required under section 1015. [2005, c. 333, §2 (NEW).]

The District Court may, in a manner consistent with the Maine Administrative Procedure Act, suspend or revoke a license upon finding any of the enumerated violations within 2 years of the date of the filing of a complaint.

9

[2005, c. 333, §2 (AMD) .]

1-A. Mandatory nonrenewal.

[1983, c. 829, §15 (RP) .]

2. Conditional. Any order revoking or suspending a license may, within the discretion of the District Court be made conditional upon the settlement, adjustment or satisfaction of the consequence of the violation or violations as specified, and the operation of such an order may be deferred for such purpose. Any such order may contain provisions for modification or dismissal thereof upon presentation to the District Court of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before such order becomes final.

[1977, c. 694, §105 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

3. Effective date. The commission of the acts enumerated in this section after September 23, 1971 constitutes a violation of this Article.

[1975, c. 555, §§4, 5 (AMD) .]

4. Notification of insufficient or no payment. Producers may notify the Department of Agriculture, Food and Rural Resources of insufficient or no payment for potatoes or rotation crops after acceptance by any processor, dealer, broker, agent or retailer in the State in violation of subsection 1, paragraph B.

A. The Commissioner of Agriculture, Food and Rural Resources or the commissioner's agent, upon notification by producers of insufficient or no payment, shall immediately investigate the complaint and shall, in a manner consistent with the provisions of the Maine Administrative Procedure Act as to adjudicatory proceedings, hold a hearing, unless such hearing is waived by the processor, dealer, broker, agent or retailer against whom the charge has been made. The processor, dealer, broker, agent or retailer accused of nonpayment shall provide the commissioner with a copy of the contract, if any, and all other materials and information to enable the commissioner to carry out the provisions of this section. Upon finding after investigation that the processor, dealer, broker, agent or retailer has violated the contract, express or implied, the commissioner may recover the proceeds of the bond required by section 1015 and apply those proceeds against the amounts owed producers. In the event the bond proceeds are inadequate to cover the debts owed producers, the commissioner shall require the processor, dealer, broker, agent or retailer to post an additional bond sufficient to cover the remaining debt owed to the producer or producers.

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(1) The commissioner, after determination upon a hearing of insufficient payment or nonpayment of debts owed to a producer, may require the licensee to formulate a schedule of payments to the producer that is satisfactory to the

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commissioner. The schedule of payments may not exceed a 30-day period.

(2) The licensee, who after a hearing is determined to be in default of payment to a producer, shall submit a payment schedule to the commissioner within one week from the commissioner's request for a payment schedule. In the event that the schedule of payment is not satisfactory to the commissioner, the commissioner shall establish the schedule of payment not to exceed a 30-day period.

(3) The commissioner shall file a complaint with the District Court seeking to suspend the license of any licensee who fails to conform to the payment schedule established in this section until the producer is paid the total claim to which the producer is entitled.

(4) Upon the filing of a complaint by the commissioner in the District Court, the licensee shall post a bond sufficient to cover the total claim owed the producer on the date on which the complaint is filed. The bond required for an appeal procedure may be waived by the District Court in the event that the bond required in paragraph A is valid and sufficient to cover the total claim owed the producer.

(5) Nothing in this section may be construed to prohibit a producer from seeking redress for insufficient payment or nonpayment from licensees in any court or in accordance with any federal procedure established to obtain redress.
[2007, c. 499, §1 (AMD).]

[2007, c. 499, §1 (AMD) .]

SECTION HISTORY

1971, c. 366, (NEW). 1971, c. 622, §22 (AMD). 1975, c. 555, §§4,5 (AMD). 1975, c. 713, §2 (AMD). 1977, c. 694, §§103-108 (AMD). 1983, c. 336, §§1,2 (AMD). 1983, c. 582, §§2,4 (AMD). 1983, c. 829, §15 (AMD). 1991, c. 837, §A20 (AMD). 1997, c. 606, §§10,11 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2005, c. 333, §§2,3 (AMD). 2007, c. 499, §1 (AMD).

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State House Room 108
Augusta, Maine 04333-0007



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CHAP. 713

PUBLIC LAWS, 1975

within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access; or

C. All the lots are at least 5 acres, but do not make up a total of more than 100 acres and the lots less than 10 acres are of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access.

Effective July 29, 1976

CHAPTER 713

AN ACT to Revise the Potato Licensing Law.

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

Sec. 1. 7 MRSA § 1015, 5th ¶, as enacted by PL 1971, c. 366, is amended to read:

Each license shall plainly state the name and business address or addresses of the licensee and shall be posted in a conspicuous place in each office where the business is transacted. The initial fee for each license shall be ~~\$50~~ \$80. Such license shall be automatically renewed for successive periods of one year each upon payment of the renewal fee which shall be ~~\$25~~ \$80. If the licensee desires to carry on business in more than one place within the State, he shall procure additional copies of the license, certified by the commissioner, for each place where the business is to be conducted. The fee for each such certification shall be ~~\$2~~ \$80.

Sec. 2. 7 MRSA § 1017, sub-§ 4, is enacted to read:

4. Notification of insufficient or no payment. Producers may notify the Department of Agriculture of insufficient or no payment for potatoes delivered to any processor in the State in violation of subsection 1, paragraph B.

A. Action by the commissioner. The Commissioner of Agriculture or his agent, upon notification by producers of insufficient or no payment shall immediately investigate the complaint and shall hold a hearing within 10 days from the date the complaint was filed, unless such hearing is waived by the processor against whom the charge has been made. The processor accused of nonpayment shall provide the commissioner with a copy of the contract, if any, and all other materials and information to enable the commissioner to carry out the provisions of this section. Upon finding, after investigation that the processor has violated the contract, express or implied, the commissioner shall require the processor to post a bond sufficient to cover the debt owed to the producer or producers.

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or found guilty after a hearing of insufficient payment or nonpayment of debts owed a producer, to formulate a schedule of payments to the producer that is satisfactory to the commissioner. The schedule of payments shall not exceed a 30-day period.

(2) The licensee accused of or found by a hearing to be in default of payment to a producer shall submit a payment schedule to the commissioner within one week from the commissioner's request for a payment schedule. In the event that the schedule of payment is not satisfactory to the commissioner, the commissioner shall establish the schedule of payment not to exceed a 30-day period.

(3) The commissioner shall suspend the license of any licensee who fails to conform to the payment schedule established in this section until the producer is paid the total claim to which the producer is entitled.

(4) A licensee found guilty of insufficient payment or nonpayment of debts owed a potato producer may appeal the decision in accordance with the procedure defined in section 1021. The licensee shall post a bond sufficient to cover the total claim owed the producer on the date on which the licensee files an appeal as established in this subsection. The bond required for an appeal procedure may be waived by the commissioner in the event that the bond required in paragraph A is valid and sufficient to cover the total claim owed the producer.

(5) Nothing in this section shall be construed to prohibit a producer from seeking redress for insufficient payment or nonpayment from licensees in any court or in accordance with any federal procedure established to obtain redress.

Effective July 29, 1976

CHAPTER 714

AN ACT to Allocate Part of Lobster and Crab Fishing License Fees to the Lobster Fund and Boat Fund.

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

¹² MRSA § 4404, sub-§ 6 is repealed and the following enacted in place thereof:

6. Lobster Fund and Boat Fund. Five dollars of each license fee received for lobster and crab fishing licenses shall be allocated to the Lobster Fund, as heretofore established, and the Boat Fund, herein established as follows:

A. Five dollars of each lobster and crab fishing license fee shall be allo-

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C. "Pass-through entity" means a corporation that for the applicable tax year is treated as an S corporation under the Code, and a general partnership, limited partnership, limited liability partnership, trust, limited liability company or similar entity that for the applicable tax year is not taxed as a C corporation for federal tax purposes. For purposes of this section, "pass-through entity" does not include a financial institution subject to tax under chapter 819.

Sec. 25. 36 MRSA §5276, sub-§1, as amended by PL 1991, c. 546, §36, is further amended to read:

1. **General rule.** The State Tax Assessor, within the applicable period of limitations, may credit an overpayment of income tax, including an overpayment reported on a joint return, and interest on such the overpayment against any liability arising from a redetermination pursuant to section 6211 or any liability in respect of any tax imposed under this Title on owed by the taxpayer, or by the taxpayer's spouse in the case of a joint return, who made the overpayment, and the. The balance, after any setoff pursuant to section 5276-A, must be refunded by the Treasurer of State.

Sec. 26. 36 MRSA §5276, sub-§6 is enacted to read:

6. **Overpayment by pass-through entity.** If there has been an overpayment of tax required to be withheld under section 5250-B, refund must be made to the pass-through entity only to the extent that the amount of the overpayment was not deducted and withheld by the pass-through entity.

Sec. 27. 36 MRSA §6211, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

§6211. Audit of claim

If, on the audit of any claim filed under this chapter, the State Tax Assessor determines the amount to have been incorrectly determined, he the assessor shall redetermine the claim and shall notify the claimant of the redetermination and his the reasons for it. The redetermination shall be final unless appealed to the State Tax Assessor within 30 days of notice is reviewable in accordance with section 151. If the claim has been paid, the amount paid in excess of that legally due is subject to interest at the rate determined pursuant to section 186. The assessor may credit a benefit payable to a claimant under this chapter against a liability of that claimant pursuant to this section.

Sec. 28. 36 MRSA §6212, as amended by PL 1989, c. 534, Pt. A, §9, is repealed and the following enacted in its place:

§6212. Denial of claim

1. **Fraudulent claim.** If the State Tax Assessor determines that a claim under this chapter is excessive and was filed with fraudulent intent, the claim must be disallowed in full. If the claim has been paid, the amount paid may be recovered by assessment, collection and enforcement in the manner provided in chapter 7. A person who, with fraudulent intent, files or prepares an excessive claim, assists in the preparation or filing of an excessive claim or supplies information in support of an excessive claim commits a Class E crime.

2. **Negligent claim.** If the State Tax Assessor determines that a claim under this chapter is excessive and was negligently prepared, the amount claimed in excess of that legally due plus 10% of the corrected claim must be disallowed. If the claim has been paid, the amount disallowed may be recovered by assessment, collection and enforcement in the manner provided in chapter 7.

3. **Unpaid liability.** A person who has an unpaid liability arising from this section and the spouse of that person are disqualified from receiving benefits under this chapter.

Sec. 29. 36 MRSA c. 920, as amended, is repealed.

Sec. 30. **Application.** Those sections of this Act that enact the Maine Revised Statutes, Title 36, section 187-B, subsection 5-B and section 193, subsection 2, paragraphs A and B apply to returns filed for periods beginning on or after January 1, 2006. That section of this Act that amends Title 36, section 1811-B applies to sales occurring on or after September 1, 2005. That section of this Act that amends Title 36, section 5250-B, subsection 1, paragraph C applies to tax years beginning on or after January 1, 2005. Those sections of this Act that repeal Title 36, section 5142, subsection 8 and enact Title 36, section 5142, subsection 8-A apply to tax years beginning on or after January 1, 2004.

See title page for effective date.

CHAPTER 333

H.P. 1110 - L.D. 1572

An Act To Amend the Potato Industry Licensing Laws

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

Whereas, the licensing of potato dealers is vital to the potato industry; and

Whereas, revisions are needed to protect potato growers when contracting for the 2005 crop; 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. 7 MRSA §1015, as amended by PL 2003, c. 344, Pt. D, §1, is further amended to read:

§1015. Application and renewal for license

The applicant shall file an application for a license or renewal of a license on forms as prescribed and furnished by the commissioner, which must contain the full name of the person applying for the license and, if the applicant is a corporation, partnership, association, exchange or legal representative, officer, director, partner or member of a corporation, partnership, association or exchange, all such names and positions. If the applicant is a foreign corporation, it shall certify that it is authorized to transact business in the State under former Title 13-A, chapter 12 or Title 13-C, chapter 15, and further state the principal business address of the applicant in the State or elsewhere, the address of all places of business in the State, and the name or names of the person or persons authorized to receive and accept service of lawful process upon the applicant within the State. All questions required to be answered in the application for licenses must be sworn to, and intentionally untruthful answers constitute the crime of perjury.

Upon receipt of such applications an initial application, the commissioner immediately shall cause notice of the applications application to be provided in a manner consistent with the provisions of the Maine Administrative Procedure Act as to adjudicatory proceedings and shall, in any case, cause a copy of the notice to be served upon the Maine Potato Board. Any interested person has 30 days in which to file comments as to the applicant's qualifications, to request a hearing or to file a verified complaint with the commissioner as provided by this Article.

This applicant shall satisfy the commissioner of his that applicant's character, financial responsibility and good faith in seeking to engage in the business. The commissioner shall, after notice and opportunity for a hearing has been provided in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, issue a license to such an

applicant if ~~he~~ the commissioner is satisfied as to the applicant's qualifications, such license entitling the applicant to act in the capacity described in the license for a period of one year from the date of issuance thereof. No A license shall may not be granted to any applicant if such person or officer, director, partner, or member thereof, has been convicted in any state or federal court of any felony within 5 years of the date of the application.

In order to insure the licensee's financial responsibility and to protect potato and rotation crop producers, the commissioner shall require the licensee to file a bond as a prerequisite to the issuance of a license. The bond must be in a form and amount satisfactory to the commissioner, but not less than \$50,000 nor more than \$300,000 in the case of dealers and brokers engaged in buying or selling either potatoes or rotation crops, but not both, not less than \$50,000 nor more than \$400,000 in the case of dealers and brokers engaged in buying and selling both potatoes and rotation crops, or not less than \$100,000 nor more than \$500,000 in the case of processors, payable to the commissioner in the commissioner's official capacity and conditioned on the full and prompt payment for all potatoes or rotation crops received or purchased from producers or other licensees during the effective period of the license. In the case of processors, the amount of bond required must be based on the licensee's anticipated monthly volume of purchases, but may be adjusted to reflect other federal escrow accounts or bond requirements met by the licensee that satisfy the purposes of this section.

Each license shall must plainly state the name and business address or addresses of the licensee and shall must be posted in a conspicuous place in each office where the business is transacted. The initial fee for each license shall be \$80 is \$100 annually. Such license shall may be automatically renewed for successive periods of one year each upon payment of the renewal fee which shall be \$80 and the submission of an application demonstrating that the applicant continues to meet the requirements for licensing, including filing proof of financial responsibility. A license or license renewal issued expires on the 30th day of June following the date of issuance. The department is not required to provide notice and opportunity for a hearing as provided in the Maine Administrative Procedure Act when granting a license renewal. If the licensee desires to carry on business in more than one place within the State, ~~he~~ the licensee shall procure additional copies of the license, certified by the commissioner, for each place where the business is to be conducted. The fee for each such additional certification shall be \$80 is \$100. In the event a person required to be licensed under this section fails to renew that person's license or submit the annual proof of financial responsibility, the

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department shall promptly provide notice to members of the potato producing industry through the Maine Potato Board and an agricultural bargaining council.

All fees collected under this Article shall must be paid forthwith to the Treasurer of State and credited to the Department of Agriculture, Food and Rural Resources for the administration of this Article and other expenses incident to the administration of said the department, and shall must be expended by the said commissioner for the purposes for which said the department is created. If any of such fees are not expended during the year in which they are collected, the unexpended balance shall does not lapse, but shall must be carried as a continuing account and available for the purposes specified until expended.

Sec. 2. 7 MRSA §1017, sub-§1, as amended by PL 1997, c. 606, §10 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

1. Acts enumerated. The commissioner or the commissioner's duly authorized agent may refuse to grant or renew a license, after notice and opportunity for a hearing is provided in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, upon a finding that any of the following acts have existed within 2 years of the date of the filing of an application for license:

A. That fraudulent charges or returns have been made by the applicant or licensee for the handling, sale or storage of potatoes or rotation crops, or for the rendering of any service in connection with the handling, sale or storage of potatoes or rotation crops;

B. That the applicant or licensee has failed or refused to render a true account of sales, or to make a settlement thereon, within the time and in the manner required by this Article, or has failed or refused to pay for potatoes or rotation crops purchased by the applicant or licensee within 30 calendar days after acceptance of the potatoes or rotation crops;

C. That the applicant or licensee has knowingly made any false material statement as to the condition, quality or quantity of potatoes or rotation crops received, handled, sold, purchased or stored by the applicant or licensee;

D. That the applicant or licensee directly or indirectly has purchased for that applicant's or licensee's own account, potatoes or rotation crops received by the applicant or licensee upon consignment without prior authorization from consignor together with price fixed by consignor or without promptly notifying the consignor of such purchase. This does not prevent any dealer, processor, broker, agent or retailer, in order to

close the day's business, from taking into account in the record of sales miscellaneous lots or parcels of potatoes or rotation crops remaining unsold, if such dealer, processor, broker, agent or retailer on the business day next following properly enters any such transaction in that applicant's or licensee's accounts;

E. That the applicant or licensee has made any substantial misrepresentation as to the conditions of the market for potatoes or rotation crops;

F. That the applicant or licensee has made fictitious sales or has defrauded or attempted to defraud a producer;

G. That a dealer, processor, broker, agent or retailer to whom any consignment is made has re-consigned such consignment to another dealer, processor, broker, agent or retailer and has received, collected or charged by such means more than one commission for making the sale therefor for the consignor without written consent of such consignor;

H. That the licensee knowingly made any false material statements in the procurement of such license;

I. That the applicant or licensee has not accounted promptly and properly to the producer with regard to any claim settled or collected by the applicant or licensee for such producer;

J. That the applicant or licensee has failed or refused, upon demand, to permit the commissioner or the commissioner's agents to make the investigations, examinations or audits as provided in this Article or that the applicant or licensee has removed or sequestered any books, records or papers necessary to any such investigations, examinations or audits, or has otherwise obstructed the same;

K. That the licensee has failed or refused to keep and maintain the records as required by this Article;

L. That the applicant or licensee has committed any act or conduct with regard to the handling, sale or storage of potatoes or rotation crops whether of the same or different character than specified in this subsection, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings; or

M. That the applicant or licensee has failed to deliver to the seller the confirmation required by section 1022 within the time specified; or

N. That the applicant or licensee has failed to maintain a bond to ensure financial responsibility to producers or other licensees as required under section 1015.

The District Court may, in a manner consistent with the Maine Administrative Procedure Act, suspend or revoke a license upon finding any of the enumerated violations within 2 years of the date of the filing of a complaint.

Sec. 3. 7 MRSA §1017, sub-§4, as amended by PL 1997, c. 606, §11 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

4. Notification of insufficient or no payment. Producers may notify the Department of Agriculture, Food and Rural Resources of insufficient or no payment for potatoes or rotation crops ~~delivered to~~ after acceptance by any processor in the State in violation of subsection 1, paragraph B.

A. The Commissioner of Agriculture, Food and Rural Resources or the commissioner's agent, upon notification by producers of insufficient or no payment, shall immediately investigate the complaint and shall, in a manner consistent with the provisions of the Maine Administrative Procedure Act as to adjudicatory proceedings, hold a hearing, unless such hearing is waived by the processor against whom the charge has been made. The processor accused of nonpayment shall provide the commissioner with a copy of the contract, if any, and all other materials and information to enable the commissioner to carry out the provisions of this section. Upon finding after investigation that the processor has violated the contract, express or implied, the commissioner may recover the proceeds of the bond required by section 1015 and apply those proceeds against the amounts owed producers. In the event the bond proceeds are inadequate to cover the debts owed producers, the commissioner shall require the processor to post an additional bond sufficient to cover the remaining debt owed to the producer or producers.

(1) The commissioner may require the licensee, who has been accused or found guilty after a hearing of insufficient payment or nonpayment of debts owed a producer, to formulate a schedule of payments to the producer that is satisfactory to the commissioner. The schedule of payments may not exceed a 30-day period.

(2) The licensee accused of or found by a hearing to be in default of payment to a producer shall submit a payment schedule to the commissioner within one week from

the commissioner's request for a payment schedule. In the event that the schedule of payment is not satisfactory to the commissioner, the commissioner shall establish the schedule of payment not to exceed a 30-day period.

(3) The commissioner shall file a complaint with the District Court seeking to suspend the license of any licensee who fails to conform to the payment schedule established in this section until the producer is paid the total claim to which the producer is entitled.

(4) Upon the filing of a complaint by the commissioner in the District Court, the licensee shall post a bond sufficient to cover the total claim owed the producer on the date on which the ~~complaint is filed~~. The bond required for an appeal procedure may be waived by the District Court in the event that the bond required in paragraph A is valid and sufficient to cover the total claim owed the producer.

(5) Nothing in this section may be construed to prohibit a producer from seeking redress for insufficient payment or nonpayment from licensees in any court or in accordance with any federal procedure established to obtain redress.

Sec. 4. 7 MRSA §1025, as amended by PL 1977, c. 696, §358, is further amended to read:

§1025. Forfeiture of bond; recovery on bond

If any licensee shall ~~fail~~ fails to make such payment as provided in section 1017, subsection 1, paragraph B, such licensee, by reason of such nonpayment shall ~~be is~~ in default as to all producers or licensees whose accounts shall ~~then~~ remain unpaid, and the bond provided for shall ~~be is~~ forfeited to the extent of all sums then due from such licensee to said ~~those~~ producers or licensees, and by nature of such default, the conditions of such bond shall ~~be are~~ deemed to be broken, and any such producer or licensee may bring an action on the defaulted bond in the name of the commissioner for the benefit of said ~~the~~ producer or licensee. A producer or a licensee bringing an action against the bond must provide the department with notice of intent to file a claim within 30 days of the payment due date. A formal verified complaint and supporting documentation must be filed with the department within 90 days of the payment due date.

The right of a producer or a licensee to bring an action against the bond is subject to the department's right to apply the proceeds of the bond against the

producer's or section 1017.

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Sec. 5. 7 MRSA §1026, as repealed and replaced by PL 1977, c. 696, §84, is amended to read:

§1026. Enforcement

The commissioner may recover the penalties imposed for violations of this Article and any rules and regulations promulgated thereunder in a civil action brought in his the commissioner's own name, the venue to be as in other civil actions and, if he the commissioner prevails in that action, he the commissioner may recover full costs, including, but not limited to, attorney's fees. The commissioner shall be is entitled to and shall receive the assistance of the Attorney General and of the several district attorneys.

Sec. 6. 7 MRSA §1028, as repealed and replaced by PL 1977, c. 696, §86, is amended by adding at the end a new paragraph to read:

Each day a violation under this section remains uncorrected may be counted as a separate offense. Penalties may be imposed for each violation.

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

Effective June 8, 2005.

CHAPTER 334

H.P. 254 - L.D. 331

An Act To Improve the Operation of Underground Damage Prevention Procedures

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

Sec. 1. 23 MRSA §3360-A, sub-§§5-G and 5-H are enacted to read:

5-G. Alternative notice requirement procedures for excavations; rulemaking. The Public Utilities Commission may by rule extend alternative notice requirements established for excavation associated with drinking water well construction pursuant to subsection 5-F to other types of excavation. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

5-H. Newly installed underground facilities in active excavation areas; rulemaking. The Public Utilities Commission shall by rule establish procedures to reduce the incidence of damage to newly

installed underground facilities in active excavation areas as defined by the commission by rule. In establishing the rule, the commission may consider adopting additional requirements for excavators or operators, including renotification and marking requirements and system notification procedures. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 23 MRSA §3360-A, sub-§6-C, as amended by PL 2003, c. 505, §3, is further amended to read:

6-C. Penalties. In an adjudicatory proceeding, the Public Utilities Commission may, in accordance with this subsection, impose an administrative penalty for any violation of this subsection. The administrative penalty may not exceed \$500, except that, if the person has been found in violation of this subsection within the prior 12 months, the administrative penalty may not exceed \$5,000. Administrative penalties imposed pursuant to this subsection are in addition to any other remedies or forfeitures provided by law and any liability that may result from the act or omission constituting the violation. Before imposing any penalties under this subsection, the commission shall consider evidence of the record of the violator, including, to the extent applicable, the number of successful excavations undertaken by the violator or the number of locations successfully marked by the violator during the prior 12 months. The commission may require a person who violates any provision of this section to participate, at the expense of the violator, in an educational program developed and conducted by the system.

The Public Utilities Commission may impose administrative penalties for any of the following violations:

A. Failure of an excavator to give notice of an excavation as required under subsection 3, except to the extent the excavator is exempt from the provisions of subsection 3 pursuant to other provisions of this section;

B. Excavation by an excavator in a reckless or negligent manner that poses a threat to an underground facility;

C. Excavation by an excavator that does not comply with the requirements of subsection 4-C, except to the extent the excavator is exempt from the provisions of subsection 4-C pursuant to subsection 5-C;

D. Failure of an underground facility operator to mark the location of the operator's underground facilities within the time limits required by subsection 4;

the evidence must be compiled and presented to the Attorney General or the local district attorney's office for prosecution.

3. Criminal penalties. Notwithstanding any other provision of law:

A. A person who practices or represents to the public that the person is authorized to practice as an underground oil storage tank installer or inspector and intentionally, knowingly or recklessly fails to obtain certification as required by this chapter or intentionally, knowingly or recklessly practices or represents to the public that the person is authorized to practice after the certification required by this chapter has expired or been suspended or revoked commits a Class E crime; and

B. A person who violates paragraph A when the person has a prior conviction under this subsection commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence, except that, for purposes of this paragraph, the date of the prior conviction must precede the commission of the offense being enhanced by no more than 3 years.

4. Civil violations. A person who practices or represents to the public that the person is authorized to practice as an underground oil storage tank installer or inspector without first obtaining certification as required by this chapter or after the certification has expired or has been suspended or revoked commits a civil violation for which a fine of not less than \$100 and not more than \$2,000 for each violation may be adjudged. An action under this subsection may be brought in District Court or Superior Court.

5. Injunctions. The Attorney General may bring an action in District Court or Superior Court to enjoin a person from violating subsection 4 and to restore to a person who has suffered any ascertainable loss by reason of that violation any money or personal or real property that may have been acquired by means of that violation and to compel the return of compensation received for engaging in that unlawful conduct.

A person who violates the terms of an injunction issued under this subsection shall pay to the State a fine of not more than \$10,000 for each violation. In an action under this subsection, when a permanent injunction has been issued, the court may order the person against whom the permanent injunction is issued to pay to the Ground Water Oil Clean-up Fund under Title 38, chapter 3, subchapter 2-B the costs of the investigation of that person by the Attorney General and the costs of suit, including attorney's fees. In an action by the Attorney General brought against a person for violating the terms of an injunction issued under this subsection, the court may make the necessary orders or judgments to restore to a person who has suffered any ascertainable loss any money or personal

or real property or to compel the return of compensation received by reason of such conduct found to be in violation of an injunction.

See title page for effective date.

CHAPTER 498

H.P. 1408 - L.D. 2024

An Act To Clarify the Licensure of Advanced Practice Registered Nurses

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

Sec. 1. 32 MRSA §2102, sub-§4, as amended by PL 1985, c. 724, §4, is further amended to read:

4. License. A "license" is an authorization to practice nursing as a professional nurse or, practical nurse or advanced practice registered nurse.

Sec. 2. 32 MRSA §2102, sub-§5-A, as enacted by PL 1995, c. 379, §5 and affected by §11, is amended to read:

5-A. Advanced practice registered nurse. "Advanced practice registered nurse" means an individual who is currently licensed under this chapter and approved by the board to practice advanced practice registered nursing as defined in subsection 2-A. "A.P.R.N." is the abbreviation for the title of "advanced practice registered nurse." An advanced practice registered nurse may use the abbreviation "A.P.R.N." or the title or abbreviation designated by the national certifying body.

"Advanced practice registered nurse" includes a certified nurse practitioner, a certified nurse midwife, a certified clinical nurse specialist and a certified nurse anesthetist who are licensed under this chapter and are approved by the board to practice advanced practice registered nursing.

Sec. 3. Effective date. This Act takes effect September 1, 2008.

Effective September 1, 2008.

CHAPTER 499

S.P. 786 - L.D. 1992

An Act To Amend the Laws Governing Agricultural Marketing and Bargaining

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

Sec. 1. 7 MRSA §1017, sub-§4, as amended by PL 2005, c. 333, §3, is further amended to read:

4. Notification of insufficient or no payment. Producers may notify the Department of Agriculture, Food and Rural Resources of insufficient or no payment for potatoes or rotation crops after acceptance by any processor, dealer, broker, agent or retailer in the State in violation of subsection 1, paragraph B.

A. The Commissioner of Agriculture, Food and Rural Resources or the commissioner's agent, upon notification by producers of insufficient or no payment, shall immediately investigate the complaint and shall, in a manner consistent with the provisions of the Maine Administrative Procedure Act as to adjudicatory proceedings, hold a hearing, unless such hearing is waived by the processor, dealer, broker, agent or retailer against whom the charge has been made. The processor, dealer, broker, agent or retailer accused of non-payment shall provide the commissioner with a copy of the contract, if any, and all other materials and information to enable the commissioner to carry out the provisions of this section. Upon finding after investigation that the processor, dealer, broker, agent or retailer has violated the contract, express or implied, the commissioner may recover the proceeds of the bond required by section 1015 and apply those proceeds against the amounts owed producers. In the event the bond proceeds are inadequate to cover the debts owed producers, the commissioner shall require the processor, dealer, broker, agent or retailer to post an additional bond sufficient to cover the remaining debt owed to the producer or producers.

(1) The commissioner, after determination upon a hearing of insufficient payment or nonpayment of debts owed to a producer, may require the licensee, who has been accused or found guilty after a hearing of insufficient payment or nonpayment of debts owed a producer, to formulate a schedule of payments to the producer that is satisfactory to the commissioner. The schedule of payments may not exceed a 30-day period.

(2) The licensee accused of or found by, who after a hearing is determined to be in default of payment to a producer, shall submit a payment schedule to the commissioner within one week from the commissioner's request for a payment schedule. In the event that the schedule of payment is not satisfactory to the commissioner, the commissioner shall establish the schedule of payment not to exceed a 30-day period.

(3) The commissioner shall file a complaint with the District Court seeking to suspend the license of any licensee who fails to conform

to the payment schedule established in this section until the producer is paid the total claim to which the producer is entitled.

(4) Upon the filing of a complaint by the commissioner in the District Court, the licensee shall post a bond sufficient to cover the total claim owed the producer on the date on which the complaint is filed. The bond required for an appeal procedure may be waived by the District Court in the event that the bond required in paragraph A is valid and sufficient to cover the total claim owed the producer.

(5) Nothing in this section may be construed to prohibit a producer from seeking redress for insufficient payment or nonpayment from licensees in any court or in accordance with any federal procedure established to obtain redress.

Sec. 2. 13 MRSA §1955, sub-§3, as enacted by PL 1973, c. 621, §1, is amended to read:

3. Handler. "Handler," in the case of potatoes, means "processor" as defined under Title 7, section 1012, subsection 14 and in the case of other agricultural products means any person engaged in the business or practice of:

A. Acquiring agricultural products from producers or associations of producers for processing or sale;

B. Grading, packaging, handling, storing or processing agricultural products received from producers or associations of producers;

C. Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or

D. Acting as an agent or broker for a handler in the performance of any function or act specified in paragraph A, B or C.

In the case of potatoes, "handler" means a processor as defined under Title 7, section 1012, subsection 14 or a person or company acting as an agent, broker or dealer as defined under Title 7, section 1012, subsections 1, 3 and 5, respectively, for a processor located or licensed in the State and providing more than 100,000 hundredweight of potatoes annually to any one processor.

See title page for effective date.

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Sec. 1. 14
by PL 1993, c. 4

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ERRORS BILL §: Sec. SUPP-5

LAW AMENDED: 11 MRSA §3-1301

General Subject: Uniform Commercial Code, Negotiable instruments,
Person entitled to enforce instrument

Type of correction (conflict, reference, other): format

Category (technical, substantive): technically substantive

Is amendment to Errors Bill needed?
(If so, draft/mark up and explain below)

Prepared by: mjr

Date: 3/5/2012 5:12 AM

File name: G:\ERRORS BILL 2012 GS\11 3-1301.DOC (3/5/2012 5:16:00 AM)

Has the error already been fixed in another bill?

LD

PL? P&SL?

Has section been amended/repealed in another bill?

LD

PL? P&SL?

EXPLANATION

Title 11, §3-1301 governs who is entitled to enforce and instrument. When it was enacted in 1993, the last sentence was incorporated as a part of subsection (3). It should be a separate indented paragraph, which applies to the whole section, not just subsection 3.

This section of the Errors Bill repeals the sentence as part of subsection 3 and reenacts it as a separate indented paragraph.



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the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(c) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(d) Except as otherwise provided in paragraph (c), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(4) Except for an indorsement covered by subsection (3), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(a) Unless there is notice of breach of fiduciary duty as provided in section 3-1307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or the payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(b) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(5) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (3) or has notice or knowledge of breach of fiduciary duty as stated in subsection (4).

(6) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

§3-1207. Reacquisition

Reacquisition of an instrument occurs if it is transferred to a former holder by negotiation or otherwise. A

former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged and the discharge is effective against any subsequent holder.

PART 3

ENFORCEMENT OF INSTRUMENTS

§3-1301. Person entitled to enforce instrument

"Person entitled to enforce" an instrument means:

(1) The holder of the instrument;

(2) A nonholder in possession of the instrument who has the rights of a holder; or

(3) A person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 3-1309 or 3-1418, subsection (4). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

§3-1302. Holder in due course

(1) Subject to subsection (3) and section 3-1106, subsection (3), "holder in due course" means the holder of an instrument if:

(a) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) The holder took the instrument:

(i) For value;

(ii) In good faith;

(iii) Without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series;

(iv) Without notice that the instrument contains an unauthorized signature or has been altered;

(v) Without notice of any claim to the instrument described in section 3-1306; and

D. Eight persons appointed by the Governor, at least 4 of whom must be chosen from a list of nominations provided by a statewide coalition for the homeless to represent homeless and formerly homeless people and low-income tenants.

Sec. 2. Further appropriations prohibited. Additional General Fund money may not be appropriated for the purpose of carrying out this Act.

See title page for effective date.

CHAPTER 293

S.P. 129 - L.D. 381

An Act to Enact a New Article on Negotiable Instruments in and to Make Necessary Conforming Amendments to the Uniform Commercial Code

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

PART A

Sec. A-1. 11 MRSA Art. 3, as amended, is repealed.

Sec. A-2. 11 MRSA Art. 3-A is enacted to read:

ARTICLE 3-A

NEGOTIABLE INSTRUMENTS

PART 1

GENERAL PROVISIONS AND DEFINITIONS

§3-1101. Short title

This Article is known and may be cited as "Uniform Commercial Code -- Negotiable Instruments."

§3-1102. Subject matter

(1) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4-A, or to securities governed by Article 8.

(2) If there is conflict between this Article and Article 4 or 9, Article 4 or 9 governs.

(3) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

§3-1103. Definitions

(1) In this Article, unless the context indicates otherwise, the following terms have the following meanings.

(a) "Acceptor" means a drawee who has accepted a draft.

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(e) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(h) "Party" means a party to an instrument.

(i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 1-201, subsection (8)).

(k) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

Jones, Julie

From: Thomas A. Cox [tac@gwi.net]
Sent: Friday, June 17, 2011 8:11 PM
To: webmaster.ros
Cc: Reinsch, Margaret
Subject: 11 M.R.S.A. §3-1301

Dear Sir/Madam;

Every time I look at 11 M.R.S.A. § 3-1301 I am concerned by the confusing manner in which it is presented at

<http://www.mainelegislature.org/legis/statutes/11/title11sec3-1301.html>

The manner in which your office has laid out the statute make it appear that the last sentence of the statute is a part of subpart (3). It is not--that sentence should be an entirely separate paragraph following subpart 3, or else the statute should be laid out as shown below. This error in setting out the statute as your office has done is causing real problems in court cases.

This is how the statute should be laid

out: (see <http://www.law.cornell.edu/ucc/3/article3.htm#s3-203>)

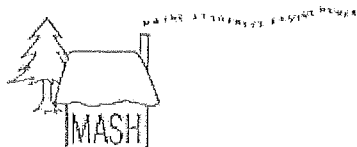
§ 3-301. PERSON ENTITLED TO ENFORCE INSTRUMENT.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

Thank you for looking into this.

Tom

Thomas A. Cox, Esq.
MASH Volunteer Program Coordinator
P.O.Box 1314
Portland, Maine 04104
(207) 749-6671



A joint project of Pine Tree Legal Assistance
And the Maine Volunteer Lawyers Project

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6/20/2011

§ 3-301. PERSON ENTITLED TO ENFORCE INSTRUMENT.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

ERRORS BILL SUPPLEMENT § SUPP- 6

LAW AMENDED: 15 MRSa §3311-B, sub-§1

General Subject: Juvenile Code, deferred disposition

Type of correction (conflict, reference, other): wrong word

Category (technical, substantive): technically substantive

Is amendment to Errors Bill needed?
(If so, draft/mark up and explain below)

Prepared by: MJR

Date: March 28, 2012

File name: G:\COMMITTEES\JUD\ERRORS BILL 2012\15 3311-B, sub-.doc (3/28/2012 11:22:00 AM)

EXPLANATION

PL 2001, chapter 384 (LD 1299, An Act to Allow Deferred Disposition in Juvenile Cases) created the option of deferred disposition in juvenile cases.

15 MRSA §3311-B, sub-§1 provides the process for the court to order deferred disposition for eligible juveniles. The court may impose requirements to be in effect during the deferment. The Committee Amendment provided that, "Unless the court orders otherwise, the requirements are immediately in effect."

In processing, the word "deferment" was inserted before "requirements" - but it was misunderstood and entered as "department."

SUPP-6 strikes out the word "department" and replaces it with "deferment".

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Supp. 6

1. Imposition. Following the acceptance of an admission of commission of a juvenile crime for which a juvenile is eligible for a deferred disposition under section 3311-A, the court may order disposition deferred to a date certain or determinable and impose requirements upon the juvenile to be in effect during the period of deferment that are considered by the court to be reasonable and appropriate to meet the purposes of the Juvenile Code. The court-imposed deferment requirements must include a requirement that the juvenile refrain from conduct that would constitute a juvenile crime, crime or civil offense. In exchange for the deferred disposition, the juvenile shall abide by the court-imposed deferment requirements. Unless the court orders otherwise, the department deferment requirements are immediately in effect.

SUMMARY

Section 6 corrects a clerical error.

PL 2011
C.384

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

S.P. 402 - L.D. 1299

An Act To Allow Deferred Disposition in Juvenile Cases

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

Sec. 1. 15 MRSA §3311-A is enacted to read:

§3311-A. Eligibility for deferred disposition

A juvenile who has entered an admission to a juvenile crime that would be a Class C, Class D or Class E crime or a civil offense if committed by an adult and who consents in writing to a deferred disposition is eligible for a deferred disposition pursuant to section 3311-B.

Sec. 2. 15 MRSA §3311-B is enacted to read:

§3311-B. Deferred disposition

1. Imposition. Following the acceptance of an admission of commission of a juvenile crime for which a juvenile is eligible for a deferred disposition under section 3311-A, the court may order disposition deferred to a date certain or determinable and impose requirements upon the juvenile to be in effect during the period of deferment that are considered by the court to be reasonable and appropriate to meet the purposes of the Juvenile Code. The court-imposed deferment requirements must include a requirement that the juvenile refrain from conduct that would constitute a juvenile crime, crime or civil offense. In exchange for the deferred disposition, the juvenile shall abide by the court-imposed deferment requirements. Unless the court orders otherwise, the department requirements are immediately in effect.

2. Amendment of requirements. During the period of deferment and upon application by the juvenile granted deferred disposition pursuant to subsection 1 or by the attorney for the State or upon the court's own motion, the court may, after a hearing upon notice to the attorney for the State and the juvenile, modify the requirements imposed by the court, add further requirements or relieve the juvenile of any requirement imposed by the court that, in the court's opinion, imposes an unreasonable burden on the juvenile.

3. Motion. During the period of deferment, if the juvenile cannot meet a deferment requirement imposed by the court, the juvenile shall bring a motion pursuant to subsection 2.

4. Finally adjudicated. For purposes of a deferred disposition, a juvenile is deemed to have been finally adjudicated when the court imposes a disposition under section 3314.

Sec. 3. 15 MRSA §3311-C is enacted to read:

§3311-C. Court hearing as to final disposition

1. Court hearing; final disposition. Unless a court hearing is sooner held under subsection 2, at the conclusion of the period of deferment, after notice, a juvenile who was granted deferred disposition pursuant to section 3311-B shall return to court for a hearing on final disposition under section 3314. If the juvenile demonstrates by a preponderance of the evidence that the juvenile has complied with the court-imposed deferment requirements, the court shall impose a dispositional alternative authorized for the juvenile crime to which the juvenile has entered an admission and consented to in writing at the time disposition was deferred or as amended by agreement of the parties in writing prior to disposition, unless the attorney for the State, prior to disposition, moves the court to allow the juvenile to withdraw the admission. Except over the objection of the juvenile, the court shall grant the State's motion. Following the granting of the State's motion, the attorney for the State shall dismiss the pending petition with prejudice. If the court finds that the juvenile has inexcusably failed to comply with the court-imposed deferment requirements, the court shall impose a dispositional alternative authorized for the juvenile crime to which the juvenile entered an admission.

2. Violation of deferment requirement. If during the period of deferment the attorney for the State has probable cause to believe that a juvenile who was granted deferred disposition pursuant to section 3311-B has violated a court-imposed deferment requirement, the attorney for the State may move the court to terminate the remainder of the period of deferment and impose disposition. Following notice and hearing, if the attorney for the State proves by a preponderance of the evidence that the juvenile has inexcusably failed to comply with a court-imposed deferment requirement, the court may continue the running of the period of deferment with the requirements unchanged, modify the requirements, add further requirements or terminate the running of the period of deferment and conduct a dispositional hearing and impose a disposition authorized for the juvenile crime to which the juvenile entered an admission. If the court finds that the juvenile has not inexcusably failed to comply with a court-imposed deferment requirement, the court may order that the running of the period of deferment continue or, after notice and hearing, take any other action permitted under this chapter.

3. Hearing. A hearing under this section or section 3311-B need not be conducted by the judge who originally ordered the deferred disposition.

4. Rights of juvenile at hearing. The juvenile at a hearing under this section or section 3311-B must be afforded the opportunity to confront and cross-examine witnesses against the juvenile, to present evidence on the juvenile's own behalf and to be represented by counsel. If the juvenile who was granted deferred disposition pursuant to

section 3311-B cannot afford counsel, the court shall appoint counsel for the juvenile. Assignment of counsel and withdrawal of counsel must be in accordance with the Maine Rules of Criminal Procedure.

5. Summons; failure to appear. A summons, served in accordance with section 3304, may be used to order a juvenile who was granted deferred disposition pursuant to section 3311-B to appear for a hearing under this section. If the juvenile fails to appear after having been served with a summons, the court may issue a warrant for the arrest of the juvenile.

6. Warrant for arrest. If during the period of deferment the attorney for the State has probable cause to believe that a juvenile who was granted deferred disposition pursuant to section 3311-B has violated a court-imposed deferment requirement, the attorney for the State may apply for a warrant for the arrest of the juvenile.

Sec. 4. 15 MRSA §3311-D is enacted to read:

§3311-D. Limited review by appeal

A juvenile is precluded from seeking to attack the legality of a deferred disposition, including a final disposition, except that a juvenile who has been determined by a court to have inexcusably failed to comply with a court-imposed deferment requirement and thereafter has had imposed a dispositional alternative authorized for the juvenile crime may appeal to the Superior Court, but not as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.



Committee: CRJ

LA: MHB

LR # and item number: 133402

New Title?: No

Add Emergency?: No

Date: 5/27/11

File Name: G:\COMMITTEES\CRJ\AMENDMTS\125th 1st\133402.doc (5/27/2011 9:42:00 AM)

REVISOR OF STATUTES
2011 MAY 27 P 12:04

COMMITTEE AMENDMENT "." TO LD 1299, An Act to Allow Deferred Disposition
in Juvenile Cases

Amend the bill by striking out everything after the enacting clause and before the
summary and inserting in its place the following:

Sec. 1. 15 MRSA §3311-A is enacted to read:

§3311-A. Eligibility for deferred disposition

A juvenile who has entered an admission to juvenile crime that would be a Class C, Class
D or Class E crime or a civil offense if committed by an adult and who consents to a deferred
disposition in writing is eligible for a deferred disposition.

Sec. 2. 15 MRSA §3311-B is enacted to read:

§3311-B. Deferred disposition

1. Imposition. Following the acceptance of an admission for committing a crime for
which the juvenile is eligible for a deferred disposition under section 3311-A, the court may
order disposition deferred to a date certain or determinable and impose requirements upon the
juvenile, to be in effect during the period of deferment, considered by the court to be reasonable
and appropriate to meet the purposes of the Juvenile Code. The court-imposed deferment
requirements must include a requirement that the juvenile refrain from conduct that would
constitute a juvenile crime. In exchange for the deferred sentencing, the juvenile shall abide by
the court-imposed deferment requirements. Unless the court orders otherwise, the requirements
are immediately in effect.

2. Amendment of requirements. During the period of deferment and upon application
of the juvenile granted deferred disposition pursuant to subsection 1 or of the attorney for the
State or upon the court's own motion, the court may, after a hearing upon notice to the attorney
for the State and the juvenile, modify the requirements imposed by the court, add further
requirements or relieve the juvenile of any requirement imposed by the court that, in the court's
opinion, imposes an unreasonable burden on the juvenile.

3. Motion. During the period of deferment, if the juvenile cannot meet a deferment requirement imposed by the court, the juvenile shall bring a motion pursuant to subsection 2.

4. Finally adjudicated. For purposes of deferred disposition, a juvenile is deemed to have been finally adjudicated when the court imposes a disposition under section 3312.

Sec. 3. 15 MRSA §3311-C is enacted to read:

§3311-C. Court hearing as to final disposition

1. Court hearing; final disposition. Unless a court hearing is sooner held under subsection 2, at the conclusion of the period of deferment, after notice, a juvenile who was granted deferred disposition pursuant to section 3311-B shall return to court for a hearing on disposition under section 3312. If the juvenile demonstrates by a preponderance of the evidence that the juvenile has complied with the court-imposed deferment requirements, the court shall impose a dispositional alternative authorized for the juvenile crime⁴ to which the juvenile has entered an admission and consented to in writing at the time disposition was deferred or as amended by agreement of the parties in writing prior to disposition, unless the attorney for the State, prior to disposition, moves the court to allow the juvenile to withdraw the admission. Except over the objection of the juvenile, the court shall grant the State's motion. Following the granting of the State's motion, the attorney for the State shall dismiss the pending petition with prejudice. If the court finds that the juvenile has inexcusably failed to comply with the court-imposed deferment requirements, the court shall impose a dispositional alternative authorized for the juvenile crime to which the juvenile entered an admission.

2. Violation of deferment requirement. If during the period of deferment the attorney for the State has probable cause to believe that a juvenile who was granted deferred disposition pursuant to section 3311-B has violated a court-imposed deferment requirement, the attorney for the State may move the court to terminate the remainder of the period of deferment and impose disposition. Following notice and hearing, if the attorney for the State proves by a preponderance of the evidence that the juvenile has inexcusably failed to comply with a court-imposed deferment requirement, the court may continue the running of the period of deferment with the requirements unchanged, modify the requirements, add further requirements or terminate the running of the period of deferment and conduct a dispositional hearing and impose a disposition authorized for the juvenile crime to which the juvenile entered an admission. If the court finds that the juvenile has not inexcusably failed to comply with a court-imposed deferment requirement, the court may order that the running of the period of deferment continue or, after notice and hearing, take any other action permitted under this chapter.

3. Hearing. A hearing under this section or section 3311-B need not be conducted by the judge who originally ordered the deferred disposition.

4. Rights of juvenile at hearing. The juvenile at a hearing under this section or section 3311-B must be afforded the opportunity to confront and cross-examine witnesses against the juvenile, to present evidence on the juvenile's own behalf and to be represented by counsel. If the juvenile who was granted deferred disposition pursuant to section 3311-B can not afford

counsel, the court shall appoint counsel for the juvenile. Assignment of counsel and withdrawal of counsel must be in accordance with the Maine Rules of Criminal Procedure.

5. Summons; failure to appear. A summons, served in accordance with section 3304, may be used to order a juvenile who was granted deferred disposition pursuant to section 3311-B to appear for a hearing under this section. If the juvenile fails to appear after having been served with a summons, the court may issue a warrant for the arrest of the juvenile.

6. Warrant for arrest. If during the period of deferment the attorney for the State has probable cause to believe that a juvenile who was granted deferred disposition pursuant to section 3311-B has violated a court-imposed deferment requirement, the attorney for the State may apply for a warrant for the arrest of the juvenile.

⁴
Sec. 3. 15 MRSA §3311-D. Limited review by appeal

A juvenile is precluded from seeking to attack the legality of a deferred disposition, including a final disposition, except that a juvenile who has been determined by a court to have inexcusably failed to comply with a court-imposed deferment requirement and thereafter has been sentenced to an alternative authorized for the crime may appeal to the Superior Court, but not as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

SUMMARY

This amendment replaces the bill. The amendment creates the option of deferred disposition in juvenile cases but instead of placing the option for juveniles in the Maine Criminal Code, it enacts this procedure in the Maine Juvenile Code with appropriate terminology and procedures for juveniles.

MAINE JUVENILE CODE

P.L. 2011, ch. 384, § 2 ^{newly-enacted} [addressing 15 M.R.S. § 3311-B]

The error is in subsection 1 of new § 3311-B. It is shown below.

Sec. 2. 15 MRSA §3311-B is enacted to read:

§3311-B. Deferred disposition

1. Imposition. Following the acceptance of an admission of commission of a juvenile crime for which a juvenile is eligible for a deferred disposition under section 3311-A, the court may order disposition deferred to a date certain or determinable and impose requirements upon the juvenile to be in effect during the period of deferment that are considered by the court to be reasonable and appropriate to meet the purposes of the Juvenile Code. The court-imposed deferment requirements must include a requirement that the juvenile refrain from conduct that would constitute a juvenile crime, crime or civil offense. In exchange for the deferred disposition, the juvenile shall abide by the court-imposed deferment requirements. Unless the court orders otherwise, the department requirements are immediately in effect.

deferment

ERRORS BILL §: SUPP-7

LAW AMENDED: 17-A MRSA §1057, sub-§3

General Subject: Possession of firearms in an establishment licensed for on-premises consumption of liquor; not a defense that has a concealed permit

Type of correction (conflict, reference, other): conflict

Category (technical, substantive): SUBSTANTIVE

Is amendment to Errors Bill needed?
(If so, draft/mark up and explain below)

Prepared by: mjr

Date: 3/4/2012 7:32 PM

File name: G:\ERRORS BILL 2012 GS\17-A 1057 3.DOC (3/28/2012 7:12:00 PM)

EXPLANATION

17-A MRSA §1057 governs the possession of firearms in an establishment licensed for on-premises consumption of liquor. Subsection 3 provides that it is not a defense to having a firearm in a licensed establishment that the person has a concealed firearms permit.

PL 2011, c. 298 (LD 1439, An Act regarding Permits to Carry Concealed Firearms) amended subsection 3 to change "firearm" to "handgun."

PL 2011, c. 394 (LD 1347, An Act Relating to Locations where Concealed Weapons May Be Carried) amended many laws concerning where a permit to carry a concealed firearm authorized a person to carry a firearm. 17-A §1057, sub-§3 was proposed in the original bill to be repealed, but the Criminal Justice Committee voted to delete that from the bill; it was mistakenly not struck from the bill in the Committee Amendment, and c. 394 repealed subsection 3.

This section of the Errors Bill repeals subsection 3 as amended by c. 298 and repealed by c. 394 and reenacts it using the c. 298 version.

Sec. 7. 17-A MRSA §1057, sub-§3, as amended by PL 2011, c. 298, §2 and repealed by c. 394, §2, is repealed and the following enacted in its place:

3. It is not a defense to a prosecution under subsection 1 that the person holds a permit to carry a concealed handgun issued under Title 25, chapter 252.

SUMMARY

Section 7 corrects a conflict created when Public Law 2011, chapter 298 amended Title 17-A, section 1057, subsection 3 and chapter 394 repealed Title 17-A, section 1057, subsection 3. This section corrects the conflict by repealing the subsection and replacing it with the chapter 298 version.

JUN 10 '11 298

STATE OF MAINE

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 1070 - L.D. 1439

An Act Regarding Permits To Carry Concealed Firearms

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

Sec. 1. 12 MRSA §11403, sub-§2, ¶B, as amended by PL 2007, c. 163, §2 and affected by §3, is further amended to read:

B. A person may not carry firearms of any kind while hunting any species of wildlife with bow and arrow during the regular archery-only season on deer, except that a person who holds a license that allows hunting with firearms may carry a handgun. This paragraph may not be construed to prohibit a person who holds a valid permit to carry a concealed ~~firearm~~ handgun pursuant to Title 25, section 2003 from carrying a ~~firearm~~ handgun.

Sec. 2. 17-A MRSA §1057, sub-§3, as enacted by PL 1989, c. 917, §2, is amended to read:

[3. It is not a defense to a prosecution under subsection 1 that the person holds a permit to carry a concealed ~~firearm~~ handgun issued under Title 25, chapter 252.]

Sec. 3. 17-A MRSA §1057, sub-§5, as amended by PL 2009, c. 447, §20, is further amended to read:

5. For purposes of this section, "under the influence of intoxicating liquor or drugs or a combination of liquor and drugs or with an excessive alcohol level" has the same meaning as "under the influence of intoxicants" as defined in Title 29-A, section 2401, subsection 13. "Excessive alcohol level" means an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. Standards, tests and procedures applicable in determining whether a person is under the influence or has an excessive alcohol level within the meaning of this section are those applicable pursuant to Title 29-A, sections 2411 and 2431; except that the suspension of a permit to carry concealed ~~firearms~~ handguns issued pursuant to Title 25, chapter 252, or of the authority of a private investigator licensed to carry a concealed ~~firearm~~ handgun pursuant to Title 32, chapter 89, is as provided in those chapters.

Sec. 4. 25 MRSA §2001-A, sub-§2, ¶A, as enacted by PL 2003, c. 452, Pt. N, §2 and affected by Pt. X, §2, is amended to read:

A. ~~Firearms~~ Handguns carried by a person to whom a valid permit to carry a concealed ~~firearm~~ handgun has been issued as provided in this chapter;

Sec. 5. 25 MRSA §2001-A, sub-§2, ¶F, as amended by PL 2007, c. 555, §1, is further amended to read:

F. A ~~firearm~~ handgun carried by a person to whom a valid permit to carry a concealed ~~firearm~~ handgun has been issued by another state if a permit to carry a concealed ~~firearm~~ handgun issued from that state has been granted reciprocity. The Chief of the State Police may enter into reciprocity agreements with any other states that meet the requirements of this paragraph. Reciprocity may be granted to a permit to carry a concealed ~~firearm~~ handgun issued from another state if:

(1) The other state that issued the permit to carry a concealed ~~firearm~~ handgun has substantially equivalent or stricter requirements for the issuance of a permit to carry a concealed ~~firearm~~ handgun; and

(2) The other state that issued the permit to carry a concealed ~~firearm~~ handgun observes the same rules of reciprocity regarding a person issued a permit to carry a concealed ~~firearm~~ handgun under this chapter.

Sec. 6. 25 MRSA §2002, sub-§8-A is enacted to read:

8-A. Handgun. "Handgun" means a type of firearm commonly referred to as a pistol or revolver originally designed to be fired by the use of a single hand and that is designed to fire or is capable of firing fixed cartridge ammunition. "Handgun" does not include a shotgun or rifle that has been altered by having its stock or barrel cut or shortened or an automatic firearm that may be held with a single hand.

Sec. 7. 25 MRSA §2003, as amended by PL 2007, c. 194, §5, is further amended to read:

§2003. Permits to carry concealed handguns

1. **Criteria for issuing permit.** The issuing authority shall, upon written application, issue a permit to carry concealed ~~firearms~~ handguns to an applicant over whom it has issuing authority and who has demonstrated good moral character and who meets the following requirements:

A. Is 18 years of age or older;

B. Is not disqualified to possess a firearm pursuant to Title 15, section 393, is not disqualified as a permit holder under that same section and is not disqualified to possess a firearm based on federal law as a result of a criminal conviction;

D. Submits an application that contains the following:

(1) Full name;

(2) Full current address and addresses for the prior 5 years;

(3) The date and place of birth, height, weight, color of eyes, color of hair, sex and race;

(4) A record of previous issuances of, refusals to issue and revocations of a permit to carry concealed firearms, handguns or other concealed weapons by any issuing authority in the State or any other jurisdiction. The record of previous refusals alone does not constitute cause for refusal and the record of previous revocations alone constitutes cause for refusal only as provided in section 2005; and

(5) Answers to the following questions:

(a) Are you less than 18 years of age?

(b) Is there a formal charging instrument now pending against you in this State for a crime under the laws of this State that is punishable by imprisonment for a term of one year or more?

(c) Is there a formal charging instrument now pending against you in any federal court for a crime under the laws of the United States that is punishable by imprisonment for a term exceeding one year?

(d) Is there a formal charging instrument now pending against you in another state for a crime that, under the laws of that state, is punishable by a term of imprisonment exceeding one year?

(e) If your answer to the question in division (d) is "yes," is that charged crime classified under the laws of that state as a misdemeanor punishable by a term of imprisonment of 2 years or less?

(f) Is there a formal charging instrument pending against you in another state for a crime punishable in that state by a term of imprisonment of 2 years or less and classified by that state as a misdemeanor, but that is substantially similar to a crime that under the laws of this State is punishable by imprisonment for a term of one year or more?

(g) Is there a formal charging instrument now pending against you under the laws of the United States, this State or any other state or the Passamaquoddy Tribe or Penobscot Nation in a proceeding in which the prosecuting authority has pleaded that you committed the crime with the use of a firearm against a person or with the use of a dangerous weapon as defined in Title 17-A, section 2, subsection 9, paragraph A?

(h) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense that, if committed by an adult, would be a crime described in division (b), (c), (d) or (f) and involves bodily injury or threatened bodily injury against another person?

(i) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense that, if committed by an adult, would be a crime described in division (g)?

(j) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense that, if committed by an adult, would be a crime described in division (b), (c), (d) or (f), but does not involve bodily injury or threatened bodily injury against another person?

- (k) Have you ever been convicted of committing or found not criminally responsible by reason of mental disease or defect of committing a crime described in division (b), (c), (f) or (g)?
- (l) Have you ever been convicted of committing or found not criminally responsible by reason of mental disease or defect of committing a crime described in division (d)?
- (m) If your answer to the question in division (l) is "yes," was that crime classified under the laws of that state as a misdemeanor punishable by a term of imprisonment of 2 years or less?
- (n) Have you ever been adjudicated as having committed a juvenile offense described in division (h) or (i)?
- (o) Have you ever been adjudicated as having committed a juvenile offense described in division (j)?
- (p) Are you currently subject to an order of a Maine court or an order of a court of the United States or another state, territory, commonwealth or tribe that restrains you from harassing, stalking or threatening your intimate partner, as defined in 18 United States Code, Section 921(a), or a child of your intimate partner, or from engaging in other conduct that would place your intimate partner in reasonable fear of bodily injury to that intimate partner or the child?
- (q) Are you a fugitive from justice?
- (r) Are you a drug abuser, drug addict or drug dependent person?
- (s) Do you have a mental disorder that causes you to be potentially dangerous to yourself or others?
- (t) Have you been adjudicated to be an incapacitated person pursuant to Title 18-A, Article 5, Parts 3 and 4 and not had that designation removed by an order under Title 18-A, section 5-307, subsection (b)?
- (u) Have you been dishonorably discharged from the military forces within the past 5 years?
- (v) Are you an illegal alien?
- (w) Have you been convicted in a Maine court of a violation of Title 17-A, section 1057 within the past 5 years?
- (x) Have you been adjudicated in a Maine court within the past 5 years as having committed a juvenile offense involving conduct that, if committed by an adult, would be a violation of Title 17-A, section 1057?
- (y) To your knowledge, have you been the subject of an investigation by any law enforcement agency within the past 5 years regarding the alleged abuse by you of family or household members?
- (z) Have you been convicted in any jurisdiction within the past 5 years of 3 or more crimes punishable by a term of imprisonment of less than one year or



of crimes classified under the laws of a state as a misdemeanor and punishable by a term of imprisonment of 2 years or less?

(aa) Have you been adjudicated in any jurisdiction within the past 5 years to have committed 3 or more juvenile offenses described in division (o)?

(bb) To your knowledge, have you engaged within the past 5 years in reckless or negligent conduct that has been the subject of an investigation by a governmental entity?

(cc) Have you been convicted in a Maine court within the past 5 years of any Title 17-A, chapter 45 drug crime?

(dd) Have you been adjudicated in a Maine court within the past 5 years as having committed a juvenile offense involving conduct that, if committed by an adult, would have been a violation of Title 17-A, chapter 45?

(ee) Have you been adjudged in a Maine court to have committed the civil violation of possession of a useable amount of marijuana, butyl nitrite or isobutyl nitrite in violation of Title 22, section 2383 within the past 5 years?

(ff) Have you been adjudicated in a Maine court within the past 5 years as having committed the juvenile crime defined in Title 15, section 3103, subsection 1, paragraph B of possession of a useable amount of marijuana, as provided in Title 22, section 2383?; and

E. Does the following:

(1) At the request of the issuing authority, takes whatever action is required by law to allow the issuing authority to obtain from the Department of Health and Human Services, limited to records of patient committals to Riverview Psychiatric Center and Dorothea Dix Psychiatric Center, the courts, law enforcement agencies and the military information relevant to the following:

(a) The ascertainment of whether the information supplied on the application or any documents made a part of the application is true and correct;

(b) The ascertainment of whether each of the additional requirements of this section has been met; and

(c) Section 2005;

(2) If a photograph is an integral part of the permit to carry concealed ~~firearms~~ handguns adopted by an issuing authority, submits to being photographed for that purpose;

(3) If it becomes necessary to resolve any questions as to identity, submits to having fingerprints taken by the issuing authority;

(4) Submits an application fee along with the written application to the proper issuing authority pursuant to the following schedule:

(a) Resident of a municipality or unorganized territory, \$35 for an original application and \$20 for a renewal, except that a person who paid \$60 for a concealed firearms permit or renewal during 1991 or 1992 is entitled to a

credit toward renewal fees in an amount equal to \$30 for a person who paid \$60 for an original application and \$45 for a person who paid \$60 for a permit renewal. The credit is valid until fully utilized; and

(b) Nonresident, \$60 for an original or renewal application, ~~except that a person who paid \$80 for a concealed firearms permit during 1991 or 1992 is entitled to a \$20 credit toward permit renewal fees. The credit is valid until fully utilized; and~~

(5) Demonstrates to the issuing authority a knowledge of handgun safety. The applicant may fully satisfy this requirement by submitting to the issuing authority, through documentation in accordance with this subparagraph, proof that the applicant has within 5 years prior to the date of application completed a course that included handgun safety offered by or under the supervision of a federal, state, county or municipal law enforcement agency or a firearms instructor certified by a private firearms association recognized as knowledgeable in matters of ~~firearms~~ handgun safety by the issuing authority or by the state in which the course was taken. A course completion certificate or other document, or a photocopy, is sufficient if it recites or otherwise demonstrates that the course meets all of the requirements of this subparagraph.

As an alternative way of fully satisfying this requirement, an applicant may personally demonstrate knowledge of handgun safety to an issuing authority, if the issuing authority is willing to evaluate an applicant's personal demonstration of such knowledge. The issuing authority is not required to offer this 2nd option.

The demonstration of knowledge of handgun safety to the issuing authority may not be required of any applicant who holds a valid State state permit to carry a concealed firearm as of April 15, 1990 or of any applicant who was or is in any of the Armed Forces of the United States and has received at least basic firearms training.

2. Complete application; certification by applicant. The requirements set out in subsection 1, constitute a complete application. By affixing the applicant's signature to the application, the applicant certifies the following:

A. That the statements the applicant makes in the application and any documents the applicant makes a part of the application are true and correct;

A-1. That the applicant understands that an affirmative answer to the question in subsection 1, paragraph D, subparagraph (5), division (l) or (o) is cause for refusal unless the applicant is nonetheless authorized to possess a firearm under Title 15, section 393;

A-2. That the applicant understands that an affirmative answer to subsection 1, paragraph D, subparagraph (5), division (p) is cause for refusal if the order of the court meets the preconditions contained in Title 15, section 393, subsection 1, paragraph D. If the order of the court does not meet the preconditions, the conduct underlying the order may be used by the issuing authority, along with other information, in judging good moral character under subsection 4;



B. That the applicant understands that an affirmative answer to one or more of the questions in subsection 1, paragraph D, subparagraph (5), divisions (a), (k), (n) or (q) to (x) is cause for refusal;

B-1. That the applicant understands that an affirmative answer to one or more of the questions in subsection 1, paragraph D, subparagraph (5), divisions (b) to (j), (m), (y), (z) or (aa) to (ff) is used by the issuing authority, along with other information, in judging good moral character under subsection 4; and

C. That the applicant understands any false statements made in the application or in any document made a part of the application may result in prosecution as provided in section 2004.

3. Copy of laws furnished to applicant. A copy of this chapter and the definitions from other chapters ~~which~~ that are used in this chapter ~~shall~~ must be provided to every applicant.

3-A. Model forms. The Attorney General shall develop model forms for the following:

- A. An application for a resident permit to carry concealed ~~firearms~~ handguns;
- B. An application for a nonresident permit to carry concealed ~~firearms~~ handguns;
- C. A resident permit to carry concealed ~~firearms~~ handguns of which a photograph is an integral part;
- D. A resident permit to carry concealed ~~firearms~~ handguns of which a photograph is not an integral part;
- E. A nonresident permit to carry concealed ~~firearms~~ handguns; and
- F. Authority to release information to the issuing authority for the purpose of evaluating information supplied on the application.

Each issuing authority shall utilize only the model forms.

4. Good moral character. The issuing authority in judging good moral character shall make its determination in writing based solely upon information recorded by governmental entities within 5 years of receipt of the application, including, but not limited to, the following matters:

- A. Information of record relative to incidents of abuse by the applicant or family or household members, provided pursuant to Title 19-A, section 4012, subsection 1;
- B. Information of record relative to 3 or more convictions of the applicant for crimes punishable by less than one year imprisonment or one or more adjudications of the applicant for juvenile offenses involving conduct that, if committed by an adult, is punishable by less than one year imprisonment;
- C. Information of record indicating that the applicant has engaged in reckless or negligent conduct; or
- D. Information of record indicating that the applicant has been convicted of or adjudicated as having committed a violation of Title 17-A, chapter 45 or Title 22,

section 2383, or adjudicated as having committed a juvenile crime that is a violation of Title 22, section 2383 or a juvenile crime that would be defined as a criminal violation under Title 17-A, chapter 45 if committed by an adult.

5. Access to confidential records. Notwithstanding that certain records retained by governmental entities are by law made confidential, the records pertaining to patient committals to Riverview Psychiatric Center and Dorothea Dix Psychiatric Center, and records compiled pursuant to Title 19-A, section 4012, subsection 1, that are necessary to the issuing authority's determination of the applicant's good moral character and compliance with the additional requirements of this section and of section 2005 must, at the request of the issuing authority, be made available for inspection by and dissemination to the issuing authority.

8. Term of permit. All concealed ~~firearm~~ handgun permits are valid for 4 years from the date of issue, unless sooner revoked for cause by the issuing authority. If a permit renewal is issued before the expiration date of the permit being renewed or within 6 months of the expiration date of the permit being renewed, the permit renewal is valid for 4 years from the expiration date of the permit being renewed.

9. Information contained in permit. Each permit to carry concealed ~~firearms~~ handguns issued ~~shall~~ must contain the following: The name, address and physical description of the permit holder; the holder's signature; the date of issuance; and the date of expiration. A permit to carry concealed ~~firearms~~ handguns may additionally contain a photograph of the permit holder if the issuing authority makes a photograph an integral part of the permit to carry concealed ~~firearms~~ handguns.

10. Validity of permit throughout the State. Permits issued authorize the person to carry those concealed ~~firearms~~ handguns throughout the State.

11. Permit to be in permit holder's immediate possession. Every permit holder shall have ~~his~~ the holder's permit in ~~his~~ the holder's immediate possession at all times when carrying a concealed ~~firearm~~ handgun and shall display the same on demand of any law enforcement officer. ~~No~~ A person charged with violating this subsection may not be adjudicated as having committed a civil violation if ~~he~~ that person produces in court the concealed ~~firearms~~ handgun permit ~~which~~ that was valid at the time of the issuance of a summons to court or, if ~~he~~ the holder exhibits the permit to a law enforcement officer designated by the summoning officer not later than 24 hours before the time set for the court appearance, ~~no~~ a complaint may not be issued.

12. Permit for a resident of 5 or more years to be issued or denied within 30 days; permit for a nonresident and resident of less than 5 years to be issued or denied within 60 days. The issuing authority, as defined in this chapter, shall issue or deny, and reply in writing as to the reason for any denial, within 30 days of the application date in the case of a resident of 5 or more years and within 60 days of the application date in the case of a nonresident or in the case of a resident of less than 5 years. If the issuing authority does not issue or deny a request for a permit renewal within the time limits specified in this subsection, the validity of the expired permit is extended until the issuing authority issues or denies the renewal.

13. Fee waiver. An issuing authority may waive the permit fee for a permit issued to a law enforcement officer certified by the Maine Criminal Justice Academy.

14. Lapsed permit. A person may apply for renewal of a permit at the permit renewal rate at any time within 6 months after expiration of a permit. A person who applies for a permit more than 6 months after the expiration date of the permit last issued to that person must submit an original application and pay the original application fee.

15. Duty of issuing authority; application fees. The application fees submitted by the applicant as required by subsection 1, paragraph E, subparagraph (4) are subject to the following.

A. If the issuing authority is other than the Chief of the State Police, \$25 of the fee for an original application and \$15 of the fee for a renewal must be paid over to the Treasurer of State.

B. If the Chief of the State Police is the issuing authority as the designee of a municipality under section 2002-A, \$25 of the fee for an original application and \$15 of the fee for a renewal must be paid over to the Treasurer of State.

C. If the Chief of the State Police is the issuing authority because the applicant is either a resident of an unorganized territory or a nonresident, the application fee must be paid over to the Treasurer of State. The fee must be applied to the expenses of administration incurred by the State Police.

16. Application fee; use. The application fee submitted by the applicant as required by subsection 1, paragraph E, subparagraph (4) covers the cost of processing the application by the issuing authority and the cost of the permit to carry concealed ~~firearms~~ handguns issued by the issuing authority.

17. Waiver of law enforcement agency record and background check fees. Notwithstanding any other provision of law, a law enforcement agency may not charge an issuing authority a fee in association with the law enforcement agency's conducting a concealed handgun permit applicant record check or background check for the issuing authority.

Sec. 8. 25 MRSA §2004, sub-§1, as enacted by PL 2003, c. 452, Pt. N, §3 and affected by Pt. X, §2, is amended to read:

1. False statements. A person who intentionally or knowingly makes a false statement in the written application for a permit to carry a concealed ~~firearm~~ handgun or any documents made a part of the application commits a Class D crime.

Sec. 9. 25 MRSA §2005, sub-§2, ¶A, as enacted by PL 1985, c. 478, §2, is amended to read:

A. If the permit holder changes ~~his~~ the permit holder's legal residence from one municipality to another during the term of the permit, the permit remains valid if ~~he~~ the permit holder provides ~~his~~ the permit holder's new address to the issuing authority of ~~his~~ the permit holder's new residence within 30 days of making that change. The



Sec. 14. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 25, chapter 252, in the chapter headnote, the words "permits to carry concealed firearms" are amended to read "permits to carry concealed handguns" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

JUN 21 '11 394

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 988 - L.D. 1347

An Act Relating to Locations where Concealed Weapons May Be Carried

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

Sec. 1. 12 MRSA §1803, sub-§7 is enacted to read:

7. Exceptions. Notwithstanding subsection 6 or any other rule-making authority, the bureau may not adopt rules that prohibit the following persons from carrying a concealed firearm in the buildings or parts of buildings and other public property that are under the bureau's jurisdiction:

A. A person to whom a valid permit to carry a concealed firearm has been issued under Title 25, chapter 252. The person must have in that person's possession the valid permit;

B. A person to whom a valid permit to carry a concealed firearm has been issued by another state if a permit to carry a concealed firearm issued from that state has been granted reciprocity under Title 25, chapter 252. The person must have in that person's possession the valid permit;

C. An authorized federal, state or local law enforcement officer in the performance of that officer's official duties;

D. A qualified law enforcement officer pursuant to 18 United States Code, Section 926B. The law enforcement officer must have in that law enforcement officer's possession photographic identification issued by the law enforcement agency by which the person is employed as a law enforcement officer; and

E. A qualified retired law enforcement officer pursuant to 18 United States Code, Section 926C. The retired law enforcement officer must have in the retired law enforcement officer's possession:

(1) Photographic identification issued by the law enforcement agency from which the person retired from service as a law enforcement officer that indicates that the person has, not less recently than one year before the date the person carries the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

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(2) Photographic identification issued by the law enforcement agency from which the person retired from service as a law enforcement officer and a certification issued by the state in which the person resides that indicates that the person has, not less recently than one year before the date the person carries the concealed firearm, been tested or otherwise found by that state to meet the standards established by that state for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

Sec. 2. 17-A MRSA §1057, sub-§3, as enacted by PL 1989, c. 917, §2, is repealed.

Sec. 3. 25 MRSA §2001-A, sub-§2, as amended by PL 2007, c. 555, §1, is further amended to read:

2. **Exceptions.** The provisions of this section concerning the carrying of concealed weapons do not apply to:

A. ~~Firearms~~ A firearm carried by a person to whom a valid permit to carry a concealed firearm has been issued as provided in this chapter;

B. Disabling chemicals as described in Title 17-A, section 1002;

C. Knives used to hunt, fish or trap as defined in Title 12, section 10001;

D. ~~Law~~ A firearm carried by a law enforcement officers officer, a corrections officers and officer or a corrections supervisors supervisor as permitted in writing by ~~their~~ the officer's or supervisor's employer;

E. ~~Firearms~~ A firearm carried by a person engaged in conduct for which a state-issued hunting or trapping license is required and possessing the required license, or ~~firearms a firearm~~ carried by a resident person engaged in conduct expressly authorized by Title 12, section 11108 and section 12202, subsection 1. This paragraph does not authorize or permit the carrying of a concealed or loaded firearm in a motor vehicle; and

F. A firearm carried by a person to whom a valid permit to carry a concealed firearm has been issued by another state if a permit to carry a concealed firearm issued from that state has been granted reciprocity. The Chief of the State Police may enter into reciprocity agreements with any other states that meet the requirements of this paragraph. Reciprocity may be granted to a permit to carry a concealed firearm issued from another state if:

(1) The other state that issued the permit to carry a concealed firearm has substantially equivalent or stricter requirements for the issuance of a permit to carry a concealed firearm; and

(2) The other state that issued the permit to carry a concealed firearm observes the same rules of reciprocity regarding a person issued a permit to carry a concealed firearm under this chapter;

G. A firearm carried by an authorized federal, state or local law enforcement officer in the performance of the officer's official duties;

H. A firearm carried by a qualified law enforcement officer pursuant to 18 United States Code, Section 926B. The law enforcement officer must have in the law enforcement officer's possession photographic identification issued by the law enforcement agency by which the person is employed as a law enforcement officer; and

I. A firearm carried by a qualified retired law enforcement officer pursuant to 18 United States Code, Section 926C. The retired law enforcement officer must have in the retired law enforcement officer's possession:

(1) Photographic identification issued by the law enforcement agency from which the person retired from service as a law enforcement officer that indicates that the person has, not less recently than one year before the date the person carries the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

(2) Photographic identification issued by the law enforcement agency from which the person retired from service as a law enforcement officer and a certification issued by the state in which the person resides that indicates that the person has, not less recently than one year before the date the person carries the concealed firearm, been tested or otherwise found by that state to meet the standards established by that state for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

Committee: CRJ

LA: MMB

LRitem: 0098(02)

Date: 05/21/11

Committee Amendment " " to LD1347
An Act Relating to Locations where Concealed
Weapons May Be Carried

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

Sec. 1. 12 MRSA §1803, sub-§7 is enacted to read:

7. Exceptions. Notwithstanding subsection 6 or any other rule-making authority, the bureau may not ~~may~~ adopt rules that prohibit the following persons from carrying a concealed firearm in the buildings or parts of buildings and other public property that are under the bureau's jurisdiction:

A. A person to whom a valid permit to carry a concealed firearm has been issued under Title 25, chapter 252. The person must have in that person's possession the valid permit;

B. A person to whom a valid permit to carry a concealed firearm has been issued by another state if a permit to carry a concealed firearm issued from that state has been granted reciprocity under Title 25, chapter 252. The person must have in that person's possession the valid permit;

C. An authorized federal, state or local law enforcement officer in the performance of that officer's official duties;

D. A qualified law enforcement officer pursuant to 18 United States Code, Section 926B. The law enforcement officer must have in that law enforcement officer's possession photographic identification issued by the law enforcement agency by which the person is employed as a law enforcement officer;

E. A qualified retired law enforcement officer pursuant to 18 United States Code, Section 926C. The retired law enforcement officer must have in the retired law enforcement officer's possession:

(1) Photographic identification issued by the law enforcement agency from which the person retired from service as a law enforcement officer that indicates that the person has, not less recently than one year before the date the person carries the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

(2) Photographic identification issued by the law enforcement agency from which the person retired from service as a law enforcement officer and a certification issued by the state in which the person resides that indicates that the person has, not less recently than one year before the date the person carries the concealed firearm, been tested or otherwise found by that state to meet the standards established by that state for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm;

and

F. A private investigator licensed under Title 32, chapter 89 who is actually performing as a private investigator.

Sec. 2. 12 MRSA §11212, sub-§1, ¶B, as amended by PL 2005, c. 427, is further amended to read:

1 B. A person may not, while in or on a motor vehicle or in or on a trailer or other
2 type of vehicle being hauled by a motor vehicle, have a cocked and armed crossbow
3 or a firearm with a cartridge or shell in the chamber or in an attached magazine, clip
4 or cylinder or a muzzle-loading firearm charged with powder, lead and a primed
5 ignition device or mechanism, except that a person who has a valid Maine permit to
6 carry a concealed weapon the following persons may have in or on a motor vehicle or
7 trailer a loaded pistol or revolver covered by that permit:

8 (1) A person to whom a valid permit to carry a concealed firearm has been
9 issued under Title 25, chapter 252. The person must have in that person's
10 possession the valid permit;

11 (2) A person to whom a valid permit to carry a concealed firearm has been
12 issued by another state if a permit to carry a concealed firearm issued from that
13 state has been granted reciprocity under Title 25, chapter 252. The person must
14 have in that person's possession the valid permit;

15 (3) An authorized federal, state or local law enforcement officer in the
16 performance of the officer's official duties;

17 (4) A qualified law enforcement officer pursuant to 18 United States Code,
18 Section 926B. The law enforcement officer must have in the law enforcement
19 officer's possession photographic identification issued by the law enforcement
20 agency by which the person is employed as a law enforcement officer;

21 (5) A qualified retired law enforcement officer pursuant to 18 United States
22 Code, Section 926C. The retired law enforcement officer must have in the retired
23 law enforcement officer's possession:

24 (a) Photographic identification issued by the law enforcement agency from
25 which the person retired from service as a law enforcement officer that
26 indicates that the person has, not less recently than one year before the date
27 the person carries the concealed firearm, been tested or otherwise found by
28 the agency to meet the standards established by the agency for training and
29 qualification for active law enforcement officers to carry a firearm of the
30 same type as the concealed firearm; or

31 (b) Photographic identification issued by the law enforcement agency from
32 which the person retired from service as a law enforcement officer and a
33 certification issued by the state in which the person resides that indicates that
34 the person has, not less recently than one year before the date the person
35 carries the concealed firearm, been tested or otherwise found by that state to
36 meet the standards established by that state for training and qualification for
37 active law enforcement officers to carry a firearm of the same type as the
38 concealed firearm; and

39 (6) A private investigator licensed under Title 32, chapter 89 who is actually
40 performing as a private investigator.

41 Sec. B. 17-A MRSA §1057, sub-§1, ¶A, as enacted by PL 1989, c. 917, §2, is
42 amended to read:

1 A. ~~Not being a law enforcement officer or a private investigator licensed under Title~~
2 ~~32, chapter 89 and actually performing as a private investigator~~ Except as provided in
3 subsection 3-A; the person possesses any firearm on the premises of a licensed
4 establishment posted to prohibit or restrict the possession of firearms in a manner
5 reasonably likely to come to the attention of patrons, in violation of the posted
6 prohibition or restriction; or

7 Sec. 4. 17-A MRSA §1057, sub-§3, as enacted by PL 1989, c. 917, §2, is
8 repealed.

9 Sec. 5. 17-A MRSA §1057, sub-§3-A is enacted to read:

10 3-A. Notwithstanding subsection 1, paragraph A, a person may carry a firearm in a
11 licensed establishment only as follows:

12 A. When the firearm is a concealed firearm carried by a person to whom a valid
13 permit to carry a concealed firearm has been issued under Title 25, chapter 252. The
14 person must have in that person's possession the valid permit;

15 B. When the firearm is a concealed firearm carried by a person to whom a valid
16 permit to carry a concealed firearm has been issued by another state if a permit to
17 carry a concealed firearm issued from that state has been granted reciprocity under
18 Title 25, chapter 252. The person must have in that person's possession the valid
19 permit;

20 C. When the firearm is carried by an authorized federal, state or local law
21 enforcement officer in the performance of the officer's official duties;

22 D. When the firearm is a concealed firearm carried by a private investigator licensed
23 under Title 32, chapter 89 who is actually performing as a private investigator;

24 E. When the firearm is a concealed firearm carried by a qualified law enforcement
25 officer pursuant to 18 United States Code, Section 926B. The law enforcement
26 officer must have in the law enforcement officer's possession photographic
27 identification issued by the law enforcement agency by which the person is employed
28 as a law enforcement officer; or

29 F. When the firearm is a concealed firearm carried by a qualified retired law
30 enforcement officer pursuant to 18 United States Code, Section 926C. The retired
31 law enforcement officer must have in the retired law enforcement officer's
32 possession:

33 (1) Photographic identification issued by the law enforcement agency from
34 which the person retired from service as a law enforcement officer that indicates
35 that the person has, not less recently than one year before the date the person
36 carries the concealed firearm, been tested or otherwise found by the agency to
37 meet the standards established by the agency for training and qualification for
38 active law enforcement officers to carry a firearm of the same type as the
39 concealed firearm; or

40 (2) Photographic identification issued by the law enforcement agency from
41 which the person retired from service as a law enforcement officer and a

1 certification issued by the state in which the person resides that indicates that the
2 person has, not less recently than one year before the date the person carries the
3 concealed firearm, been tested or otherwise found by that state to meet the
4 standards established by that state for training and qualification for active law
5 enforcement officers to carry a firearm of the same type as the concealed firearm.

6 **Sec. 6. 25 MRSA §2001-A, sub-§2**, as amended by PL 2007, c. 555, §1, is
7 further amended to read:

8 **2. Exceptions.** The provisions of this section concerning the carrying of concealed
9 weapons do not apply to:

10 A. ~~Firearms~~ A firearm carried by a person to whom a valid permit to carry a
11 concealed firearm has been issued as provided in this chapter;

12 B. Disabling chemicals as described in Title 17-A, section 1002;

13 C. Knives used to hunt, fish or trap as defined in Title 12, section 10001;

14 D. ~~Law~~ A firearm carried by a law enforcement officers officer, a corrections
15 officers and officer or a corrections supervisors supervisor as permitted in writing by
16 their the officer's or supervisor's employer;

17 E. ~~Firearms~~ A firearm carried by a person engaged in conduct for which a state-
18 issued hunting or trapping license is required and possessing the required license, or
19 ~~firearms~~ a firearm carried by a resident person engaged in conduct expressly
20 authorized by Title 12, section 11108 and section 12202, subsection 1. This
21 paragraph does not authorize or permit the carrying of a concealed or loaded firearm
22 in a motor vehicle, ~~except as provided by Title 12, section 11212, subsection 1,~~
23 ~~paragraph B;~~ and

24 F. A firearm carried by a person to whom a valid permit to carry a concealed firearm
25 has been issued by another state if a permit to carry a concealed firearm issued from
26 that state has been granted reciprocity. The Chief of the State Police may enter into
27 reciprocity agreements with any other states that meet the requirements of this
28 paragraph. Reciprocity may be granted to a permit to carry a concealed firearm
29 issued from another state if:

30 (1) The other state that issued the permit to carry a concealed firearm has
31 substantially equivalent or stricter requirements for the issuance of a permit to
32 carry a concealed firearm; and

33 (2) The other state that issued the permit to carry a concealed firearm observes
34 the same rules of reciprocity regarding a person issued a permit to carry a
35 concealed firearm under this chapter;

36 G. A firearm carried by an authorized federal, state or local law enforcement officer
37 in the performance of the officer's official duties;

38 H. A firearm carried by a qualified law enforcement officer pursuant to 18 United
39 States Code, Section 926B. The law enforcement officer must have in the law
40 enforcement officer's possession photographic identification issued by the law
41 enforcement agency by which the person is employed as a law enforcement officer;

1 I. A firearm carried by a qualified retired law enforcement officer pursuant to 18
2 United States Code, Section 926C. The retired law enforcement officer must have in
3 the retired law enforcement officer's possession:

4 (1) Photographic identification issued by the law enforcement agency from
5 which the person retired from service as a law enforcement officer that indicates
6 that the person has, not less recently than one year before the date the person
7 carries the concealed firearm, been tested or otherwise found by the agency to
8 meet the standards established by the agency for training and qualification for
9 active law enforcement officers to carry a firearm of the same type as the
10 concealed firearm; or

11 (2) Photographic identification issued by the law enforcement agency from
12 which the person retired from service as a law enforcement officer and a
13 certification issued by the state in which the person resides that indicates that the
14 person has, not less recently than one year before the date the person carries the
15 concealed firearm, been tested or otherwise found by that state to meet the
16 standards established by that state for training and qualification for active law
17 enforcement officers to carry a firearm of the same type as the concealed firearm;

18 abd
19 J. A firearm carried by a private investigator licensed under Title 32, chapter 89 who
20 is actually performing as a private investigator

21 Sec. 7. 25 MRSA §2904, sub-§3 is enacted to read:

22 3. Exceptions. Notwithstanding subsections 1 and 2, neither the Commissioner of
23 Public Safety nor the officials of governmental units listed in subsection 2 may adopt
24 rules that prohibit the following persons from carrying a concealed firearm in the
25 buildings or parts of buildings and other public property that are under their respective
26 supervisions:

27 A. A person to whom a valid permit to carry a concealed firearm has been issued
28 under Title 25, chapter 252. The person must have in that person's possession the
29 valid permit;

30 B. A person to whom a valid permit to carry a concealed firearm has been issued by
31 another state if a permit to carry a concealed firearm issued from that state has been
32 granted reciprocity under Title 25, chapter 252. The person must have in that
33 person's possession the valid permit;

34 C. An authorized federal, state or local law enforcement officer in the performance
35 of the officer's official duties;

36 D. A qualified law enforcement officer pursuant to 18 United States Code, Section
37 926B. The law enforcement officer must have in the law enforcement officer's
38 possession photographic identification issued by the law enforcement agency by
39 which the person is employed as a law enforcement officer;

40 E. A qualified retired law enforcement officer pursuant to 18 United States Code,
41 Section 926C. The retired law enforcement officer must have in the retired law
42 enforcement officer's possession;

1 (1) Photographic identification issued by the law enforcement agency from
2 which the person retired from service as a law enforcement officer that indicates
3 that the person has, not less recently than one year before the date the person
4 carries the concealed firearm, been tested or otherwise found by the agency to
5 meet the standards established by the agency for training and qualification for
6 active law enforcement officers to carry a firearm of the same type as the
7 concealed firearm; or

8 (2) Photographic identification issued by the law enforcement agency from
9 which the person retired from service as a law enforcement officer and a
10 certification issued by the state in which the person resides that indicates that the
11 person has, not less recently than one year before the date the person carries the
12 concealed firearm, been tested or otherwise found by that state to meet the
13 standards established by that state for training and qualification for active law
14 enforcement officers to carry a firearm of the same type as the concealed firearm;
15 and

16 F. A private investigator licensed under Title 32, chapter 89 who is actually
17 performing as a private investigator.

18 **Sec. 8. 26 MRSA §595, sub-§5,** as enacted by PL 1987, c. 558, §1, is amended to
19 read:

20 **5. Dangerous weapons prohibited.** It is a Class D crime for any person, including,
21 but not limited to, security guards and persons involved in a labor dispute, strike or
22 lockout, to be armed with a dangerous weapon, as defined in Title 17-A, section 2,
23 subsection 9, at a site where applications for employment with an employer involved in a
24 labor dispute, strike or lockout are being received or where interviews of those job
25 applicants are being conducted or where medical examinations of those job applicants are
26 being performed, except that a firearm may be carried under these circumstances only as
27 follows:

28 A. A person holding a valid permit to carry a concealed firearm is not exempt from
29 this subsection.

30 B. A When the firearm is carried by a security guard is exempt from this subsection
31 to the extent that federal laws or rules required require the security guard to be armed
32 with a dangerous weapon at such a site;

33 C. A public When the firearm is carried by an authorized federal, state or local law
34 enforcement officer is exempt from this subsection while on active duty in the public
35 service, in the performance of the officer's official duties;

36 D. A When the firearm is carried by a security guard employed by an employer
37 involved in a labor dispute, strike or lockout may be present at the location where
38 applications for employment with the employer will be accepted, interviews of those
39 applicants conducted or medical examinations of those applicants performed to the
40 extent permitted under Title 32, chapter 93. Nothing in this section may be construed
41 to extend or limit in any way the restrictions placed upon the location of private
42 security guards under Title 32, chapter 93;

1 E. When the firearm is a concealed firearm carried by a person to whom a valid
2 permit to carry a concealed firearm has been issued under Title 25, chapter 252. The
3 person must have in that person's possession the valid permit;

4 F. When the firearm is a concealed firearm carried by a person to whom a valid
5 permit to carry a concealed firearm has been issued by another state if a permit to
6 carry a concealed firearm issued from that state has been granted reciprocity under
7 Title 25, chapter 252. The person must have in that person's possession the valid
8 permit;

9 G. When the firearm is a concealed firearm carried by a private investigator licensed
10 under Title 32, chapter 89 who is actually performing as a private investigator;

11 H. When the firearm is a concealed firearm carried by a qualified law enforcement
12 officer pursuant to 18 United States Code, Section 926B. The law enforcement
13 officer must have in the law enforcement officer's possession photographic
14 identification issued by the law enforcement agency by which the person is employed
15 as a law enforcement officer; and

16 I. When the firearm is a concealed firearm carried by a qualified retired law
17 enforcement officer pursuant to 18 United States Code, Section 926C. The retired
18 law enforcement officer must have in the retired law enforcement officer's
19 possession:

20 (1) Photographic identification issued by the law enforcement agency from
21 which the person retired from service as a law enforcement officer that indicates
22 that the person has, not less recently than one year before the date the person
23 carries the concealed firearm, been tested or otherwise found by the agency to
24 meet the standards established by the agency for training and qualification for
25 active law enforcement officers to carry a firearm of the same type as the
26 concealed firearm; or

27 (2) Photographic identification issued by the law enforcement agency from
28 which the person retired from service as a law enforcement officer and a
29 certification issued by the state in which the person resides that indicates that the
30 person has, not less recently than one year before the date the person carries the
31 concealed firearm, been tested or otherwise found by that state to meet the
32 standards established by that state for training and qualification for active law
33 enforcement officers to carry a firearm of the same type as the concealed firearm.

34 This amendment is the majority report of the committee.
amendment SUMMARY

35 This bill eliminates the prohibition on certain persons possessing firearms in certain
36 locations, including state parks and historic sites, premises licensed for the consumption
37 of alcohol, state property under the jurisdiction of the Department of Public Safety and
38 the Legislative Council and locations of labor disputes. (Specifically) notwithstanding any
39 statutory provisions or rules prohibiting the possession of a firearm, the bill permits the
40 following persons to possess firearms:

may

pursuant

to title 25, section 2001-A:

also
amendment specifies
that a person
maintains

22

ERRORS BILL §: SUPP-8

LAW AMENDED: 18 MRSA 1655

General Subject: Administration and Settlement of Decedents' Estate

Type of correction (conflict, reference, other): Replicated in Title 18-A, §3-914.

Category (technical, substantive): T?

Is amendment to Errors Bill needed?
(If so, draft/mark up and explain below)

Prepared by: cjs/mjr

Date: 3/28/2012 7:52 PM

File name: G:\COMMITTEES\JUD\ERRORS BILL 2012\18 1655.doc(3/26/2012 3:11:00 PM)

EXPLANATION

Section 1655 in Title 18 is duplicated in section 3-619, subsection (e) of Title 18-A. Title 18 was repealed in Public Law 1979, chapter 540, §24-C, and replaced by Title 18-A, the Probate Code. Chapter 540 took effect January 1, 1981.

Public Law 1979, c. 641 repealed 18 §1655 as repealed by PL 1979, c. 540 and enacted §1655 to deal with money in estates in excess of debts when there are no heirs. The court must order the deposit of the money into the unclaimed property account of the State. The same general provisions were enacted in 18-A §3-619. Was §1655 re-enacted to cover the gap in time until the Probate Code became effective in January 1981?

In 2003, PL 2003, c. 20 amended 18 §1655 to update the cross-reference to the new Unclaimed Property Act. It also amended 18-A, §3-619 to make the same update.

SUPP-8 repeals 18 MRSA §1655 because it is covered by 18-A MRSA §3-619.

①


Sec. 8. 18 MRSA §1655, as amended by PL 2003, c. 20, Pt. T, §11, is repealed.


SUMMARY

Section 8 repeals a duplicate section of law.


Maine Revised Statutes


100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000


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Title 18, Chapter 209: PUBLIC ADMINISTRATORS

[18 §1651. Duties; bonds \(REPEALED\)](#)

[18 §1652. Fees \(REPEALED\)](#)

[18 §1653. Conservation of property pending appointment \(REPEALED\)](#)

[18 §1654. Powers revoked \(REPEALED\)](#)

[18 §1655. Distribution of balance](#) 

[18 §1656. Notice; audit \(REPEALED\)](#)

[18 §1657. Forfeit of balance to State after 20 years \(REPEALED\)](#)

**The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.**

Office of the Revisor of Statutes

7 State House Station

State House Room 108

Augusta, Maine 04333-0007

(3)

*33027 18 M.R.S.A. § 1655

MAINE REVISED STATUTES ANNOTATED
TITLE 18. DECEDENTS' ESTATES AND FIDUCIARY RELATIONS
PART 3. ADMINISTRATION AND SETTLEMENT OF DECEDENTS'
ESTATES
CHAPTER 209. PUBLIC ADMINISTRATORS

*Current with legislation through the 2011 First Regular Session and First Special Session of
the 125th Legislature*

§ 1655. Distribution of balance

When there is in the hands of a public administrator an amount of money more than is necessary for the payment of the deceased's debts and for other purposes of administration, if no widow, widower or heirs of the deceased have been discovered, the administrator must be required by the judge to deposit it with the Treasurer of State, who shall receive it and dispose of it according to Title 33, chapter 41. [FN1]

CREDIT(S)

R.S.1954, c. 154, § 52; 1959, c. 319; 1979, c. 540, § 24-C, eff. Jan. 1, 1981; 1979, c. 641, § 5; 2003, c. 20, § T-11, eff. July 1, 2003.

[FN1] 33 M.R.S.A. § 1951 et seq.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES**HISTORICAL AND STATUTORY NOTES****1998 Main Volume**

Laws 1979, c. 540, § 24-C, effective January 1, 1981, repealed this section.

Laws 1979, c. 641, § 5, repealed and replaced this section as repealed by Laws 1979, c. 540, § 24-C. Prior to repeal and replacement by Laws 1979, c. 641, § 5, this section read:

before 1979
 "When there is in the hands of such public administrator an amount of money more than is necessary for the payment of the deceased's debts and for other purposes of administration, if no widow, widower or heirs of said deceased have been discovered, said administrator shall be required by the judge to deposit it with the Treasurer of State, who shall receive it. The State shall be responsible for the principal thereof, for the benefit of those who may lawfully claim it. The Governor and Council, on application and proof, may order the Treasurer of State to pay it over, and such principal is appropriated to pay such lawful claims. Any income earned on such funds shall be paid into the General Fund as compensation for administration.

"If during the process of administration of such estate any widow, widower or heirs of said deceased are discovered, then the probate court shall order distribution of the estate in the same manner as in the case of ordinary administration."

2011 Electronic Pocket Part Update

*33028 2003 Legislation

Laws 2003, c. 20, § T-11, substituted "chapter 41" for "chapter 27" and made a nonsubstantive change.

Maine Revised Statutes

[§3-619 PDF](#)
[§3-618](#)
[Title 18-A:](#)
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§3-619. Public administrators

(a). The Governor shall appoint in each county for a term of 4 years, unless sooner removed, a public administrator who shall, upon petition to the court and after notice and hearing, be appointed to administer the estates of persons who die intestate within the county, or who die intestate elsewhere leaving property within the county, and who are not known to have within the state any heirs who can lawfully inherit the estate, and for whom no other administration has been commenced. The public administrator shall have the same powers and duties of a personal representative under supervised administration as provided in section 3-504, and except as provided in subsection (g), shall give bond as provided for other personal representatives in cases of ordinary administration under sections 3-603 through 3-606. If any person entitled to appointment as personal representative under section 3-203 shall, prior to the appointment of the public administrator, file a petition for informal or formal appointment as personal representative, the court shall withhold any appointment of the public administrator pending denial of the petition for the appointment of the private personal representative.

[1981, c. 268, §2 (AMD) .]

(b). The public administrator may be allowed fees and compensation for his services as in the case of ordinary administration as provided in sections 3-719, 3-720 and 3-721, except that no fee for his own services shall be paid without prior approval by the court.

[1979, c. 540, §1 (NEW) .]

(c). Pending the appointment of the public administrator, and in the absence of any local administration or any administration by a domiciliary foreign personal representative under sections 4-204 and 4-205, the public administrator may proceed to conserve the property of the estate when it appears necessary or expedient.

[1979, c. 540, §1 (NEW) .]

(d). If, before the estate of such deceased in the hands of the public administrator is fully settled, any last will and testament of the decedent is granted informal or formal probate, or if any person

entitled under section 3-203 to appointment as personal representative is informally or formally appointed, the appointment of the public administrator is terminated as provided in section 3-608, and he shall account for and deliver the assets of the estate to the private personal representative as provided therein, or to the successors under the will as provided by law if no private personal representative has been appointed.

[1979, c. 540, §1 (NEW) .]

(e). When there are assets, other than real property, remaining in the hands of such public administrator after the payment of the decedent's debts and all costs of administration and no heirs have been discovered, the public administrator must be ordered by the judge to deposit them with the Treasurer of State, who shall receive them and dispose of them according to Title 33, chapter 41. These assets must, for the purposes of Title 33, chapter 41, be presumed unclaimed when the judge orders the public administrator to deposit them with the Treasurer of State.

[2003, c. 20, Pt. T, §12 (AMD) .]

(f). In all cases where a public administrator is appointed, the register shall immediately send to the Treasurer of State a copy of the petition and the decree thereon, and in all cases where the public administrator is ordered to pay the balance of the estate as provided in subsection (e) the judge shall give notice to the county treasurer of the amount and from what estate it is receivable. If the public administrator neglects for 3 months after the order of the judge to deposit the money, the county treasurer shall petition the court for enforcement of the order or bring a civil action upon any bond of the public administrator for the recovery thereof. The records and accounts of the public administrator shall be audited annually by the State Department of Audit.

[1979, c. 540, §1 (NEW) .]

(g). Estates administered under this section having a value at the decedent's death not exceeding \$200 shall be exempt from all notice and filing costs and from giving bond. The cost of notice shall be paid by the court.

[1981, c. 268, §4 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 268, §§2-4 (AMD). 2003, c. 20, §12 (AMD).

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Maine Revised Statutes

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Article 3: PROBATE OF WILLS AND ADMINISTRATION

Part 9: SPECIAL PROVISIONS RELATING TO DISTRIBUTION

§3-914. Disposition of unclaimed assets

(A). If an heir, devisee or claimant can not be found, the personal representative shall distribute the share of the missing person to the person's conservator, if any; otherwise it must be disposed of according to Title 33, chapter 41.

[2003, c. 20, Pt. T, §13 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 20, §13 (AMD).

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Office of the Revisor of Statutes

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State House Room 108
Augusta, Maine 04333-0007



PL 1979

~~No~~ When a person has died under circumstances which constitute a medical examiner case as defined in Title 22, section 3025, no person shall inject into any cavity or artery of the body of ~~any person who has died from violence, by the action of chemical, thermal or electrical agents, or following abortion, or suddenly when not disabled by recognizable disease~~ any fluid or substance, until a legal certificate as to the cause of death has been obtained from the medical examiner ~~has been obtained~~, or until legal investigation has determined the cause of death, or written permission to embalm such body has been given by the medical examiner. If a criminal cause of death is alleged or suspected, no fluid or other substance shall be injected into a body until the cause of death is legally established or until an autopsy has been performed.

Sec. 12. 32 MRSA § 1405, 2nd ¶, last sentence beginning with the words "For said certificate" as amended by PL 1971, c. 56, is further amended to read:

For said certificate the medical examiner shall receive a fee of \$10 \$15 payable by the person requesting same.

Sec. 13. 32 MRSA § 1405, as last amended by PL 1977, c. 232, § 5, is further amended by adding at the end the following new paragraph:

No body shall be released for burial at sea, or for dissection except for an organ transplant, without a certificate from a medical examiner as provided for by this section with respect to cremation.

CHAPTER 539

H. P. 1193 — L. D. 1444

AN ACT Concerning the Minimum Public Utility Monthly Electrical Charge.

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

35 MRSA § 96 is enacted to read:

§ 96. Minimum distribution costs

The Public Utilities Commission, in approving any minimum customer charge in an electric utility rate proceeding subsequent to the effective date of this section, shall consider whether the exclusion of any minimum distribution costs incurred by the utility from such customer charge may be reasonably expected to advance the basic findings and purposes of this chapter. If the commission so finds, it shall exclude from the customer charge any minimum distribution charges which do not advance the basic findings and purposes of this chapter.

CHAPTER 540

S. P. 1 — L. D. 1

AN ACT to Establish the Maine Probate Code.

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

Sec. 1. 18-A MRSA is enacted to read:

TITLE 18-A

PROBATE CODE

ARTICLE I

GENERAL PROVISIONS, DEFINITIONS AND JURISDICTION

PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

§ 1-101. Short title

This Act shall be known and may be cited as the Probate Code.

§ 1-102. Purposes; rule of construction

(a) This Code shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this Code are:

- (1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;
- (2) to discover and make effective the intent of a decedent in the distribution of his property;
- (3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;
- (4) to facilitate use and enforcement of certain trusts;
- (5) to make uniform the law among the various jurisdictions.

§ 1-103. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions.

§ 1-104. Severability

If any provision of this Code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.

§ 1-105. Construction against implied repeal

This Code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

§ 1-106. Effect of fraud and evasion

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person, other than a bona fide purchaser, benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 6 years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

§ 1-107. Evidence as to death or status

In proceedings under this Code the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the Code or by rules promulgated under section 1-304. In addition, notwithstanding Title 22, section 2707, the following rules relating to determination of death and status are applicable:

- (1) a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;
- (2) a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;
- (3) a person who is absent for a continuous period of 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

§ 1-108. Acts by holder of general power

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.

CHAPTER 540

The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 3-608 through 3-611.

§ 3-619. Public administrators

(a) The Governor shall appoint in each county for a term of 4 years, unless sooner removed, a public administrator who shall, upon petition to the court and after notice and hearing, be appointed to administer the estates of persons who die intestate within the county, or who die intestate elsewhere leaving property within the county, and who are not known to have within the state any heirs who can lawfully inherit the estate, and for whom no other administration has been commenced. The public administrator shall have the same powers and duties of a personal representative under supervised administration as provided in section 3-504, and shall give bond as provided for other personal representatives in cases of ordinary administration under sections 3-603 through 3-606. If any person entitled to appointment as personal representative under section 3-203 shall, prior to the appointment of the public administrator, file a petition for informal or formal appointment as personal representative, the court shall withhold any appointment of the public administrator pending denial of the petition for the appointment of the private personal representative.

(b) The public administrator may be allowed fees and compensation for his services as in the case of ordinary administration as provided in sections 3-719, 3-720 and 3-721, except that no fee for his own services shall be paid without prior approval by the court.

(c) Pending the appointment of the public administrator, and in the absence of any local administration or any administration by a domiciliary foreign personal representative under sections 4-204 and 4-205, the public administrator may proceed to conserve the property of the estate when it appears necessary or expedient.

(d) If, before the estate of such deceased in the hands of the public administrator is fully settled, any last will and testament of the decedent is granted informal or formal probate, or if any person entitled under section 3-203 to appointment as personal representative is informally or formally appointed, the appointment of the public administrator is terminated as provided in section 3-608, and he shall account for and deliver the assets of the estate to the private personal representative as provided therein, or to the successors under the will as provided by law if no private personal representative has been appointed.

(e) When there is in the hands of such public administrator an amount of money more than is necessary for the payment of the decedent's debts and for other purposes of administration, if no heirs have been discovered, the public administrator shall be required by the judge to deposit it as provided in section 3-914. Any income earned on such funds shall be paid into the General Fund as compensation for administration.

(f) In all cases where a public administrator is appointed, the register shall immediately send to the Treasurer of State a copy of the petition and the decree thereon, and in all cases where the public administrator is ordered to pay the balance of the estate as provided in subsection (e) the judge shall give notice to the county treasurer of the amount and from what estate it is receivable. If the public administrator neglects for 3 months after the order of the judge to deposit the money, the county treasurer shall petition the court for enforcement of the order or bring a civil action upon any bond of the public administrator for the recovery thereof. The records and accounts of the public administrator shall be audited annually by the State Department of Audit.

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

§ 3-701. Time of accrual of duties and powers

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

§ 3-702. Priority among different letters

A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

§ 3-703. General duties; relation and liability to persons interested in estate; standing to sue

(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 7-302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this Code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this Code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this Code.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as his decedent had immediately prior to death.

§ 3-704. Personal representative to proceed without court order; exception

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this Code, to resolve questions concerning the estate or its administration.

§ 3-705. Duty of personal representative; information to heirs and devisees

Not later than 30 days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative and, in any case where there has been no formal testacy proceedings, to the devisees in any purported will whose existence and the names of the devisees thereunder are known to the personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

§ 3-706. Duty of personal representative; inventory and appraisal

Within 3 months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item. The inventory shall also include a schedule of credits of the decedent, with the names of the obligors, the amounts due, a description of the nature of the obligation, and the amount of all such credits, exclusive of expenses and risk of settlement or collection.

The personal representative shall send a copy of the inventory to interested persons who request it. He shall also file the original of the inventory with the court.

§ 3-707. Employment of appraisers

The personal representative shall employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

§ 3-708. Duty of personal representative; supplementary inventory

CHAPTER 540

(a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered requires registration and that the trustee inform the beneficiaries as provided in section 7-303.

(b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(c) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (a) and (b).

§ 3-914. Disposition of unclaimed assets

(a) If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any, otherwise it shall be disposed of according to Title 33, chapter 27.

§ 3-915. Distribution to person under disability

A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this Code or otherwise to give a valid receipt and discharge for the distribution.

§ 3-916. Apportionment of estate taxes

(a) For purposes of this section:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State;

(2) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(3) "Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee;

(4) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(5) "Tax" means the federal estate tax, the Maine estate tax whenever it is imposed, and interest and penalties imposed in addition to the tax.

(6) "Fiduciary" means personal representative or trustee.

(b) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this Code, the method described in the will controls.

(c) (1) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Code the determination of the court in respect thereto shall be prima facie correct.

(d) (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other per-

son required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act.

(2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(e) (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b), and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(f) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3 months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(h) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this State or who owns property in this State subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

PART 10

CLOSING ESTATES

§ 3-1001. Formal proceedings terminating administration; testate or intestate; order of general protection

Upon the death of the householder the exemption provided by section 4551 shall terminate; provided, however, that nothing herein shall be deemed to affect the homestead allowance provided by Title 18-A, section 2-401.

Sec. 20. 14 MRSA § 4657 is repealed.

Sec. 21. 14 MRSA c. 703 is repealed.

Sec. 22. 14 MRSA § 5902 is amended to read:

§ 5902. Demands due from deceased persons

Demands against a person belonging to a defendant at the time of death of such person may be asserted by counterclaim against claims prosecuted by his executor or administrator personal representative. If a balance is found due to the defendant, judgment shall be in like form and of like effect as if he had commenced an action therefor. If the estate is insolvent, it must be presented to the commissioners or added to the list of claims like other judgments.

Sec. 23. 14 MRSA § 6302 is repealed.

Sec. 24. 14 MRSA § 6303 is amended to read:

§ 6303. Death of mortgagor or successor

If a person entitled to redeem a mortgaged estate or an equity of redemption which has been sold on execution, or the right to redeem such right, or the right to redeem lands set off on execution, dies without having made a tender for that purpose, a tender may be made and an action for redemption commenced and prosecuted by his executor or administrator personal representative, or by his heirs or devisees subject to the authority of the personal representative over the administration of the estate under Title 18-A, sections 3-709 and 3-711. If the plaintiff in such action dies pending the action, it may be prosecuted to final judgment by his personal representative, or by his heirs or devisees subject to the same authority of the personal representative or his executor or administrator. When a mortgagor resides out of the State, any person may, in his behalf, tender to the holder of the mortgage the amount due thereon. The tender shall be as effectual as if made by the mortgagor.

Sec. 24-A. 16 MRSA § 54 is repealed.

Sec. 24-B. 16 MRSA § 651 is amended to read:

§ 651. Rules of evidence

The rules of evidence in special proceedings of a civil nature, such as before referees, auditors and county commissioners and courts of probate, are the same as provided for civil actions. The rules of evidence in courts of probate are as provided in Title 18-A, section 1-107.

Sec. 24-C. 18 MRSA as amended, is repealed.

Sec. 25. 19 MRSA § 161, as amended by PL 1975, c. 701, § 8, is further amended to read:

§ 161. Holding and disposing of property

A married person, widow or widower of any age may own in his or her own right real and personal estate acquired by descent, gift or purchase and may manage, sell mortgage, convey and devise the same by will without the joinder or assent of husband or wife; but such conveyance without the joinder or assent of the husband or wife shall not bar his or her right and interest by descent in the estate so conveyed. Real estate directly conveyed to a person by his or her spouse cannot be conveyed by that person without the joinder of his or her spouse, except real estate conveyed to him or her as security or in payment of a bona fide debt actually due him or her from that spouse. When payment was made for property conveyed to a spouse from the property of the conveying spouse or it was conveyed by a spouse to his or her spouse without a valuable consideration, it may be taken as the property of the conveying spouse to pay his or her debts contracted before such purchase.

Sec. 26. 19 MRSA § 168 is repealed.

Sec. 27. 19 MRSA § 216 as last amended by PL 1975, c. 47, is repealed.

Sec. 27-A. 19 MRSA § 220 is enacted to read:

§ 220. Rights of children born out of wedlock

A child born out of wedlock is the child of his natural parents and is entitled to the same legal rights as a child born in lawful wedlock, except as otherwise expressly provided by statute.

Sec. 28. 19 MRSA § 535 is amended to read:

§ 535. Legal effect; descent of property

By such decree the natural parents are divested of all legal rights in respect to such child and he is freed from all legal obligations of obedience and maintenance in respect to them. He is, for the custody of the person and right of obedience and maintenance, to all intents and purposes the child of his adopters, with right of inheritance when not otherwise expressly provided in the decree of adoption, the same as if born to them in lawful wedlock, except that he shall not inherit property expressly limited to the heirs of the body of the adopters nor property from their collateral kindred by right of representation, and he shall stand in regard to lineal descendants of his adopters in the same position as if born to them in lawful wedlock, but he shall not by reason of adoption lose his right to inherit from his natural parents or kindred as provided in Title 18-A, section 2-109, paragraph (1). The adoption of a child made in any other state, according to the laws of that state, shall have the same force and effect in this State, as to inheritance and all other rights and duties as if said adoption had been made in this State according to the laws of this State. If the person adopted died intestate, his property acquired by himself or by devise, bequest, gift or otherwise before or after such adoption from his adopting parents or from the kindred of said adopting parents shall be distributed according to Title 18, the same as if born to said adopting parents in lawful wedlock; and property received by devise, bequest, gift or otherwise from his natural parents or kindred shall be distributed according to Title 18, as if no act of adoption had taken place.

Sec. 29. 19 MRSA § 537 is repealed.

Sec. 30. 19 MRSA § 581, as amended by PL 1977, c. 118, §§ 1 and 2, is repealed and the following enacted in its place:

§ 581. Spouse deserted or living apart

If a married person, without just cause, deserts his spouse or if his spouse, for just cause, is actually living apart from him, and if such desertion or living apart has continued for a period of at least 60 days immediately prior to the filing of the petition, the court may, upon the spouse's petition, or if he is mentally ill, upon the petition of his guardian or next friend, enter a decree that such spouse is so deserted or is so living apart and may prohibit the other spouse from imposing any restraint on the petitioner's personal liberty during such time as the court shall by order direct. Upon the petition of either spouse, or of the guardian or next friend of either who may be mentally ill, the court may make further orders relative to the care, custody and support of the minor children of the parties, may determine with which of their parents such children or any of them shall remain, may order either spouse to pay to the court for the other spouse sufficient money for the prosecution of such petition, and may from time to time, upon a similar petition, revise or alter any such order and make a new order in lieu thereof, as the circumstances of the parties or such minor children or any of them may require, and may enforce obedience by appropriate process. An order for child support under this section may include an order for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the children or an order to provide a policy or contract for coverage of such expenses. Availability of public welfare benefits to the family shall not affect the decision of the court as to the responsibility of a parent to provide child support. Nothing in this section shall preclude the court from incarcerating a spouse for nonpayment of child support, alimony or attorney's fees in violation of a court order to do so.

Sec. 31. 19 MRSA § 582, as repealed and replaced by PL 1975, c. 701, § 9, is repealed.

Sec. 32. 19 MRSA § 583 is repealed.

Sec. 33. 19 MRSA § 584, as last amended by PL 1973, c. 479, § 3, is repealed and the following enacted in its place:

§ 584. Petition; notice

The petition under section 581 may be brought and determined in the county or judicial division in which either of the parties lives, except that if the petitioner has left the county or judicial division in which the parties lived together and the respondent still lives therein, the petition shall be brought in that county or judicial division, and such notice shall be given thereon as the rules of the court may provide. The fee for filing such petition shall be \$5.

The right to bring such petition shall not be denied any person for failure to meet any residency requirement if such person is a member of the Armed Forces of the United States on active duty stationed in Maine or a dependent or spouse of such member. Such a member shall be deemed to be a resident either of the county or judicial division in which the military installation or installations or other place at which he has been stationed is located or of the county or judicial division in which he has sojourned.

Sec. 34. 19 MRSA § 585 is repealed and the following enacted in its place:

§ 585. Marriage settlement or contract not affected

Any action under section 581 shall not be deemed to invalidate any marriage settlement or contract between the parties.

Sec. 35. 19 MRSA § 586 is amended to read:

ment of any tax assessed under section 3634 or compromised under section 3635 shall, unless otherwise provided in the instrument creating the taxable interests, deduct the tax so paid from the whole property devised, bequeathed or given.

Sec. 50. 36 MRSA § 3686 is amended to read:

§ 3686. Civil action by State; bond

A civil action may be maintained in the name of the State against ~~an administrator, executor, a personal representative, trustee, grantee or donee for the recovery of all taxes imposed by chapters 551 - 567, with interest thereon. Administrators and executors~~ Personal representatives shall be liable to the State on their administration bonds for all taxes assessable under said chapters and interest thereon. Whenever ~~an~~ no administration bond is ~~waived by testamentary provision or by the assent of interested parties otherwise~~ required, the judge of probate, notwithstanding ~~such waiver, before granting letters testamentary or of administration~~ any provisions of Title 18-A, sections 3-603 through 3-606, may, and unless he shall find that any inheritance or estate tax due and to become due the State is reasonably secured by the lien upon real estate hereinbefore provided, shall require a bond payable to him or his successor sufficient to secure the payment of all inheritance taxes and interest conditioned in substance to pay all inheritance and estate taxes due to the State from the estate of the deceased with interest thereon. An action for the recovery of inheritance and estate taxes and interest shall lie on either of said bonds ~~without the authority of the judge of probate.~~

Sec. 51. 36 MRSA § 3687 is repealed.

Sec. 52. 37 MRSA §§ 201 - 215, are repealed.

Sec. 52-A. 37 MRSA §§ 217 - 221 are repealed.

Sec. 53. **Effective date.** This Act shall become effective January 1, 1981, except as otherwise provided.

Effective January 1, 1981, unless otherwise indicated.

CHAPTER 541

S. P. 581 — L. D. 1639

AN ACT to Make Additional Corrections of Errors and Inconsistencies in the Laws of Maine.

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

Whereas, Acts of this and previous Legislatures have resulted in certain technical errors and inconsistencies in the laws of Maine; and

Whereas, these errors and inconsistencies cause difficulty and confusion in determining what is intended under the law; and

Whereas, it is vitally necessary that this difficulty and confusion be resolved in order to prevent any injustice or hardship on the citizens of Maine; 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:

PART A

Sec. 1. 1 MRSA § 151, last ¶ is amended to read:

At 2 o'clock ~~ante-meridian~~ ~~antemeridian~~ of the last Sunday in April of each year, the standard time in this State shall be advanced one hour, and at 2 o'clock ~~ante-meridian~~ ~~antemeridian~~ of the last Sunday in October of each year the standard time in this State, by the retarding of one hour, shall be made to coincide with the mean astronomical time of the degree of longitude governing the zone wherein the State is situated, the standard official time of which is described as United States Eastern Standard Time, so that between the last Sunday of April at 2 o'clock ~~ante-meridian~~ ~~antemeridian~~ and the last Sunday in October at 2 o'clock ~~ante-meridian~~ ~~antemeridian~~ in each year the standard time in this State shall be one hour in advance of the United States Eastern Standard Time and said time shall be known as "Eastern Daylight Time."

Sec. 2. 1 MRSA § 353, first sentence, as amended by PL 1973, c. 625, § 3, is further amended to read:

The Attorney General shall prepare a brief explanatory statement which shall fairly describe the intent and content of each constitutional resolution or statewide referendum that may be presented to the people.

Sec. 3. 1 MRSA § 405, sub-§ 6, ¶ B, first sentence, as repealed and replaced by PL 1975, c. 758, is amended to read:

Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, provided that:

Sec. 4. 1 MRSA § 1003, sub-§ 1, as enacted by PL 1975, c. 621, § 1, is amended to read:

1. Procedures, rules and regulations. The commission shall adopt such procedures, rules and regulations as may appear necessary for the orderly, prompt, fair and efficient carrying out of its duties, consistent with this Act chapter.

Sec. 5. 1 MRSA § 1101, first ¶, as enacted by PL 1977, c. 259, § 1, is amended to read:

For the purposes of this section chapter, unless the context indicates otherwise, the following words shall have the following meanings.

Sec. 6. 3 MRSA c. 7, first 2 lines, are repealed and the following enacted in their place:

CHAPTER 7

LEGISLATIVE COUNCIL

Sec. 7. 3 MRSA § 162, sub-§ 6, as amended by P&SL 1973, c. 220, § 3, is further amended to read:

6. Appointment of directors and officers. To appoint a Legislative Administrative Director, a Director of Legislative Research, a Legislative Finance Officer, a Constituent Service Officer and a State Law Librarian, each of whom shall be chosen without reference to party affiliations and solely on the grounds of fitness to perform the duties of his office; each to be appointed for a term of 7 years from the date of his appointment and until his successor has been appointed and qualified:

Sec. 8. 3 MRSA § 162, sub-§ 12, as repealed and replaced by PL 1973, c. 590, § 4, is amended to read:

12. Physical facilities for Legislature. To insure that adequate physical facilities are provided for the efficient operation of the Legislature and to provide for and determine the utilization of legislatively controlled facilities both within and without the state-house Statehouse;

Sec. 9. 3 MRSA § 167, next to last ¶, first sentence, is amended to read:

The Legislative Finance Officer shall appoint, with the approval of the Legislative Council, an assistant legislative finance officer to assist the Legislative Finance Officer in carrying out his duties.

Sec. 10. 3 MRSA § 342, 2nd ¶, is amended to read:

If reasonably consistent with other essential uses of State-House statehouse office space, these facilities shall continue to be assigned for press use while the Legislature is not in session, but in any case, reasonably adequate facilities shall also be made available to the press at all other times.

Sec. 11. 4 MRSA § 164, sub-§ 12, first sentence, as repealed and replaced by PL 1969, c. 299, is amended to read:

The Chief Judge shall establish Establish in each division a Traffic Violations Bureau.

Sec. 12. 4 MRSA § 164, sub-§ 12, 2nd ¶, as repealed and replaced by PL 1969, c. 299, is amended to read:

The violations clerk shall accept written appearances, waiver of trial, plea of guilty and payment of fine and costs in traffic offense cases, subject to the limitations hereinafter prescribed in this subsection.

PL 1979 (1980)

CHAPTER 640

Sec. 2. 38 MRSA § 1312, as enacted by PL 1979, c. 511, § 2, is amended to read:

§ 1312. Solid waste subsidy

1. **Establishment.** There is established a fund to provide an annual solid waste subsidy to be paid to qualifying municipalities and counties.

2. **Calculation.** This subsidy shall provide a percentage, up to 50%, of the actual eligible cost of solid waste facility operation and maintenance for the prior year. This percentage of state participation shall be calculated by dividing the legislative appropriation for this fund by the sum of the reported eligible costs from all municipalities and counties. Each municipality and county shall receive a subsidy equal to this percentage multiplied by their actual eligible costs for the prior year.

Sec. 3. 38 MRSA § 1313, as enacted by PL 1979, c. 511, § 2, is repealed and the following enacted in its place:

§ 1313. Eligible facilities

1. **Facilities.** All municipalities and counties operating or contracting with the following types of solid waste disposal facilities will be eligible for the solid waste subsidy:

- A. Municipal facilities;
- B. Private facilities;
- C. County facilities; and
- D. Facilities operated by regional refuse districts and other public or quasi-public entities.

2. **Compliance.** Those facilities that the board has determined are in substantial compliance with the following criteria will be eligible for the solid waste subsidy:

- A. Operational criteria in rules adopted under section 1304, subsection 1, for facilities established on or before October 3, 1973; and
- B. Site and operational criteria in section 421 and rules adopted under section 1304 for facilities established after October 3, 1973.

3. **Appeals.** Municipalities and counties may appeal determination of compliance in accordance with provisions of chapter 2.

Sec. 4. 38 MRSA § 1314, sub-§ 6, ¶ B, first sentence, as enacted by PL 1979, c. 511, § 2, is amended to read:

Operation, maintenance and capital cost of equipment owned by the municipality or county and used at the facility.

Sec. 5. 38 MRSA § 1314, sub-§§ 7 and 8, as enacted by PL 1979, c. 511, § 2, are amended to read:

7. **Transfer stations.** All annual costs, including equipment and transportation, resulting from operation of waste transfer stations; and

8. **Resource recovery.** All annual costs resulting from recycling, resource recovery and energy production from solid wastes; and

Sec. 6. 38 MRSA § 1314, sub-§ 9 is enacted to read:

9. **Exclusions.** Costs for transport, storage, treatment and disposal of municipal or industrial sludge are not eligible for subsidy.

Sec. 7. 38 MRSA § 1315, as enacted by PL 1979, c. 511, § 2, is amended to read:

§ 1315. Administration

1. **Municipal reporting of costs.** The solid waste subsidy shall be based on costs for the prior calendar year. All municipalities and counties shall report actual eligible costs to the department by February 1st.

2. **Determination of subsidy.** The Legislature shall by May 1st annually enact legislation appropriating a fund for this subsidy. A subsidy index shall be calculated by dividing this fund by the sum of the eligible annual costs reported by municipalities and counties for the prior calendar year. If the subsidy index is

greater than 0.50, it shall be established at 0.50. All money not expended from the fund shall lapse. Each municipality and county shall receive an amount equal to this subsidy index times the municipality's or county's reported costs.

3. **Authorization of payment.** The commissioner shall authorize subsidy payments to the eligible municipalities and counties. The subsidy shall be paid to each municipality and county in 2 equal installments, the first on June 1st and the 2nd on October 1st each year for the prior year's costs.

4. **Audits.** Each municipality and county shall maintain records and accounts sufficient to document reported costs, and these records and accounts shall be available for audit for at least 3 years.

5. **Appeal.** The computation of the solid waste subsidy for any municipality or county may be appealed in writing to the board by the municipal officers or county commissioners within 30 days from the date of notification of the computed amount. The board shall review the appeal and make an adjustment if, in its judgment, an error has been made. The board's decision shall be final as to facts supported by the records of the appeal.

CHAPTER 641

S. P. 735 — L. D. 1914

AN ACT to Adjust the Administration of the Abandoned Property Law.

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

Sec. 1. 10 MRSA § 3953 is repealed and the following enacted in its place:

§ 3953. Disposal of residue

After satisfying the lien and the reasonable costs and expenses accrued, the residue shall be disposed of according to Title 33, chapter 27.

Sec. 2. 10 MRSA § 4009 is amended to read:

§ 4009. Disposal of proceeds

Money paid into court may be paid over to the person legally entitled to it, on motion and order of the court. If it is not called for at the first term after it is paid into court, it shall be paid into the county treasury presumed abandoned and disposed of according to Title 33, chapter 27. If afterwards the person entitled to it upon motion establishes his claim to it, the court may order the county treasurer to pay it to him.

Sec. 3. 11 MRSA § 7-206, sub-§ (5) is amended to read:

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods, or dispose of it according to Title 33, chapter 27.

Sec. 4. 11 MRSA § 7-210, sub-§ (6) is amended to read:

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods, or dispose of it according to Title 33, chapter 27.

Sec. 5. 18 MRSA § 1655, as repealed by PL 1979, c. 540, § 24-C, is repealed and the following enacted in its place:

§ 1655. Distribution of balance

When there is in the hands of a public administrator an amount of money more than is necessary for the payment of the deceased's debts and for other purposes of administration, if no widow, widower or heirs of the deceased have been discovered, the administrator shall be required by the judge to deposit it with the Treasurer of State, who shall receive it and dispose of it according to Title 33, chapter 27.

Sec. 6. 18 MRSA § 1657, as repealed by PL 1979, c. 540, § 24-C, is repealed.

Sec. 7. 25 MRSA § 3504, as enacted by PL 1975, c. 558, is amended to read:

(14)

CHAPTER 643

§ 3504. Deposit of proceeds

Proceeds of the sale of the property at public auction, less reimbursement to the law enforcement agency and others authorized of the reasonable expenses of custody thereof, shall be deposited in the State Treasury or the treasury of the appropriate political subdivision thereof to be expended as provided by law disposed of according to Title 33, chapter 27.

Sec. 8. 29 MRSA § 1111, 5th ¶, 3rd and 4th sentences, as repealed and replaced by PL 1967, c. 174, are amended to read:

If the owner, or holder of a security interest thereon, has not reclaimed the vehicle within 30 days from the date of such removal, ~~the vehicle shall be deemed to have been abandoned and shall become the property of the person bearing the expense of removal, as detailed above the vehicle may be sold at public auction, after giving 10 days' notice of the time and place of the sale in a newspaper of general circulation in the area, and by mailing a copy of that notice to the registered owner or holder of a security interest, if his identity and address can be reasonably ascertained, and a copy to the Chief of the State Police. After satisfying the expenses of removal and sale, the residue shall be disposed of according to Title 33, chapter 27. If he has not ascertained the identity of such owner, or holder of a security interest thereon, he shall cause notice of his claim to the vehicle to be published once a week for 2 successive weeks in a newspaper circulated in the county where such vehicle is located~~

Sec. 9. 30 MRSA § 2952, 2nd and 3rd sentences are amended to read:

After satisfying the lien and any costs that may accrue, any residue remaining shall on demand within 6 months, be paid to such guest or boarder, and if not so demanded within 6 months from date of such sale, such residue shall be deposited by such innkeeper, boardinghouse keeper or hotel keeper with the treasurer of the county in which the inn, hotel or boardinghouse is situated, together with a statement of such keeper's claim and the cost of enforcing same, a copy of the published notice, and of the amounts received for the goods sold at said sale be disposed of according to Title 33, chapter 27. Said residue shall by said county treasurer be credited to the general revenue fund of said county, subject to a right of said guest or boarder or his representative to reclaim at any time within 3 years of date of deposit with said treasurer

Sec. 10. 33 MRSA § 1312, sub-§ 1, as enacted by PL 1977, c. 707, § 8, is repealed and the following enacted in its place:

1. Property. Any cash or sums payable on a written instrument other than a money order or traveller's check and all other personal property with a fair market value of \$1,000 or more not otherwise covered in this chapter, that is held or owing in the ordinary course of the holder's business shall be presumed abandoned if it has not been claimed within 10 years after becoming payable or distributable. Section 1304, subsection 3, shall apply in the cases of money orders or traveller's checks.

Sec. 11. 33 MRSA § 1351, sub-§ 1, as enacted by PL 1977, c. 707, § 8, is amended by adding at the end the following new sentence:

A person may also report funds or other property prior to the presumption of abandonment if it has been abandoned.

Sec. 12. 33 MRSA § 1352, sub-§ 1, as enacted by PL 1977, c. 707, § 8, is amended to read:

1. Publication. Within 120 days of the filing of the report required by section 1351, the Treasurer of State shall cause to be published in at least 2 newspapers of general circulation in the State, at least once a week for 2 consecutive weeks, a notice and listing of all abandoned property reported to him.

Sec. 13. 33 MRSA § 1358, sub-§ 2, ¶ A, as enacted by PL 1977, c. 707, § 8, is amended to read:

A. The Treasurer of State may expend the funds in the Abandoned Property Fund for the payment of claims or refunds to holders as authorized under this chapter, and for the payment of taxes, costs of maintenance and upkeep of abandoned property, costs of required notice and publication, and costs of auction or sale or other administrative costs under this chapter.

Sec. 14. 33 MRSA § 1359, sub-§ 1, 3rd sentence, as enacted by PL 1977, c. 707, § 8, is amended to read:

The claim shall be made to the person originally holding the property, or to his successor or successors to the Treasurer of State, if there is no other successor.

Sec. 15. 33 MRSA § 1366 is enacted to read:

§ 1366. Agreements with other states

The Treasurer of State may enter into agreements with other states for administering this chapter, provided that the Attorney General has approved the agreement as to its legality.

CHAPTER 642

H. P. 1653 — L. D. 1762

AN ACT Broadening the Elderly Tax and Rent Refund Act to Include Persons who are Currently Married as well as Unmarried under the Eligibility Standards.

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

Sec. 1. 36 MRSA § 6103, sub-§ 1, as amended by PL 1979, c. 541, Part B, § 56, is further amended by adding at the end a new sentence to read:

Ownership of a homestead under this chapter may be by fee, by life tenancy, by bond for deed, as mortgagee or any other possessory type interest in which the owner is personally responsible for the tax for which he claims a refund.

Sec. 2. 36 MRSA § 6111, as last amended by PL 1979, c. 561, § 1, is repealed and the following enacted in its place:

§ 6111. Age limitation

A claim which is otherwise allowable under this chapter shall only be granted when:

1. Age 62. At least one member of the household has attained the age of 62 during the year for which relief is requested;

2. Age 55; not married. The claimant is currently not married and has attained the age of 55 during the year for which relief is requested and is, due to disability, receiving federal disability payments, such as supplemental security income; or

3. Age 55; married. The claimant is currently married and has attained the age of 55 during the year for which relief is requested and both the claimant and the claimant's spouse are, due to disability, receiving federal disability payments, such as supplemental security income.

CHAPTER 643

H. P. 1739 — L. D. 1857

AN ACT to Permit the Public Utilities Commission to Include in the Fuel Adjustment Clause Capacity Purchases from Small Power Producers and Cogenerators.

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

Whereas, the Public Utilities Commission is developing a new fuel adjustment clause for Central Maine Power Company which may be implemented by April 1, 1980; and

Whereas, this new clause is based upon a projection of estimated fuel costs for 12 months; and

Whereas, if this bill is enacted and becomes effective after the implementation of Central Maine Power's new fuel adjustment clause, capacity purchases from small power producers and cogenerators could not be recovered under Central Maine Power's fuel adjustment clause until 12 months after the new clause is implemented; and

Whereas, this delay will unnecessarily discourage utility purchases of energy from small power producers and cogenerators; 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

CHAPTER 20

H.R. 973 - L.D. 1319

An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005

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

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses incident to the operation of state departments and institutions will become due and payable immediately; 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:

PART A

Sec. A-1. Appropriations and allocations.

In order to provide for necessary expenditures of State Government and other purposes for the fiscal years ending June 30, 2004 and June 30, 2005, the following sums as designated in the following tabulations are appropriated or allocated out of any money not otherwise appropriated or allocated.

Sec. A-2. Allotments required.

Upon receipt of allotments duly approved by the Governor based upon work programs submitted to the State Budget Officer, the State Controller shall authorize expenditures of these funds, together with expenditures for other purposes necessary to the conduct of State Government, on the basis of these allotments and not otherwise. Allotments for Personal Services and Capital Expenditures and amounts for All Other departmental expenses may not exceed the amounts shown in the budget document or as they may be revised by the joint standing committee of the Legislature having jurisdiction over these appropriations and allocations, unless recommended by the

State Budget Officer and approval of the Governor in accordance with established law.

Sec. A-3. Personal Services funding.

The amounts provided for Personal Services in appropriated and allocated programs are subject to the provision that the total number of positions and the costs thereof in any program may not, during any fiscal year, vary either from the positions included in computing the total dollars appropriated or allocated for Personal Services or in the specific cost of each position upon which the appropriations and allocations are based. The State Budget Officer shall take the action necessary to ensure compliance with this section except as provided for in this section and section 6 in this Part.

An appointing authority shall comply with the Civil Service Laws, rules and regulations and collective bargaining agreements pertaining to the hiring, promoting, demoting and bumping of state employees. The Legislature shall act upon any recommendation for additional appropriations or allocations in order to fund additional requirements created by complying with this paragraph.

Except as indicated below, savings accruing from unused funding of employee benefits may not be used to increase services provided by employees. Except as indicated below, accrued salary savings generated from vacant positions within an appropriation or allocation for Personal Services may be used for the payment of nonrecurring Personal Services costs within the account where the savings exist. In the 2004-2005 biennium only, accrued savings generated from vacant positions within a General Fund account's appropriation for Personal Services may be used to offset Personal Services shortfalls in other General Fund accounts that occur as a direct result of Personal Services appropriation reductions for projected vacancies provided that the transfer of such accrued savings is subject to review by the Joint Standing Committee on Appropriations and Financial Affairs. Costs related to acting capacity appointments and emergency, unbudgeted overtime for which it is impractical to budget in advance may be used with the approval of the appointing authority. Other actions such as retroactive compensation for reclassifications or reallocations and retroactive or one-time settlements related to arbitrator or court decisions must be recommended by the department of agency head and approved by the State Budget Officer. Salary and employee benefits savings may not be used to fund recurring Personal Services actions either in the account where the savings exist or in another account.

The amounts appropriated or allocated for Personal Services include funds for the State's share of state employees' retirement. The State Controller shall transfer the State's share to the Maine State Retirement